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Your decision should answer the resolutional question: Is the hypothetical enactment of topical action better than the status quo or a competitive option?

The “war powers authority” of the President is his legal authority as Commander-in-Chief

Gallagher, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer 2011

(Joseph, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” *Parameters*, http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.4

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to war powers authority**, **the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.**6 This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

“Statutory” means a law by Congress

The Oxford Guide to the U.S. Government 2012

(Oxford University Press via Oxford Reference, Georgetown Library)

statute

A statute is a written law enacted by a legislature. **A federal statute is a law enacted by Congress**. State statutes are enacted by state legislatures; those that violate the U.S. Constitution may be struck down by the Supreme Court if the issue is appealed to the Court.

Judicial means the courts

MacMillan Dictionary No Date

(http://www.macmillandictionary.com/us/dictionary/american/judicial)

Judicial – definition

ADJECTIVE [ONLY BEFORE NOUN]

1 relating to the judges and courts that are responsible for justice in a country or state

the judicial system

They claim to win the debate for reasons other than the desirability of topical action. That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, uneducational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.

Simulated debates about national security law inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, 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.

Linking the ballot to a simulation of concrete strategies teaches the skills to organize pragmatic consequences *and* philosophical values into a course of action

Hanghoj 8

http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf Thorkild Hanghøj, Copenhagen, 2008 Since this PhD project began in 2004, the present author has been affiliated with DREAM (Danish Research Centre on Education and Advanced Media Materials), which is located at the Institute of Literature, Media and Cultural Studies at the University of Southern Denmark. Research visits have taken place at the Centre for Learning, Knowledge, and Interactive Technologies (L-KIT), the Institute of Education at the University of Bristol and the institute formerly known as Learning Lab Denmark at the School of Education, University of Aarhus, where I currently work as an assistant professor.

