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### 1NC—Topicality

#### “USFG should” means the debate is about a policy established by governmental means

Jon M. ERICSON, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., 3 [*The Debater’s Guide*, Third Edition, p. 4]

The Proposition of Policy: Urging Future Action

In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow should in the should-verb combination. For example, should adopt here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase free trade, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### A limited topic of discussion that provides for equitable ground is key to productive inculcation of decision-making and advocacy skills in every and all facets of life—even if their position is contestable that’s distinct from it being valuably debatable. Our interpretation provides room for flexibility, creativity, and innovation, but targets the discussion to avoid mere statements of fact

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Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a fact or value or policy, there is no need for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate “Resolved: That two plus two equals four,” because there is simply no controversy about this statement. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this “debate” is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007.

Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, “Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms.” That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as “We ought to do something about this” or, worse, “It’s too complicated a problem to deal with.” Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as “What can be done to improve public education?”—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements “Resolved: That the federal government should implement a program of charter schools in at-risk communities” and “Resolved: That the state of Florida should adopt a school voucher program” more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference.

I. DEFINING THE CONTROVERSY

To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about “homelessness” or “abortion” or “crime” or “global warming” we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose.

Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does “effectiveness” mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, “Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?” The basis for argument could be phrased in a debate proposition such as “Resolved: That the United States should enter into a mutual defense treaty with Laurania.” Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

#### Decision-making skills are the largest impact—they are the only portable impact and determine our success or failure in life. Critical thinking skills inculcated through debate are crucial

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After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations’s resolutions. Debate about a possible military action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition.

Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions.

Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations.

We all make many decisions every day. To refinance or sell one’s home, to buy a high-performance SUV or an economical hybrid car, what major to select, what to have for dinner, what candidate to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? The Daily Show or the ball game? And upon what information should I rely to make my decision?

Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIME magazine named YOU its “Person of the Year.” Congratulations! Its selection was based on the participation not of “great men” in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs, online networking, YouTube, Facebook, MySpace, Wikipedia, and many other “wikis,” knowledge and “truth” are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs?

The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates.

Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized.

The executive order establishing California’s requirement states:

Instruction in critical thinking is designed to achieve an understanding of the relationship of language to logic, which would lead to the ability to analyze, criticize, and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambiguous statements of knowledge or belief. The minimal competence to be expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish fact from judgment, belief from knowledge, and skills in elementary inductive and deductive processes, including an understanding of the formal and informal fallacies of language and thought.

Competency in critical thinking is a prerequisite to participating effectively in human affairs, pursuing higher education, and succeeding in the highly competitive world of business and the professions. Michael Scriven and Richard Paul for the National Council for Excellence in Critical Thinking Instruction argued that the effective critical thinker:

■ raises vital questions and problems, formulating them clearly and precisely;

■ gathers and assesses relevant information, using abstract ideas to interpret it effectively; comes to well-reasoned conclusions and solutions, testing them against relevant criteria and standards;

■ thinks open-mindedly within alternative systems of thought, recognizing and assessing, as need be, their assumptions, implications, and practical consequences; and

■ communicates effectively with others in figuring out solutions to complex problems.

They also observed that critical thinking “entails effective communication and problem solving abilities and a commitment to overcome our native egocentrism and sociocentrism.”1 Debate as a classroom exercise and as a mode of thinking and behaving uniquely promotes development of each of these skill sets. Since classical times, debate has been one of the best methods of learning and applying the principles of critical thinking. Contemporary research confirms the value of debate. One study concluded:

The impact of public communication training on the critical thinking ability of the participants is demonstrably positive. This summary of existing research reaffirms what many ex-debaters and others in forensics, public speaking, mock trial, or argumentation would support: participation improves the thinking of those involved.2

In particular, debate education improves the ability to think critically. In a comprehensive review of the relevant research, Kent Colbert concluded, “The debate–critical thinking literature provides presumptive proof favoring a positive debate–critical thinking relationship.”3

Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others.

Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job offer, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for our product, or a vote for our favored political candidate.

#### Debate is crucial to instill effective deliberation and problem-solving skills in an active citizenry. That is necessary to confront future existential challenges facing society

Lundberg 10—Christian O. Lundberg, Professor of Communications at University of North Carolina, Chapel Hill [“Tradition of Debate in North Carolina,” *Navigating Opportunity: Policy Debate in the 21st Century*, By Allan D. Louden, p. 311-13]

The second major problem with the critique that identifies a naivety in articulating debate and democracy is that it presumes that the primary pedagogical outcome of debate is speech capacities. But the democratic capacities built by debate are not limited to speech-as indicated earlier, debate builds capacity for critical thinking, analysis of public claims, informed decision making, and better public judgment. If the picture of modem political life that underwrites this critique of debate is a pessimistic view of increasingly labyrinthine and bureaucratic administrative politics, rapid scientific and technological change outpacing the capacities of the citizenry to comprehend them, and ever-expanding insular special-interest- and money-driven politics, it is a puzzling solution, at best, to argue that these conditions warrant giving up on debate. If democracy is open to rearticulation, it is open to rearticulation precisely because as the challenges of modem political life proliferate, the citizenry's capacities can change, which is one of the primary reason that theorists of democracy such as Dewey in The Public and Its Problems place such a high premium on education (Dewey 1988, 63, 154). Debate provides an indispensible form of education in the modern articulation of democracy because it builds precisely the skills that allow the citizenry to research and be informed about policy decisions that impact them, to sort through and evaluate the evidence for and relative merits of arguments for and against a policy in an increasingly information-rich environment, and to prioritize their time and political energies toward policies that matter the most to them.

The merits of debate as a tool for building democratic capacity-building take on a special significance in the context of information literacy. John Larkin (2005, 140) argues that one of the primary failings of modem colleges and universities is that they have not changed curriculum to match with the challenges of a new information environment. This is a problem for the course of academic study in our current context, but perhaps more important, argues Larkin, for the future of a citizenry that will need to make evaluative choices against an increasingly complex and multimediated information environment (ibid.). Larkin's study tested the benefits of debate participation on information-literacy skills and concluded that in-class debate participants reported significantly higher self- efficacy ratings of their ability to navigate academic search databases and to effectively search and use other Web resources:

To analyze the self-report ratings of the instructional and control group students, we first conducted a multivariate analysis of variance on all of the ratings, looking jointly at the effect of instruction/no instruction and debate topic…that it did not matter which topic students had been assigned… students in the Instructional [debate] group were significantly more confident in their ability to access information and less likely to feel that they needed help to do so….These findings clearly indicate greater self-efficacy for online searching among students who participated in [debate] .... These results constitute strong support for the effectiveness of the project on students' self-efficacy for online searching in the academic databases. There was an unintended effect, however: After doing…the project, instructional group students also felt more confident than the other students in their ability to get good information from Yahoo and Google. It may be that the library research experience increased self-efficacy for any searching, not just in academic databases. (Larkin 2005, 144)

Larkin's study substantiates Thomas Worthen and Gaylen Pack's (1992, 3) claim that debate in the college classroom plays a critical role in fostering the kind of problem-solving skills demanded by the increasingly rich media and information environment of modernity. Though their essay was written in 1992 on the cusp of the eventual explosion of the Internet as a medium, Worthen and Pack’s framing of the issue was prescient: the primary question facing today`s student has changed from how to best research a topic to the crucial question of learning how to best evaluate which arguments to cite and rely upon from an easily accessible and veritable cornucopia of materials.

There are, without a doubt, a number of important criticisms of employing debate as a model for democratic deliberation. But cumulatively, the evidence presented here warrants strong support for expanding debate practice in the classroom as a technology for enhancing democratic deliberative capacities. The unique combination of critical thinking skills, research and information processing skills, oral communication skills, and capacities for listening and thoughtful, open engagement with hotly contested issues argues for debate as a crucial component of a rich and vital democratic life. In-class debate practice both aids students in achieving the best goals of college and university education, and serves as an unmatched practice for creating thoughtful, engaged, open-minded and self-critical students who are open to the possibilities of meaningful political engagement and new articulations of democratic life.

Expanding this practice is crucial, if only because the more we produce citizens that can actively and effectively engage the political process, the more likely we are to produce revisions of democratic life that are necessary if democracy is not only to survive, but to thrive. Democracy faces a myriad of challenges, including: domestic and international issues of class, gender, and racial justice; wholesale environmental destruction and the potential for rapid climate change; emerging threats to international stability in the form of terrorism, intervention and new possibilities for great power conflict; and increasing challenges of rapid globalization including an increasingly volatile global economic structure. More than any specific policy or proposal, an informed and active citizenry that deliberates with greater skill and sensitivity provides one of the best hopes for responsive and effective democratic governance, and by extension, one of the last best hopes for dealing with the existential challenges to democracy [in an] increasingly complex world.

#### Simulated national security law debates preserve agency and enhance decision-making

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, “National Security Law Pedagogy and the Role of Simulations”, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Prefer specificity—simulation about war powers is uniquely empowering

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

2. Factual Chaos and Uncertainty¶ One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often **under-taught** in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a **broader set of tools,** such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to **swiftly and efficiently engage** in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. **Deeply humanistic theories underlie this approach**. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. **It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions** related to professional responsibility **that will confront them** in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet **it is vital for their future success to give students the ability to** create conditions of learning.

### 1NC—Case

#### They don’t meet their role of the ballot. Musical performance cannot act as vehicle for resistance – it operates through a circular logic: one starts with identifying the groups that are “hegemonic” and the groups that are “marginal” and then simply valorizes the practices of those groups without rigorously researching and debating the material political conditions that produce poverty, racism, and violence. This undermines political agency

Gitlin 97—sociology, Columbia (Todd, The anti-political populism of cultural studies, Dissent; Spring, Vol. 44, Iss. 2; p 77, ProQuest)