 Joas’ re-interpretation of Dewey’s pragmatism as a “theory of situated creativity” raises a critique of humans as purely rational agents that navigate instrumentally through meansends- schemes (Joas, 1996: 133f). This critique is particularly important when trying to understand how games are enacted and validated within the realm of educational institutions that by definition are inscribed in the great modernistic narrative of “progress” where nation states, teachers and parents expect students to acquire specific skills and competencies (Popkewitz, 1998; cf. chapter 3). However, as Dewey argues, the actual doings of educational gaming cannot be reduced to rational means-ends schemes. Instead, the situated interaction between teachers, students, and learning resources are played out as contingent re-distributions of means, ends and ends in view, which often make classroom contexts seem “messy” from an outsider’s perspective (Barab & Squire, 2004). 4.2.3. Dramatic rehearsal The two preceding sections discussed how Dewey views play as an imaginative activity of educational value, and how his assumptions on creativity and playful actions represent a critique of rational means-end schemes. For now, I will turn to Dewey’s concept of dramatic rehearsal, which assumes that social actors deliberate by projecting and choosing between various scenarios for future action. Dewey uses the concept dramatic rehearsal several times in his work but presents the most extensive elaboration in Human Nature and Conduct: Deliberation is a dramatic rehearsal (in imagination) of various competing possible lines of action… [It] is an experiment in finding out what the various lines of possible action are really like (...) Thought runs ahead and foresees outcomes, and thereby avoids having to await the instruction of actual failure and disaster. An act overtly tried out is irrevocable, its consequences cannot be blotted out. An act tried out in imagination is not final or fatal. It is retrievable (Dewey, 1922: 132-3). This excerpt illustrates how Dewey views the process of decision making (deliberation) through the lens of an imaginative drama metaphor. Thus, decisions are made through the imaginative projection of outcomes, where the “possible competing lines of action” are resolved through a thought experiment. Moreover, Dewey’s compelling use of the drama metaphor also implies that decisions cannot be reduced to utilitarian, rational or mechanical exercises, but that they have emotional, creative and personal qualities as well. Interestingly, there are relatively few discussions within the vast research literature on Dewey of his concept of dramatic rehearsal. A notable exception is the phenomenologist Alfred Schütz, who praises Dewey’s concept as a “fortunate image” for understanding everyday rationality (Schütz, 1943: 140). Other attempts are primarily related to overall discussions on moral or ethical deliberation (Caspary, 1991, 2000, 2006; Fesmire, 1995, 2003; Rönssön, 2003; McVea, 2006). As Fesmire points out, dramatic rehearsal is intended to describe an important phase of deliberation that does not characterise the whole process of making moral decisions, which includes “duties and contractual obligations, short and long-term consequences, traits of character to be affected, and rights” (Fesmire, 2003: 70). Instead, dramatic rehearsal should be seen as the process of “crystallizing possibilities and transforming them into directive hypotheses” (Fesmire, 2003: 70). Thus, deliberation can in no way guarantee that the response of a “thought experiment” will be successful. But what it can do is make the process of choosing more intelligent than would be the case with “blind” trial-and-error (Biesta, 2006: 8). The notion of dramatic rehearsal provides a valuable perspective for understanding educational gaming as a simultaneously real and imagined inquiry into domain-specific scenarios. Dewey defines dramatic rehearsal as the capacity to stage and evaluate “acts”, which implies an “irrevocable” difference between acts that are “tried out in imagination” and acts that are “overtly tried out” with real-life consequences (Dewey, 1922: 132-3). This description shares obvious similarities with games as they require participants to inquire into and resolve scenario-specific problems (cf. chapter 2). On the other hand, there is also a striking difference between **moral deliberation** and educational game activities in terms of the actual consequences that follow particular actions. Thus, when it comes to educational games, acts are both imagined and tried out, but without all the real-life consequences of the practices, knowledge forms and outcomes that are being simulated in the game world. Simply put, there is a difference in realism between the dramatic rehearsals of everyday life and in games, which only “play at” or simulate the stakes and risks that characterise the “serious” nature of moral deliberation, i.e. a real-life politician trying to win a parliamentary election experiences more personal and emotional risk than students trying to win the election scenario of The Power Game. At the same time, the lack of real-life consequences in educational games makes it possible to design a relatively safe learning environment, where teachers can stage particular game scenarios to be enacted and validated for educational purposes. In this sense, educational games are able to provide a safe but meaningful way of letting teachers and students make mistakes (e.g. by giving a poor political presentation) and dramatically rehearse particular “competing possible lines of action” that are relevant to particular educational goals (Dewey, 1922: 132). Seen from this pragmatist perspective, the educational value of games is not so much a question of learning facts or giving the “right” answers, but more a question of exploring the contingent outcomes and domain-specific processes of problem-based scenarios.

Absolutism and deconstruction is false choice for both language and politics—dialogue around a stasis point carves out an ethical middle ground that refuses totalization

Elias, associate professor of English – University of Tennessee at Knoxville, ‘5

(Amy J., “Metahistorical Romance, the Historical Sublime, and Dialogic History,” Rethinking History, Vol. 9, No. 2/3, p. 159-172)