From the late 1960s onward, as I have said, the insurgent energy was to be found in movements that aimed to politicize specific identities-racial minorities, women, gays. If the "collective behavior" school of once-conventional sociology had grouped movements in behalf of justice and democratic rights together with fads and fashions, cultural studies now set out to separate movements from fads, to take seriously the accounts of movement participants themselves, and thereby to restore the dignity of the movements only to end up, in the 1980s, linking movements with fads by finding equivalent dignity in both spheres, so that, for example, dressing like Madonna might be upgraded to an act of "resistance" equivalent to demonstrating in behalf of the right to abortion, and watching a talk show on family violence was positioned on the same plane. In this way, cultural studies extended the New Left symbiosis with popular culture. Eventually, the popular culture of marginal groups (punk, reggae, disco, feminist poetry, hip-hop) was promoted to a sort of counterstructure of feeling, and even, at the edges, a surrogate politics-a sphere of thought and sensibility thought to be insulated from the pressures of hegemonic discourse, of instrumental reason, of economic rationality, of class, gender, and sexual subordination. The other move in cultural studies was to claim that culture continued radical politics by other means. The idea was that cultural innovation was daily insinuating itself into the activity of ordinary people. Perhaps the millions had not actually been absorbed into the hegemonic sponge of mainstream popular culture. Perhaps they were freely dissenting. If "the revolution" had receded to the point of invisibility, it would be depressing to contemplate the victory of a hegemonic culture imposed by strong, virtually irresistible media. How much more reassuring to detect "resistance" saturating the pores of everyday life! In this spirit, there emerged a welter of studies purporting to discover not only the "active" participation of audiences in shaping the meaning of popular culture, but the "resistance" of those audiences to hegemonic frames of interpretation in a variety of forms-news broadcasts (Dave Morley, The `Nationwide ' Audience, 1980); romance fiction (Janice Radway, Reading the Romance, 1984); television fiction (Tamar Liebes and Elihu Katz, The Export of Meaning, 1990; Andrea Press, Women Watching Television, 1991); television in general (John Fiske, Television Culture, 1987); and many others. Thus, too, the feminist fascination with the fictions and talk shows of daytime "women's television"-in this view, the dismissal of these shows as "trivial," "banal," "soap opera," and so on, follows from the patriarchal premise that what takes place within the four walls of the home matters less than what takes place in a public sphere established (not coincidentally) for the convenience of men. Observing the immensity of the audiences for Oprah Winfrey and her legions of imitators, many in cultural studies upended the phenomenon by turning the definitions around. The largely female audiences for these shows would no longer be dismissed as distracted voyeurs, but praised as active participants in the exposure and therefore politicizing of crimes like incest, spousal abuse, and sexual molestation. These audiences would no longer be seen simply as confirming their "normality" with a safe, brief, well bounded, vicarious acquaintanceship with deviance. They could be understood as an avant-garde social movement. Above all, in a word, cultural studies has veered into populism. Against the unabashed elitism of conventional literary and art studies, cultural studies affirms an unabashed populism in which all social activities matter, all can be understood, all contain cues to the social nature of human beings. The object of attention is certified as worthy of such not by being "the best that has been thought and said in the world" but by having been thought and said by or for "the people"-period. The popularity of popular culture is what makes it interesting-and not only as an object of study. It is the populism if not the taste of the analyst that has determined the object of attention in the first place. The sociological judgment that popular culture is important to people blurs into a critical judgment that popular culture must therefore be valuable. To use one of the buzzwords of "theory," there is a "slippage" from analysis to advocacy, defense, upward "positioning." Cultural studies often claims to have overthrown hierarchy, but what it actually does is invert it. What now certifies worthiness is the popularity of the object, not its formal qualities. If the people are on the right side, then what they like is good. This tendency in cultural studies-I think it remains the main line-lacks irony. One purports to stand four-square for the people against capitalism, and comes to echo the logic of capitalism. The consumer sovereignty touted by a capitalist society as the grandest possible means for judging merit finds a reverberation among its ostensible adversaries. Where the market flatters the individual, cultural studies flatters the group. What the group wants, buys, demands is ipso facto the voice of the people. Where once Marxists looked to factory organization as the prefiguration of "a new society in the shell of the old," today they tend to look to sovereign culture consumers. David Morley, one of the key researchers in cultural studies, and one of the most reflective, has himself deplored this tendency in recent audience studies. He maintains that to understand that "the commercial world succeeds in producing objects. . . which do connect with the lived desires of popular audiences" is "by no means necessarily to fall into the trap . . . of an uncritical celebration of popular culture." But it is not clear where to draw the line against the celebratory tendency when one is inhibited from doing so by a reluctance to criticize the cultural dispositions of the groups of which one approves. Unabashedly, the populism of cultural studies prides itself on being political. In the prevailing schools of cultural studies, to study culture is not so much to try to grasp cultural processes but to choose sides or, more subtly, to determine whether a particular cultural process belongs on the side of society's angels. An aura of hope surrounds the enterprise, the hope (even against hope) of an affirmative answer to the inevitable question: Will culture ride to the rescue of the cause of liberation? There is defiance, too, as much as hope. The discipline means to cultivate insubordination. On this view, marginalized groups in the populace continue to resist the hegemonic culture. By taking defiant popular culture seriously, one takes the defiers seriously and furthers their defiance. Cultural studies becomes "cult studs." It is charged with surveying the culture, assessing the hegemonic import of cultural practices and pinpointing their potentials for "resistance." Is this musical style or that literary form "feminist" or "authentically Latino"? The field of possibilities is frequently reduced to two: for or against the hegemonic. But the nature of that hegemony, in its turn, is usually defined tautologically: that culture is hegemonic that is promoted by "the ruling group" or "the hegemonic bloc," and by the same token, that culture is "resistant" that is affirmed by groups assumed (because of class position, gender, race, sexuality, ethnicity, and so on) to be "marginalized" or "resistant." The process of labeling is circular, since it has been predetermined whether a particular group is, in fact, hegemonic or resistant. The populism of cultural studies is fundamental to its allure, and to the political meaning its adherents find there, for cultural studies bespeaks an affirmation of popularity tout court. To say that popular culture is "worth attention" in the scholarly sense is, for cultural studies, to say something pointed: that the people who render it popular are not misguided when they do so, not fooled, not dominated, not distracted, not passive. If anything, the reverse: the premise is that popular culture is popular because and only because the people find in it channels of desire pleasure, initiative, freedom. It is this premise that gives cultural studies its aura of political engagement-or at least political consolation. To unearth reason and value, brilliance and energy in popular culture is to affirm that the people have not been defeated. The cultural student, singing their songs, analyzing their lyrics, at the same time sings their praises. However unfavorable the balance of political forces, people succeed in living lives of vigorous resistance! Are the communities of African-Americans or AfroCaribbeans suffering? Well, they have rap! (Leave aside the question of whether all of them want rap.) The right may have taken possession of 10 Downing Street, the White House, and Congress-and as a result of elections, embarrassingly enough!-but at least one is engage in cultural studies. Consolation: here is an explanation for the rise of academic cultural studies during precisely the years when the right has held political and economic power longer and more consistently than at any other time in more than a half century. Now, in effect, "the cultural is political," and more, it is regarded as central to the control of political and economic resources. The control of popular culture is held to have become decisive in the fate of contemporary societies-or at least it is the sphere in which opposition can find footing, find breathing space, rally the powerless, defy the grip of the dominant ideas, isolate the powers that be, and prepare for a "war of position" against their dwindling ramparts. On this view, to dwell on the centrality of popular culture is more than an academic's way of filling her hours; it is a useful certification of the people and their projects. To put it more neutrally, the political aura of cultural studies is supported by something like a "false consciousness" premise: the analytical assumption that what holds the ruling groups in power is their capacity to muffle, deform, paralyze, or destroy contrary tendencies of an emotional or ideological nature. By the same token, if there is to be a significant "opposition," it must first find a base in popular culture-and first also turns out to be second, third, and fourth, since popular culture is so much more accessible, so much more porous, so much more changeable than the economic and political order. With time, what began as compensation hardened-became institutionalized-into a tradition. Younger scholars gravitated to cultural studies because it was to them incontestable that culture was politics. To do cultural studies, especially in connection with identity politics, was the politics they knew. The contrast with the rest of the West is illuminating. In varying degrees, left-wing intellectuals in France, Italy, Scandinavia, Germany, Spain and elsewhere retain energizing attachments to Social Democratic, Green, and other left-wing parties. There, the association of culture with excellence and traditional elites remains strong. But in the Anglo-American world, including Australia, these conditions scarcely obtain. Here, in a discouraging time, popular culture emerges as a consolation prize. (The same happened in Latin America, with the decline of left-wing hopes.) The sting fades from the fragmentation of the organized left, the metastasis of murderous nationalism, the twilight of socialist dreams virtually everywhere. Class inequality may have soared, ruthless individualism may have intensified, the conditions of life for the poor may have worsened, racial tensions may have mounted, unions and social democratic parties may have weakened or reached an impasse, but never mind. Attend to popular culture, study it with sympathy, and one need not dwell on unpleasant realities. One need not be unduly vexed by electoral defeats. One need not be preoccupied by the ways in which the political culture's center of gravity has moved rightward-or rather, one can put this down to the iron grip of the established media institutions. One need not even be rigorous about what one opposes and what one proposes in its place. Is capitalism the trouble? Is it the particular form of capitalism practiced by multinational corporations in a deregulatory era? Is it patriarchy (and is that the proper term for a society that has seen an upheaval in relations between women and men in the course of a half-century)? Racism? Antidemocracy? Practitioners of cultural studies, like the rest of the academic left, are frequently elusive. Speaking cavalierly of "opposition" and "resistance" permits-rather, cultivates-a certain sloppiness of thinking, making it possible to remain "left" without having to face the most difficult questions of political selfdefinition. The situation of cultural studies conforms to the contours of our political moment. It confirms-and reinforces-the current paralysis: the incapacity of social movements and dissonant sensibilities to imagine effective forms of public engagement. It substitutes an obsession with popular culture for coherent economic-political thought or a connection with mobilizable populations outside the academy and across identity lines. One must underscore that this is not simply because of cultural studies' default. The default is an effect more than a cause. It has its reasons. The odds are indeed stacked against serious forward motion in conventional politics. Political power is not only beyond reach, but functional majorities disdain it, finding the government and all its works contemptible. Few of the central problems of contemporary civilization are seriously contested within the narrow band of conventional discourse. Unconventional politics, such as it is, is mostly fragmented and self-contained along lines of racial, gender, and sexual identities. One cannot say that cultural studies diverts energy from a vigorous politics that is already in force. Still, insofar as cultural studies makes claims for itself as an insurgent politics, the field is presumptuous and misleading. Its attempt to legitimize the ecstasies of the moment confirms the collective withdrawal from democratic hope. Seeking to find political energies in audiences who function as audiences, rather than in citizens functioning as citizens, the dominant current in cultural studies is pressed willy-nilly toward an uncritical celebration of technological progress. It offers no resistance to the primacy of visual and nonlinear culture over the literary and linear. To the contrary: it embraces technological innovation as soon as the latest developments prove popular. It embraces the sufficiency of markets; its main idea of the intellect's democratic commitment is to flatter the audience. Is there a chance of a modest redemption? Perhaps, if we imagine a harder headed, less wishful cultural studies, free of the burden of imagining itself to be a political practice. A chastened, realistic cultural studies would divest itself of political pretensions. It would not claim to be politics. It would not mistake the academy for the larger society. It would be less romantic about the world-and about itself. Rigorous practitioners of cultural studies should be more curious about the world that remains to be researched and changed. We would learn more about politics, economy, and society, and in the process, appreciate better what culture, and cultural study, do not accomplish. If we wish to do politics, let us organize groups, coalitions, demonstrations, lobbies, whatever; let us do politics. Let us not think that our academic work is already that.

#### Making the oppressed subject visible provokes surveillance, voyeurism and attempts at imperial possession and incorporation.

Peggy PHELAN Chair NYU Performance Studies Dept. 93 [*Unmarked* p. 7-8]

The current contradiction between “identity politics” with its accent on visibility, and the psychoanalytic/ldeconstructionist mistrust (if visibility as she source of unity or wholeness needs to he refigured, if not resolved. As the left dedicates ever more energy to visibility politics, I am increasingly troubled by the forgetting of the problems of visibility so successfully articulated by feminist film theorists in I he 1970s and 1980s. I am not suggesting that continued invisibility is the “proper” political agenda for the disenfranchised, but. rather that. the binary between the power of visibility and the impotency of invisibility is falsifying. There is real power in remaining unmarked; and there are serious limitations to visual representation as a political goal. Visibility is a trap (“In this matter oft he visible, everything is a trap”: (Lacan *Four Fundamental Concepts*: 93); it summons surveillance and the law; it provokes voyeurism, fetishism, the colonialist/imperial appetite for possession. Yet it retains a certain political appeal. Visibility politics have practical consequences: a line can be drawn between a practice (getting someone seen or read) and a theory (if you are seen it. is harder for “them” to ignore you, to construct a punitive canon); the two can be reproductive. While there is a deeply ethical appeal in the desire for a more inclusive representational landscape and certainly under-represented communities can be empowered by an enhanced visibility, the terms of this visibility often enervate the putative power of these identities. A much more nuanced relationship to the power of visibility needs to be pursued than the Left currently engages.” Arguing that communities of the hitherto under-represented will be made stronger if representational economies reflect and see them, progressive cultural activists have staked a huge amount on increasing and expanding the visibility of racial, ethnic, and sexual “others.” It is assumed that disenfranchised communities who see their members within the representational field will feel great or pride in being Part, of such a community and those who are not in such a community will increase their understanding of the diversity and strength of such communities. Implicit within this argument. are several presumptions which bear further scrutiny: 1) Identities are visibly marked so the resemblance between the African-American on the television and the African-American on the street helps the observer see they are members of the same community. Reading physical resemblance is a way of' identifying community.

2 The relationship between representation and idenity is linear and smoothly mimetic, What one sees is who one is.

3 If one's mimetic likeness is not represented. one is not addressed. 4. Increased visibility equals increased power. Each presumption reflects the ideology of the visible, an ideology which erases the power of the unmarked, unspoken, and unseen.

#### They turn the political into only the personal—appeals to personal experience replace analysis of group oppression with personal testimony. As a result, politics becomes a policing operation—those not in an identity group are denied intellectual access and those within the group who don’t conform to the aff’s terms are excluded. Over time, this strategy LIMITS politics to ONLY the personal. This devastates structural change, and turns the case—it demands that political performance assimilate to very limited norms of experience

Joan SCOTT Harold F. Linder Professor at the School of Social Science in the Institute for Advanced Study in Princeton 92 [“Multiculturalism and the Politics of Identity” *October* Summer p. 16-19]

The logic of individualism has structured the approach to multiculturalism in many ways. The call for tolerance of difference is framed in terms of respect for individual characteristics and attitudes; group differences are conceived categorically and not relationally, as distinct entities rather than interconnected structures or systems created through repeated processes of the enunciation of difference. Administrators have hired psychological consulting firms to hold diversity workshops which teach that conflict resolution is a negotation between dissatisfied individuals. Disciplinary codes that punish "hate-speech" justify prohibitions in terms of the protection of individuals from abuse by other individuals, not in terms of the protection of members of historically mistreated groups from discrimination, nor in terms of the ways language is used to construct and reproduce asymmetries of power. The language of protection, moreover, is conceptualized in terms of victimization; the way to make a claim or to justify one's protest against perceived mistreatment these days is to take on the mantle of the victim. (The so-called Men's Movement is the latest comer to this scene.) Everyone-whether an insulted minority or the perpetrator of the insult who feels he is being unjustly accused-now claims to be an equal victim before the law. Here we have not only an extreme form of individualizing, but a conception of individuals without agency. There is nothing wrong, on the face of it, with teaching individuals about how to behave decently in relation to others and about how to empathize with each other's pain. The problem is that difficult analyses of how history and social standing, privilege, and subordination are involved in personal behavior entirely drop out. Chandra Mohanty puts it this way: There has been an erosion of the politics of collectivity through the reformulation of race and difference in individualistic terms. The 1960s and '70s slogan "the personal is political" has been recrafted in the 1980s as "the political is personal." In other words, all politics is collapsed into the personal, and questions of individual behaviors, attitudes, and life-styles stand in for political analysis of the social. Individual political struggles are seen as the only relevant and legitimate form of political struggle.5 Paradoxically, individuals then generalize their perceptions and claim to speak for a whole group, but the groups are also conceived as unitary and autonomous. This individualizing, personalizing conception has also been be- hind some of the recent identity politics of minorities; indeed it gave rise to the intolerant, doctrinaire behavior that was dubbed, initially by its internal critics, "political correctness." It is particularly in the notion of "experience" that one sees this operating. In much current usage of "experience," references to structure and history are implied but not made explicit; instead, personal testimony of oppression re- places analysis, and this testimony comes to stand for the experience of the whole group. The fact of belonging to an identity group is taken as authority enough for one's speech; the direct experience of a group or culture-that is, membership in it-becomes the only test of true knowledge. The exclusionary implications of this are twofold: all those not of the group are denied even intellectual access to it, and those within the group whose experiences or interpretations do not conform to the established terms of identity must either suppress their views or drop out. An appeal to "experience" of this kind forecloses discussion and criticism and turns politics into a policing operation: the borders of identity are patrolled for signs of nonconformity; the test of membership in a group becomes less one's willingness to endorse certain principles and engage in specific political actions, less one's positioning in specific relationships of power, than one's ability to use the prescribed languages that are taken as signs that one is inherently “of” the group. That all of this isn't recognized as a highly political process that produces identities is troubling indeed, especially because it so closely mimics the politics of the powerful, naturalizing and deeming as discernably objective facts the prerequisites for inclusion in any group. Indeed, I would argue more generally that separatism, with its strong insistence on an exclusive relationship between group identity and access to specialized knowledge (the argument that only women can teach women's literature or only African-Americans can teach African-American history, for example), is a simultaneous refusal and imitation of the powerful in the present ideological context. At least in universities, the relationship between identity- group membership and access to specialized knowledge has been framed as an objection to the control by the disciplines of the terms that establish what counts as (important, mainstream, useful, collective) knowledge and what does not. This has had an enormously important critical impact, exposing the exclusions that have structured claims to universal or comprehensive knowledge. When one asks not only where the women or African-Americans are in the history curriculum (for example), but why they have been left out and what are the effects of their exclusion, one exposes the process by which difference is enunciated. But one of the complicated and contradictory effects of the implementation of programs in women's studies, African-American studies, Chicano studies, and now gay and lesbian studies is to totalize the identity that is the object of study, reiterating its binary opposition as minority (or subaltern) in relation to whatever is taken as majority or dominant.

#### Trading autobiography for the ballot commodifies one’s identity and has limited impact on the culture that one attempt’s to reform—when narrative “wins,” it subverts its own most radical intentions by becoming an exemplar of the very culture under indictment.

Coughlin 95—Anne M. Coughlin, Associate Professor of Law, Vanderbilt Law School [August, 1995, “Regulating the Self: Autobiographical Performances in Outsider Scholarship,” *Virginia Law Review*, 81 Va. L. Rev. 1229, Lexis]

Although Williams is quick to detect insensitivity and bigotry in remarks made by strangers, colleagues, and friends, her taste for irony fails her when it comes to reflection on her relationship with her readers and the material benefits that her autobiographical performances have earned for her. n196 Perhaps Williams should be more inclined to thank, rather than reprimand, her editors for behaving as readers of autobiography invariably do. When we examine this literary faux pas - the incongruity between Williams's condemnation of her editors and the professional benefits their publication secured her - we detect yet another contradiction between the outsiders' use of autobiography and their desire to transform culture radically. Lejeune's characterization of autobiography as a “contract” reminds us that autobiography is a lucrative commodity. In our culture, members of the reading public avidly consume personal stories, n197 which surely explains why first-rate law journals and academic presses have been eager to market outsider narratives. No matter how unruly the self that it records, an autobiographical performance transforms that self into a form of “property in a moneyed economy” n198 and into a valuable intel [\*1283] lectual asset in an academy that requires its members to publish. n199 Accordingly, we must be skeptical of the assertion that the outsiders' splendid publication record is itself sufficient evidence of the success of their endeavor. n200

Certainly, publication of a best seller may transform its author's life, with the resulting commercial success and academic renown. n201 As one critic of autobiography puts it, “failures do not get published.” n202 While writing a successful////

 autobiography may be momentous for the individual author, this success has a limited impact on culture. Indeed, the transformation of outsider authors into “success stories” subverts outsiders' radical intentions by constituting them as exemplary participants within contemporary culture, willing to market even themselves to literary and academic consumers. n203 What good does this transformation do for outsiders who are less fortunate and less articulate than middle-class law professors? n204 Although they style themselves cultural critics, the [\*1284] storytellers generally do not reflect on the meaning of their own commercial success, nor ponder its entanglement with the cultural values they claim to resist. Rather, for the most part, they seem content simply to take advantage of the peculiarly American license, identified by Professor Sacvan Bercovitch, “to have your dissent and make it too.” n205