I must admit that the last person I would have expected to align with my views would have been Martin Heidegger, whose writing I find extremely frustrating most of the time. Yet Heidegger was fascinated by the idea of dialogue in ways that do map on to some of the claims I am making for sublime history, and given Heidegger’s ineffable hermeneutics, I suppose that this should not be surprising. The dialogue that Heidegger imagined was possible between human subjects was one that literally never arrived, and it could not be coerced to produce a ‘meaning’. His dialogue with ‘a Japanese’ in ‘A Dialogue on Language’ (1971) makes clear that the meaning of the successful dialogue goes beyond the intended meaning of the speakers of the dialogue; it also goes beyond the control of the speakers, precisely because it comprises language and is embodied in language. In this view, **dialogue incorporates the play of language**: ‘The veiled relation of message and messenger’s course plays everywhere’ (Heidegger 1971, p. 53). But for Heidegger this is not infinite play or ontological undecidability, as it would be later for Jacques Derrida. Language **serves as both a medium and a guide** for any good-faith dialogue and provides a ‘hint’ to the speakers of what the dialogue is actually about. The ‘hint’ is akin to Lyotard’s sublime: it is an unspoken, unrepresentable figure that is and is not ‘meaning’ because it is and is not language. The hint is given by language to the speakers of a dialogue, but they do not register this hint as a paraphrasable meaning, a topic summary. The hint is akin to intuition, laying at the borders of conscious perception, yet it does not stem from consciousness but from language itself. The hint guides the dialogue and forms its conversational trajectory. In ‘A Dialogue on Language’, an Inquirer (Heidegger’s persona) and ‘a Japanese’ speak about it thus: I: That is in keeping with the hints. They are enigmatic. They beckon to us. They beckon away. They beckon us toward that from which they unexpectedly bear themselves toward us. J: You are thinking of hints as belonging together with what you have explained by the word ‘gesture’ or ‘bearing.’ I: That is so. J: Hints and gestures, according to what you indicated, are **different from signs** and chiffres, all of which have their habitat in metaphysics. I: Hints and gestures belong to an **entirely different realm** of reality, if you will allow this term which seems treacherous even to myself. (Heidegger 1971, p. 26) Hints form a vital part of Heidegger’s ‘ineffable dialogue where that which cannot be said is brought close’ (Rockwell 2003, p. 25). Dialogue is the interaction of human consciousness with language to form a meaning, a discourse, that is more than the sum of its parts and to some extent beyond the control of its interlocutors but emerging from their speech and interaction. What the hint allows Heidegger to explore is a middle ground between determinism and open-ended play in dialogue itself. The dialogue’s interlocutors both construct the dialogue and are guided by it. While stemming from a Kantian rather than a Hegelian philosophical tradition, the dialogism of Mikhail Bakhtin stresses the nonunitary character of the self as dialogue. As Michael Holquist (1990, p. 18) notes, for Bakhtin, the very capacity to have consciousness is based on otherness. This otherness is not merely a dialectical alienation on its way to a sublation that will endow it with unifying identity in higher consciousness. On the contrary . . . it is the differential relation between a center and all that is not that center. . . . ‘Center’ in Bakhtin’s thought [must] be understood for what it is: a relative rather than an absolute term, and as such, one with no claim to absolute privilege, least of all one with transcendent ambitions. In this view, the self becomes a dialogic process rather than a singularity, and it is always defined by interaction with the other. Bakhtin asserts that ‘Life can be consciously comprehended only in concrete answerability. . . . Life can be consciously comprehended only as an ongoing event, and not as Being qua a given. All life that has fallen away from answerability cannot have a philosophy: it is, in its very principle, fortuitous and incapable of being rooted’ (1993, p. 56). As his commentators note, Bakhtin’s unique contribution to poetics is that he correlates self/other dialogics to a kind of authorship. The dialogic engagement between self and other demands narration; as Eskin notes, ‘It is through the other’s aesthetic productivity that I receive a body localizable and discernible in . . . a social, communal world’ (2000, p. 82). Moreover, the other’s narrativization of me demands that my consciousness answer, and this sets in motion an unceasing ‘oscillation between the other’s ‘‘aesthetic completion’’ of me and my own assertion of incompleteness and infinite potential’ (Eskin). For Bakhtin, this process of self-development through interaction with the other is parallel to other dialogical relations in the world dependent upon narration. Most importantly, it is parallel to novelness, an unceasingly dialogic and never-ending interpretation of the world by literary narrative itself. Novelness is a form of knowledge, and it puts ideas that claim primacy in dialogue with one another (Holquist 1990, p. 87). In the novel, the other is presented through social perspectives, characterization, voices, and points of view that Bakhtin calls heteroglossia: ‘The living utterance, having taken meaning and shape at a particular historical moment in a socially specific environment, cannot fail to brush up against thousands of living dialogic threads, woven by socio-ideological consciousness around the given object of an utterance; it cannot fail to become an active participant in social dialogue’ (Bakhtin 1981, pp. 276 – 7). Committed to the idea that the self is ‘unfinalizable’ and that reality is creative and open (Morson and Emerson 1990), Bakhtin formulated a theory of dialogism that encompassed the creative formation of the self, the text and the world. The perspective of the other, as Thomas Pynchon might say, ‘keeps it bouncing’. The question is, then: Can theories of dialogism such as Bakhtin’s be applied to history or historical understanding? Can we have a dialogue with history? We might fudge this answer by talking about our interactions with individual historical texts—manuscripts, records, etc.—and how we enter into a kind of ‘dialogue’ with them. Yet the problem is that these texts do not, cannot, answer us, and they were not written with dialogic interaction in mind. Even in the esoteric terms of Heideggerian ineffability, the answer to whether we can set up a dialogue with history is ‘no’. History is not a person; it is not a place; it is not even a text except in its traces. There is nothing with which to have a dialogue if one wishes to have a dialogue with history. Yet we strive to have a dialogue with history, perhaps because we perceive it to be not a thing or a sterile collection of written texts but rather a cacophony of voices of living beings who preceded us in time. If we hear and perceive history as human voice, then there is an odd logic to why we pursue a dialogue with the past, though clearly, since those voices cannot engage with us on their own terms in the present, there can be no real dialogue with them for us. What I perceive to be a yearning for the sublime space of History in metahistorical romance is, however, this movement towards the voices of the past, this desire to engage in a living dialogue with these once-living voices and thus to form ourselves and our reality anew. Stanley Aronowitz has written that Bakhtin’s categories (dialogue, chronotope, polyphony) ‘may be seen as a critique of historicism from the perspective of a new conception of historicity’ (1995, p.121), and I agree. While dialogism makes no promises, it does offer a hint, a hope, a glimmer of possibility for self-knowledge through the interaction with another, even if that other is a voice from the past. How does this relate to the movement towards History, the sublime desire at the heart of metahistorical romance? We return again and again to the past not, perhaps, because we expect to find the buried logocentric treasure there, the key to the kingdom of ‘Why?’ We return to the past again and again, seeking perhaps not closure but creative openness, dialogue with the voices we hear there; we return seeking the creative living utterance that we need for self-formation. At least, understanding a return to the past this way helps to explain the desire at the heart of metahistorical romance, and why perhaps the genre is so prevalent at the end of the twentieth century. Dialectic does not offer us this possibility of interaction with the living voice. It presents a view of history not as lived voice but as mechanical process, and it therefore does not invite us into the space of the past as does dialogue. This is why Bakhtin determined that dialectic was essentially monological, and turned instead to a model (of self-formation, of poetics) that reinscribed the human voice, and thus the possibility for growth and ethical revelation, into our art and history. In Hayden White’s terms, it is only by understanding history as meaningless, inexplicable and sublime—and liberating oneself from the disciplined linear model of history of which dialectic is one example—that there is a possibility of human ‘dignity and freedom’ (White 1987, p. 81). In his discussion of the chronotope in The Dialogic Imagination, Bakhtin specifically cites the historical novel as the receptacle of chronotopic motifs; more importantly, however, towards the end of the essay he begins to explore the relationship between the chronotopes of a novel and the chronotopes of the lived reality of the reader. ‘Out of the actual chronotopes of our world,’ he writes, ‘emerge the reflected and created chronotopes of the world represented in the work’ (1981, p. 253). If in fact the metahistorical romance is a postmodern form of the historical romance, and if the central characteristic of this postmodern genre is a desire for interaction with the voices of the past that it perceives as necessary to a selfformation and understanding of the world, then the constant, recursive movement towards history and back again in this postmodern narrative form understandably mimes the give-and-take of dialogism as both ethical and generic process. I think that this is what Ernst van Alphen means when he writes that to be comfortable and at