## \*\*\* 2NC

### 2NC Overview

#### One—debate is never the site for social change; it is only the site for learning the skills to advocate for social change. This argument is pretty logical—“we” can’t do anything about anything in this debate because it’s only a game—it is only about the faculties we acquire and can use—even if they win individual debates have transformative potential the limited scope of people that know about them means decision-making and advocacy skills outside of this debate are more important

Atchison and Panetta 9—\*Jarrod, Director of Debate at Wake Forest and \*\*Edward, Director of Debate at the University of Georgia [“Intercollegiate Debate and Speech Communication: Issues for the Future,” *The Sage Handbook of Rhetorical Studies*, Lunsford, Andrea, ed., 2009, p. 317-334]

The final problem with an individual debate round focus is the role of competition. Creating community change through individual debate rounds sacrifices the “community” portion of the change. Many teams that promote activist strategies in debates profess that they are more interested in creating change than winning debates. What is clear, however, is that the vast majority of teams that are not promoting community change are very interested in winning debates. The tension that is generated from the clash of these opposing forces is tremendous. Unfortunately, this is rarely a productive tension. Forcing teams to consider their purpose in debating, their style in debates, and their approach to evidence are all critical aspects of being participants in the community. However, the dismissal of the proposed resolution that the debaters have spent countless hours preparing for, in the name of a community problem that the debaters often have little control over, does little to engender coalitions of the willing. Should a debate team lose because their director or coach has been ineffective at recruiting minority participants? Should a debate team lose because their coach or director holds political positions that are in opposition to the activist program? Competition has been a critical component of the interest in intercollegiate debate from the beginning, and it does not help further the goals of the debate community to dismiss competition in the name of community change.

The larger problem with locating the “debate as activism” perspective within the competitive framework is that it overlooks the communal nature of the community problem. If each individual debate is a decision about how the debate community should approach a problem, then the losing debaters become collateral damage in the activist strategy dedicated toward creating community change. One frustrating example of this type of argument might include a judge voting for an activist team in an effort to help them reach elimination rounds to generate a community discussion about the problem. Under this scenario, the losing team serves as a sacrificial lamb on the altar of community change. Downplaying the important role of competition and treating opponents as scapegoats for the failures of the community may increase the profile of the winning team and the community problem, but it does little to generate the critical coalitions necessary to address the community problem, because the competitive focus encourages teams to concentrate on how to beat the strategy with little regard for addressing the community problem. There is no role for competition when a judge decides that it is important to accentuate the publicity of a community problem. An extreme example might include a team arguing that their opponents’ academic institution had a legacy of civil rights abuses and that the judge should not vote for them because that would be a community endorsement of a problematic institution. This scenario is a bit more outlandish but not unreasonable if one assumes that each debate should be about what is best for promoting solutions to diversity problems in the debate community.

If the debate community is serious about generating community change, then it is more likely to occur outside a traditional competitive debate. When a team loses a debate because the judge decides that it is better for the community for the other team to win, then they have sacrificed two potential advocates for change within the community. Creating change through wins generates backlash through losses. Some proponents are comfortable with generating backlash and argue that the reaction is evidence that the issue is being discussed. From our perspective, the discussion that results from these hostile situations is not a productive one where participants seek to work together for a common goal. Instead of giving up on hope for change and agitating for wins regardless of who is left behind, it seems more reasonable that the debate community should try the method of public argument that we teach in an effort to generate a discussion of necessary community changes. Simply put, debate competitions do not represent the best environment for community change because it is a competition for a win and only one team can win any given debate, whereas addressing systemic century-long community problems requires a tremendous effort by a great number of people.

### AT: Education without Ethics

#### Four—switch-side debate is a pre-requisite to teaching students ethics—they must learn to challenge their convictions.

Muir 93—Star Muir, Professor of Communication at George Mason [“A Defense of the Ethics of Contemporary Debate,” *Philosophy and Rhetoric* 26.4, p. 291-292]

A final point about relativism is that switch-side debate encourages fairness and equality of opportunity in evaluating competing values. Initially, it is apparent that a priori fairness is a fundamental aspect of games and gamesmanship. 46 Players in the game should start out with equal advantage, and the rules should be construed throughout to provide no undue advantage to one side or the other. Both sides, notes Thompson, should have an equal amount of time and a fair chance to present their arguments. Of critical importance, he insists, is an equality of opportunity. 47 Equality of opportunity is manifest throughout many debate procedures and norms. On the question of topicality—whether the affirmative plan is an example of the stated topic—the issue of "fair ground" for debate is explicitly developed as a criterion for decision. Likewise, when a counterplan is offered against an affirmative plan, the issue of coexistence, or of the "competitiveness" of the plans, frequently turns on the fairness of the affirmative team 's suggested "permutation" of the plans. In these and other issues, the value of fairness, and of equality of opportunity, is highlighted and clarified through constant disputation. The point is simply that debate does teach values, and that these values are instrumental in providing a hearing for alternative points of view. Paying explicit attention to decision criteria, and to the division of ground arguments (a function of competition), effectively renders the value structure pluralistic, rather than relativistic. In a tolerant context, convictions can still be formed regarding the appropriateness and utility of differing values. Responding to the charge that switch-side debaters are hypocritical and sophistical, Windes responds with a series of propositions:

Sound conviction depends upon a thorough understanding of the controversial problem under consideration. . . . This thorough under-standing of the problem depends upon careful analysis of the issues and survey of the major arguments and supporting evidence...

This measured analysis and examination of the evidence and argument can best be done by the careful testing of each argument pro and con. . . . The learner's sound conviction covering controversial questions [therefore] depends partly upon his experience in defending and/or rejecting tentative affirmative and negative positions.48 Sound conviction, a key element of an individual's moral identity, is thus closely linked to a reasoned assessment of both sides. Some have even suggested that it would be immoral not to require debaters to defend both sides of the issues.49 It does seem hypocritical to accept the basic premise of debate, that two opposing accounts are present on everything, and then to allow students the comfort of their own untested convictions. Debate might be rendering students a disservice, insofar as moral education is concerned, if it did not provide them some knowledge of alternative views and the concomitant strength of a reasoned moral conviction.

### AT: Advocating Rez = Unethical

#### The argument that being topical is structurally unfair for them is a self-serving assertion used to sidestep clash—critiquing any part of the resolution, like the FG, to legitimize avoiding topical action gets co-opted by the right for the opposite purpose.

TALISSE 5— Robert, philosophy professor at Vanderbilt [“Deliberativist responses to activist challenges,” *Philosophy & Social Criticism*, 31.4]

\*\*\*gendered language in this article refers to arguments made by two specific individuals in an article by Iris Young

My call for a more detailed articulation of the second activist challenge may be met with the radical claim that I have begged the question. It may be said that my analysis of the activist’s challenge and my request for a more rigorous argument presume what the activist denies, namely, that arguments and reasons operate independently of ideology. Here the activist might begin to think that he made a mistake in agreeing to engage in a discussion with a deliberativist—his position throughout the debate being that one should decline to engage in argument with one’s opponents! He may say that of course activism seems lacking to a deliberativist, for the deliberativist measures the strength of a view according to her own standards. But the activist rejects those standards, claiming that they are appropriate only for seminar rooms and faculty meetings, not for real-world politics. Consequently the activist may say that by agreeing to enter into a discussion with the deliberativist, he had unwittingly abandoned a crucial element of his position. He may conclude that the consistent activist avoids arguing altogether, and communicates only with his comrades. Here the discussion ends.

However, the deliberativist has a further consideration to raise as his discursive partner departs for the next rally or street demonstration. The foregoing debate had presumed that there is but one kind of activist and but one set of policy objectives that activists may endorse. Yet Young’s activist is opposed not only by deliberative democrats, but also by persons who also call themselves ‘activists’ and who are committed to a set of policy objectives quite different from those endorsed by this one activist. Once these opponents are introduced into the mix, the stance of Young’s activist becomes more evidently problematic, even by his own standards.