home in his new house, which was once owned by Jews killed in the Holocaust, he must see the house not as his but as ours: he must somehow dialogue with the dead voices of the past in order to construct (not reconstruct, not understand) a new relation to the world around him and to his own self-understanding (Van Alphen 1997, pp. 204 – 5). I think this is what the metahistorical romance does by returning again and again to the historical past without resolution, without closure: it too seeks to dialogue with the past, to reconstruct its own (First World) relation to the world. I am more and more intrigued by the idea that sublime history is dialogic history, or at least an attempt to create such a thing by contemporary consciousnesses cut off from older periods’ methods for creating order, selfdefinition and meaning in the world. If this is so, then sublime desire derives from a **fundamentally different impulse** than does radical postmodernism aligned with deconstruction and poststructuralism. Deconstructive, poststructuralist, anti-epistemological postmodernism glories in its refusals, its bad-boy promiscuity, its militant anarchism, its radical chic, its heroic Nietzschean insight about the blinders of convention that blinker the eyes of the oblivious cows masticating in the pastureland. This postmodern refrain is a familiar one because it stems precisely from the modernism it condemns (in the form of the modernist avant-garde), and we heard it echo in the 1960s street work of the Situationist International, in Lyotard’s 1979 clarion call to wage war on totality, in Deleuze and Guattari’s schizopoetics, in Ihab Hassan’s paratactic postmodernism, in Judith Butler’s performative gender, in Donna Haraway’s cyborg interfaces, in Richard Rorty’s neo-pragmatist irony, in **Derrida’s attack on logocentrism**, in cyberculture rhapsodies about connectivity. It is an enticing position that is also a necessary corrective to fundamentalisms of all types. But it almost always fails to take into account the current, nuanced account of the relation between ‘belief’ and foundational logic which posits that the most entrenched orthodoxies are often based on reasons that are illogical, unprovable by empiricist methods, and anti-modern. And from a certain perspective, it is simply the obverse (underbelly?) of a modernist rationalism that demands to know all of the answers all of the time. A reversal is not necessarily a refusal; as Derrida in fact has shown us, negation and affirmation are usually just two sides of the same sheet of logocentric paper. At the current world-historical moment, it is imperative that we learn from but (historically?) contexualize the radical skepticism about history and the hermeneutics of suspicion that guided literary theory in the midand late twentieth century (and that is now apparently entering historiography with a vengeance) and conduct a **more nuanced investigation** of what an effective history can be. Perhaps **provisional foundationalism is not the same thing as anti-foundationalism** after all, and one simply does not have to choose between strait-jacket grounding and absolute openness. Perhaps it is possible even to see dialogue as a game as dangerous as radical refusal, not a domesticated form or a middle way as much as an alternative to the affirmation/refusal coupling integral to assertion (of science, of theory, of logic, of value). The Bakhtinian impulse towards dialogue is in fact perfectly in **keeping with a postmodernist valuation of open-endedness, newness, freedom, indeterminacy.** When self and radical other establish relationship and dialogue, history will be on the table and up for grabs. However, in order to talk, we will have to recognize some foundational starting point that will allow us to refuse foundations from that point on. We need perhaps to do a new kind of history that is a dialogue between possibly incommensurate alternatives and paradoxical chronotopes. As Michael Holquist has noted, biology shows us that all living systems are indeterminate, unconsummated, unfinished, and to that extent, singular, yet humans’ living uniqueness is also, paradoxically, what we all have in common. Moreover, through our human mortality, our singular bodies are pervaded by history, and we have this in common as well (Holquist 1997, p. 233). A pluralist world culture may now be due for a postpostmodernism which has the courage to acknowledge that we have for too long constructed an either/or fallacy that forces us to choose unnaturally between the singular and the universal, the heterodox and the orthodox, the spoken and the unspoken, universalism and utter difference, History and history, meaning and play. The fact that these binary oppositions are false was in fact Derrida’s greatest insight. To say that history is tropological is not to say that it has no value or that it is nothing at all. It may be time to (re)acknowledge history as something we universally share, something that as Jeanette Winterson has noted is ‘written on the body’, even as we enter into experimental, ethical dialogue with it, in the full knowledge that that dialogue will remain unfinalized, deferred, filled with hints that guide a conversation which never ends. Which is, perhaps, what metahistorical romance is all about.