To explain: although Young’s discussion associates the activist always with politically progressive causes, such as the abolition of the World Trade Organization (109), the expansion of healthcare and welfare programs (113), and certain forms of environmentalism (117), not all activists are progressive in this sense. Activists on the extreme and racist Right claim also to be fighting for justice, fairness, and liberation. They contend that existing processes and institutions are ideologically hegemonic and distorting. Accordingly, they reject the deliberative ideal on the same grounds as Young’s activist. They advocate a program of political action that operates outside of prevailing structures, disrupting their operations and challenging their legitimacy. They claim that such action aims to enlighten, inform, provoke, and excite persons they see as complacent, naïve, excluded, and ignorant. Of course, these activists vehemently oppose the policies endorsed by Young’s activist; they argue that justice requires activism that promotes objectives such as national purity, the disenfranchisement of Jews, racial segregation, and white supremacy. More importantly, they see Young’s activist’s vocabulary of ‘inclusion’, ‘structural inequality’, ‘institutionalized power’, as fully in line with what they claim is a hegemonic ideology that currently dominates and systematically distorts our political discourses.21

The point here is not to imply that Young’s activist is no better than the racist activist. The point rather is that Young’s activist’s arguments are, in fact, adopted by activists of different stripes and put in the service of a wide range of policy objectives, each claiming to be just, liberatory, and properly inclusive.22 In light of this, there is a question the activist must confront. How should he deal with those who share his views about the proper means for bringing about a more just society, but promote a set of ends that he opposes?

It seems that Young’s activist has no way to deal with opposing activist programs except to fight them or, if fighting is strategically unsound or otherwise problematic, to accept a Hobbesian truce. This might not seem an unacceptable response in the case of racists; however, the question can be raised in the case of any less extreme but nonetheless opposed activist program, including different styles of politically progressive activism. Hence the deliberativist raises her earlier suspicions that, in practice, activism entails a politics based upon interestbased power struggles amongst adversarial factions.

### Topic Words

#### They don’t meet—they don’t do one of the 5.

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Judicial means the court

WEST’S LAW 08 [West's Encyclopedia of American Law, edition 2. http://legal-dictionary.thefreedictionary.com/judicial]

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing.

Judicial connotes the power to punish, sentence, and resolve conflicts.

### WP DA

#### Executive flex necessary to respond to and prevent crises

POSNER & VERMEULE 7—\*Eric A. Posner, Professor of Law at the University of Chicago Law School AND \*\*Adrian Vermeule, Professor of Law at Harvard [*Terror in the Balance: Security, Liberty, and the Courts*, Oxford University Press, pg. 4]

A different view, however, is that the history is largely one of political and constitutional success. The essential feature of the emergency is that national security is threatened; because the executive is the only organ of government with the resources, power, and flexibility to respond to threats to national security, it is natural, inevitable, and desirable for power to flow to this branch of government. Congress rationally acquiesces; courts rationally defer. Civil liberties are compromised because civil liberties interfere with effective response to the threat; but civil liberties are never eliminated because they remain important for the well-being of citizens and the effective operation of the government. People might panic, and the government must choose policies that enhance morale as well as respond to the threat, but there is nothing wrong with this. The executive implements bad policies as well as good ones, but error is inevitable, just as error is inevitable in humdrum policymaking during normal times. Policy during emergencies can never be mistake-free; it is enough if policymaking is not systematically biased in any direction, so that errors are essentially random and wash out over many decisions or over time. Both Congress and the judiciary realize that they do not have the expertise or resources to correct the executive during an emergency. Only when the emergency wanes do the institutions reassert themselves, but this just shows that the basic constitutional structure remains unaffected by the emergency. In the United States, unlike in many other countries, the constitutional system has never collapsed during an emergency.

#### Multiple crisis inevitable—executive strength key—Iran Prolif, terrorism, Russian aggression, economic collapse, Senkaku conflict.

GHITIS 13 World affairs columnist for The Miami Herald and World Politics Review. [Frida Ghitis, World to Obama: You can't ignore us, http://www.cnn.com/2013/01/22/opinion/ghitis-obama-world]

The president should keep in mind that millions around the world yearn to know they have the backing of the most powerful country on Earth. As he surely knows, even his words make a big difference.

And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.

Syria unraveling: The United Nations says more than 60,000 people have already died in a civil war that the West has, to its shame, done little to keep from spinning out of control. Washington has warned that the use of chemical or biological weapons might force its hand. But the regime may have already used them. The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing more powerful within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.

Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly anti-Semitic speech coming from the mouth of Mohammed Morsy barely two years before he became president.

Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading United Nations inspectors to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.

North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, Islamist extremists took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.

Russia repression: As Russian President Vladimir Putin succeeds in crushing opposition to his increasingly authoritarian rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.

Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.

And there are the so-called "black swans," events of low probability and high impact. There is talk that China and Japan could go to war over a cluster of disputed islands.

A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.

We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.

The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.

The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.

After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.

International disengagement is not an option. As others before Obama have discovered, history has a habit of toying with the best laid, most well-in

#### Our framework is to maximize the lives saved. We should never sacrifice individuals for abstract market values – however, attempts to preserve lives gives equality to all rational beings – that’s key to value to life

Cummisky 96 (David, professor of philosophy at Bates College, Kantian Consequentialism, pg. 145)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract “social entity.” It is not a question of some persons having to bear the cost for some elusive “overall social good.” Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Robert Nozick, for example, argues that to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has.” But why is this not equally true of all those whom we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, we fail to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? A morally good agent recognizes that the basis of all particular duties is the principle that “rational nature exists as an end in itself” (GMM 429). Rational nature as such is the supreme objective end of all conduct. If one truly believes that all rational beings have an equal value, then the rational solution to such a dilemma involves maximally promoting the lives and liberties of as many rational beings as possible (chapter 5). In order to avoid this conclusion, the non-consequentialist Kantian needs to justify agent-centered constraints. As we saw in chapter 1, however, even most Kantian deontologists recognize that agent-centered constraints require a non-value-based rationale. But we have seen that Kant’s normative theory is based on an unconditionally valuable end. How can a concern for the value of rational beings lead to a refusal to sacrifice rational beings even when this would prevent other more eExt.ensive losses of rational beings? If the moral law is based on the value of rational beings and their ends, then what is the rationale for prohibiting a moral agent from maximally promoting these two tiers of value? If I sacrifice some for the sake for others, I do not use them arbitrarily, and I do not deny the unconditional value of rational beings. Persons may have “dignity, that is, an unconditional and incomparable worth” that transcends any market value ( GMM 436)., but persons also have a fundamental equality that dictates that some must sometimes give way for the sake of others (chapter 5 and 7). The concept of the end-in-itself does not support th view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, the equal consideration suggests that one may have to sacrifice some to save many.

#### Role of the ballot is to evaluate consequences before ethical justifications

**Isaac 2** – Professor of Political Science, Indiana (Jeffrey, “Ends, Means and Politics,” Dissent 49.2, p 35-6, ebsco)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

## \*\*\* 1NR

#### Our criticism impact-turns their prioritization arguments -- placing emphasis on certain identity category as necessary for resistance represents a political cul-de-sac that makes liberation impossible and re-entrenches the harms they describe

**Day ‘5** Richard, professor in the department of global development at Queen's University “Gramsci is Dead: Anarchist Currents in the Newest Social Movements” http://www.scribd.com/doc/19280772/Gramsci-is-Dead

This observation is based on a few scattered passages in *Empire*, but is refl ective, I would claim, of a general tendency in Hardt and Negri’s work. They are highly critical, for example, of Laclau and Mouffe’s ‘revisionist’ reading of Gramsci: ‘Poor Gramsci, communist and militant before all else, tortured and killed by fascism … was given the gift of being considered the founder of a strange notion of hegemony that leaves no place for a Marxian politics’ (235 n. 26). What would a properly marxist reading of hegemony look like? Hardt and Negri approvingly cite Lenin’s analysis of imperialism, and give him credit for recognizing, at least implicitly, the existence of a fundamental dichotomy in modes of radical struggle: ‘*either world communist revolution or Empire*’ (2000: 234, italics in original). In their comments on the *Rethinking Marxism* dossier, they declare themselves as being ‘indebted to Slavoj Žižek for the reformulation of this question [of the ability of the multitude to make decisions] in Leninist terms’ (2001: 242). It is somewhat jarring to see two autonomists reaching back behind western marxist readings of Gramsci to recover a properly leninist conception of hegemony. Yet it seems clear that the project of counter-Empire, as they conceive it, would be oriented in just this way. ‘Globalization must be met with a counter-globalization’, they write in *Empire*: ‘Empire [must be met] with a counter-Empire’ (2000: 207). Near the end of the book, they suggest that ‘the actions of the multitude against Empire’ already ‘affi rm [the] hegemony’ of an ‘earthly city’ that is replacing the modern republic (411). This eschatological tone is maintained in a later interview, where the authors argue that ‘a catholic (that is, global) project is the only alternative’ (2002: 184). Finally, and perhaps most tellingly, Negri is known for this kind of approach in his own political practice, as evidenced by the comments of a fellow autonomist militant: Negri can be taken as an emblematic figure: every time he set foot in spaces that were opening up, in this case within the philosophical community or within the community of intellectual debate in general, he immediately tried to impose his hegemony on them or in any case force them into a hegemonic strategy. Therefore, immediately the mechanism of the party was put into play. The paradox of Autonomia was that of being born from the dissolution of the political groups only to maintain within itself the logic of the party, in other words that of the executive that had to direct, impose hegemony, address, to rein in to a common strategy and tactic everything that moved, whatever the aspect or contradiction. (Marazzi 2002) Thus, although it may be internally differentiated and fluid, the task of the multitude—as it is envisaged by Hardt and Negri at any rate—is to counter one totalizing force with another, to struggle for hegemony in the leninist sense of this term. Another problem with the project of the constituent power of the multitude has already been alluded to in the discussion of classcentrism above. Although at times Hardt and Negri present the multitude as a ‘plane of singularities, an open set of relations, which is not homogeneous or identical with itself’ (2000: 103), they also have a tendency to think of it as something singular, totalizable. ‘[I]f we are consigned to the non-place of Empire, can we construct a powerful non-place and realize it concretely?’ (208). ‘The counterEmpire must also be a new global vision, a new way of living in the world’ (214). Each of these questions and statements can, and should, be rendered differently if the multitude is to be theorized as ‘not a new body but a multiplicity of bodies’ (2001: 243). That is: if we are consigned to the non-place of Empire, can we construct powerful non-*places* and realize *them* concretely? Or: **counter-Empire must also be a *disparate but affi nite set* of new global *visions*, new *ways* of living in the world. This is not a matter of mere grammar, although the language one uses in such cases is obviously important. It is a matter of the distinction between hegemonic and affi nitybased forms, of the difference between a desire to build ‘a coherent project of counterpower’** (2001: 242) **versus the desire to allow for incoherence within the ranks of those who oppose the neoliberal order, each for their own reasons. The question being raised here is who, precisely, *is, or can be,* part of the multitude?** Is the multitude perhaps identical with the ‘new proletariat’ (Hardt and Negri 2000: 53), understood as ‘a broad category that includes all those whose labour is directly or indirectly exploited by and subjected to capitalist norms of production and reproduction’ (52)? If we accept the autonomist argument that immaterial labour is becoming increasingly important, and the factory ubiquitous, then everyone, everywhere, will eventually become part of the proletariat. This seems to be the sense of the following passage: In the biopolitical context of Empire … the production of capital converges ever more with the production and reproduction of social life itself; it thus becomes ever more diffi cult to maintain distinctions among productive, reproductive, and unproductive labour. Labour—material or immaterial, intellectual or corporeal—produces and reproduces social life, and in the process is exploited by capital. (402) What, then, of the relationship between proletariat and multitude? Hardt and Negri don’t say, but it would seem that the multitude is the proletariat made militant, the self-valorizing proletariat; to invoke an old distinction from which workerism must attempt to distance itself, it would seem that the multitude is nothing other than the new proletariat *for-itself*. Reading the relationship between these concepts in this way helps us to understand why Hardt and Negri sometimes write as though the multitude already exists—they claim it has created Empire, for example—while in other instances they assume that it needs to be brought into being, as in the quotes above. But **even on this friendly reading of their postmodern marxism, a further question is begged by the apparent ease with which the proletariat is supposed to awaken into multitude—I am referring here to the question of building solidarity across very real divisions of race, sex, sexuality, class, region, and so on. ‘Cosmopolitical liberation’ (2000: 64), if we can give it any meaning at all, will mean different things to different individuals and groups at different times, in different places**. **Some, like Hardt and Negri, will agree that state-supported proletarianization links us all; that fighting capitalism and the state form are the ‘fundamental’ struggles. Others will disagree, holding instead that overturning patriarchy or heteronormativity or racism is the most important task**. Autonomist marxism’s inability to deal adequately with these questions led, in the 1970s, to the breaking away of many of the women involved in the movement to form Lotta Feminista (Wright 2002: 134–5), and the internal feminist critique remained cogent in the 1990s (Del Re 1996). **The realities of radical struggle in the postmodern condition show that *cosmopolitical liberation under a single sign is a modernist fantasy*. Total liberation does not exist, it never has existed, and it never will exist; to seek it is to give in to a Utopian urge to free the entire world once and for all, to achieve the transparent society.** This is a key insight of poststructuralist theory that Hardt and Negri refuse to take on board, and which drives their rejection of Laclau and Mouffe’s deconstruction of the leninist understanding of hegemony. Although, as I have indicated, I do not agree with their turn to a liberal politics, and would push their conclusions further towards a logic of affi nity, Laclau and Mouffe’s work has the benefi t of making it clear that we cannot simply assume that something like ‘the multitude’ exists, nor can we hope to bring together the multitudes under a single sign without reproducing all that is bound up with the logic of hegemony. This point has been reinforced by a number of readers of *Empire*, some of whom are otherwise quite friendly to its project. Pramod K. Mishra has pointed out that Hardt and Negri’s book is ‘Eurocentric in the deployment of sources, theories, knowledges, and historical events (2001: 96), and has questioned its association of the new proletariat with ‘third world nomads’. Many of these subjects, he notes, ‘have either become [a] miniature Bill Gates or aspire to be one’ (98). This is to say that most of those who leave the ‘Third World’—and certainly those who participate most closely in immaterial labour—are the elite in education, wealth and culture, and ‘have no desire whatsoever to dismantle Hardt and Negri’s Empire’ (98). Sourayan Mookerjea makes a similar point regarding Hardt and Negri’s conception of ‘the global’ and their consequent dismissal of ‘the local’: ‘Is Hardt and Negri’s distrust of local struggles, their inability to conceive how the defense of the local or even of national sovereignty might in specific circumstances itself be a route to ‘democratic globalization’ only a consequence of a surreptitious privilege given to the conditions of struggle in the United States?’ (Mookerjea 2003: 2). **These critiques clearly echo those that have been brought forth in feminist contexts by women of the global South. Yet, despite its citation of some postcolonial literature, the analysis of the proletariat in *Empire* is essentializing and homogenizing; it *assumes the existence* of something that needs to be constructed, not just textually but*politically.* There quite simply *is no multitude* right now, except in the sense that there has always already been a multitude, that is, an occasionally linked, but generally disparate field of struggles with no coherence or unity. If the multitudes are ever to come together in any way, this will be the result of a long process of building solidarity and dealing with differences and structured oppressions that plague movements for radical alternatives as much as they do the political mainstream. We simply cannot wish away or have done with racism, heterosexism, classism and other forms of prejudice**. Like the state form and capitalism, **they are ever-present as possibilities**, and therefore must be continuously acknowledged and warded off to the greatest extent possible. **To put it simply: calling ‘everyone’ proletariat (or anything else for that matter) is to stumble blindly into a political impasse, and has the unfortunate effect of alienating precisely those with whom one might hope to build links of solidarity.** Given that they are working with a leninist conception of hegemonic social change, it should not be surprising that Hardt and Negri fail to avoid the most persistent danger of this approach. But, as I have noted, they also draw surreptitiously from anarchism, which has been working for a long time on some of the questions that seem to plague them after writing *Empire*, and which therefore might be able to offer some guidance: How can all this [the constituent power of the multitude] be organized? Or better, how can it adopt an organizational figure? How can we give to these movements of multitudes of bodies, which we recognized are real, a power of expression that can be shared? We still do not know how to respond to these questions (2001: 243) At the broadest level, an anarchist response might be: you are posing yourself the wrong questions. ‘All of this’ is always already organized, and your ‘we’, whatever that might be, cannot ‘give’ it anything without destroying what it is. You must ‘be still, and wait without hope / for hope would be hope for the wrong thing’ (Eliot 1944: 28). That is, **you must trust in non-unifi ed, incoherent, non-hegemonic forces for social change, because hegemonic forces cannot produce anything that will look like change to you at all.**

#### Their appeal to the experience of an oppressed identity to establish the authenticity of a political claim reinforces exclusion. Experience is defined in self-serving terms to eliminate questioning of its foundational status.

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The unifying aspect of experience excludes whole realms of human activity by simply not counting them as experience, at least not with any consequences for social organization or politics. When class becomes an overriding identity, other subject-positions are subsumed by it, those of gender, for example (or, in other instances of this kind, of history, race, ethnicity, and sexuality). The positions of men and women and their different relationships to politics are taken as reflections of material and social arrangements rather than as products of class politics itself; they are part of the "experience" of capitalism. Instead of asking how some experiences become more salient than others, how what matters to Thompson is defined as experience, and how differences are dissolved, experience becomes itself cumulative and homogenizing, providing the common denominator on which class consciousness is built.

Thompson's own role in determining the salience of certain things and not others is never addressed. Although his author's voice intervenes powerfully with moral and ethical judgments about the situations he is recounting, the presentation of the experiences themselves is meant to secure their objective status. We forget that Thompson's history, like the accounts offered by political organizers in the nineteenth century of what mattered in workers' lives, is an interpretation, a selective ordering of information that through its use of originary categories and teleological accounts legitimizes a particular kind of politics (it becomes the only possible politics) and a particular way of doing history (as a reflection of what happened, the description of which is little influenced by the historian if, in this case, he only has the requisite moral vision that permits identification with the experiences of workers in the past).

In Thompson's account class is finally an identity rooted in structural relations that preexist politics. What this obscures is the contradictory and contested process by which class itself was conceptualized and by which diverse kinds of subject-positions were assigned, felt, contested, or embraced. As a result, Thompson's brilliant history of the English working class, which set out to historicize the category of class, ends up essentializing it. The ground may seem to be displaced from structure to agency by insisting on the subjectively felt nature of experience, but the problem Thompson sought to address isn't really solved. Working-class "experience" is now the ontological foundation of working-class identity, politics, and history.24

This kind of use of experience has the same foundational status if we substitute "women's" or "black" or "lesbian" or "homosexual" for "working-class" in the previous sentence. Among feminist historians, for example, "experience" has helped to legitimize a critique of the false claims to objectivity of traditional historical accounts. Part of the project of some feminist history has been to unmask all claims to objectivity as an ideological cover for masculine bias by pointing out the shortcomings, incompleteness, and exclusiveness of mainstream history. This has been achieved by providing documentation about women in the past that calls into question existing interpretations made without consideration of gender. But how do we authorize the new knowledge if the possibility of all historical objectivity has been questioned? By appealing to experience, which in this usage connotes both reality and its subjective apprehension-the experience of women in the past and of women historians who can recognize something of themselves in their foremothers.

Judith Newton, a literary historian writing about the neglect of feminism by contemporary critical theorists, argues that women, too, arrived at the critique of objectivity usually associated with deconstruction or the new historicism. This feminist critique came "straight out of reflection on our own, that is, women's experience, out of the contradictions we felt between the different ways we were represented even to ourselves, out of the inequities we had long experienced in our situations."25 Newton's appeal to experience seems to bypass the issue of objectivity (by not raising the question of whether feminist work can be objective) but it rests firmly on a foundational ground (experience). In her work the relationship between thought and experience is represented as transparent (the visual metaphor combines with the visceral) and so is directly accessible, as it is in historian Christine Stansell's insistence that "social practices," in all their "immediacy and entirety," constitute a domain of "sensuous experience" (a prediscursive reality directly felt, seen, and known) that cannot be subsumed by "language."26 The effect of these kinds of statements, which attribute an indisputable authenticity to women's experience, is to establish incontrovertibly women's identity as people with agency. It is also to universalize the identity of women and thus to ground claims for the legitimacy of women's history in the shared experience of historians of women and those women whose stories they tell. In addition, it literally equates the personal with the political, for the lived experience of women is seen as leading directly to resistance to oppression, that is, to feminism.2" Indeed, the possibility of politics is said to rest on, to follow from, a preexisting women's experience///

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"Because of its drive towards a political massing together of women," writes Denise Riley, "feminism can never wholeheartedly dismantle 'women's experience,' however much this category conflates the attributed, the imposed, and the lived, and then sanctifies the resulting melange." The kind of argument for a women's history (and for a feminist politics) that Riley criticizes closes down inquiry into the ways in which female subjectivity is produced, the ways in which agency is made possible, the ways in which race and sexuality intersect with gender, the ways in which politics organize and interpret experience-in sum, the ways in which identity is a contested terrain, the site of multiple and conflicting claims. In Riley's words, "it masks the likelihood that ... [experiences] have accrued to women not by virtue of their womanhood alone, but as traces of domination, whether natural or political.""28 I would add that it masks the necessarily discursive character of these experiences as well.

#### We should not use experience as the basis for authority. Exposing the existence of racist ideology on the basis of experience does not provide the means to undermine it. My experience of being oppressed doesn’t provide the path to getting outside oppression. If the only way to resist is based on experience of racist oppression, then there is no way to get outside of the system of racism.

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The project of making experience visible precludes analysis of the workings of this system and of its historicity; instead, it reproduces its terms. We come to appreciate the consequences of the closeting of homosexuals and we understand repression as an interested act of power or domination; alternative behaviors and institutions also become available to us. What we don't have is a way of placing those alternatives within the framework of (historically contingent) dominant patterns of sexuality and the ideology that supports them. We know they exist, but not how they have been constructed; we know their existence offers a critique of normative practices, but not the extent of the critique. Making visible the experience of a different group exposes the existence of repressive mechanisms, but not their inner workings or logics; we know that difference exists, but we don't understand it as relationally constituted. For that we need to attend to the historical processes that, through discourse, position subjects and produce their experiences. It is not individuals who have experience, but subjects who are constituted through experience. Experience in this definition then becomes not the origin of our explanation, not the authoritative (because seen or felt) evidence that grounds what is known, but rather that which we seek to explain, that about which knowledge is produced. To think about experience in this way is to historicize it as well as to historicize the identities it produces. This kind of historicizing represents a reply to the many contemporary historians who have argued that an unproblematized "experience" is the foundation of their practice; it is a historicizing that implies critical scrutiny of all explanatory categories usually taken for granted, including the category of "experience."