Our view of language as dialogic and intersubjective avoids the totalization of both structuralism and deconstruction—pure deconstruction de-centers language from its human basis and causes mass violence

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(Christine E., “Living Out Loud within the Body of the Letter: Theoretical Underpinnings of the Materiality of Language,” College English, Vol. 65, No. 5, p. 494-510)

Bakhtin's view of language contrasts with the view presented by Derrida under the rubric of differance. Derrida notes: "The play of differences supposes, in effect, syntheses and referrals which forbid at any moment, or in any sense, that a simple element be presenti n and of itself, referring only to itself" (Positions2 6). Differance indicates a sense of movement and transfer within language. Thus, language is al-ways dynamic and capricious. Perhaps, therefore, it is only language that is always already present. For the text, finally, serves as the material "venue" or "site" of lin-guistic interplay. Derrida observes: Whether in the order of spoken or written discourse, no element can function as a sign without referring to another element which itself is not simply present. This interweaving results in each "element"-phoneme or grapheme-being constituted on the basis of the trace within it of the other elements of the chain or system. This interweaving, this textile, is the text produced only in the transformation of another text. Nothing, neither among the elements nor within the system, is anywhere ever simply present or absent. There are only, everywhere, differences and traces of traces. (26)

Still, Derrida's emphasis on "differences and traces of traces" suggests the impalpability that sometimes characterizes his conception of language. In this way, Derrida takes on a rhetoric of indeterminacy characterized by an emphasis on free play, ab-sence, infinity, dislocation, chance, uncertainty, rupture, decentering, erasure, dis-continuity, displacement-all of the buzzwords that add up to the shadowy appearance and disappearance of "traces of traces." In light of some of the unresolved issues with which Derrida leaves us, and in view of the sense of bodily materiality found in feminist postmodern work, I feel the need to return to Bakhtin's version of the materiality of language, which takes shape through concepts such as dialogism, heteroglossia, and answerability. As Bakhtin argues throughout his oeuvre, **any linguistic activity presupposes a condition of "answerability**." Rather than turning the self-other encounter that underlies all linguistic activity into a trope predicated on mysterious notions of alterity and paradox-in the way that Derrida's difference does-Bakhtin's work acknowledges the transitivity and sense of mutual implication in the self-other dynamic. He writes in his long essay, "Author and Hero in Aesthetic Activity": There is one thing that, indubitably, has essential significance for us here: the actual, concrete axiological experiencing of another human being within the close whole of my own unique life, within the actual horizon of my own life, has a twofold character, because I and the others-we move on different planes of seeing and evaluating (not abstract, but actual, concrete, evaluating), and, **in order to transpose us to a single, unified plane**, I must take a stand axiologically outside my own life and perceive myself as an other among others. (59)

In this passage, Bakhtin conceptualizes the self-other dynamic in terms that are ex-plicitly material and physical. His perspective attempts to move beyond the superficial tropology of intersubjectivity by insisting upon a notion of intersubjectivity grounded in the "inner and outer body." In "Author and Hero in Aesthetic Activity," Bakhtin considers the place of the material body in the history of Western philosophical theory. He anticipates Michel Foucault's reflections on the discursive "disciplining" of the body in works such as Madness and Civilization (1961), The Birth of the Clinic (1963), Discipline and Punish (1975), and The History of Sexuality (1976). Unlike Foucault's, however, Bakhtin's concentration on the body does not focus on discourse's constitution, mastery, and regulation of the body. Instead, Bakhtin uses the body as a means of indicating the **material basis of intersubjectivity.** This sense of intersubjectivity is realized through the notions of "co-experience" and "expressive aesthetics." Bakhtin's early work on the self-other dynamic seeks to demarcate and explain divisions between the self's "inner" and "outer" body and its relation to the other. Bakhtin's attention to the body, as Michael Holquist points out in his introduction to Art and Answerability, is an effort on Bakhtin's part in the early twentieth century to engage "the new problems raised by theoretical physics and the new physiology [... by considering] how mind relates to body, and how physical matter relates to such apparently immaterial entities as relations between things" (xv). As Holquist observes, the most salutary feature of Bakhtin's approach is his refusal to embrace the disembodied view of language I associate with Derrida and-to some extent as well-with Saussure's deci-sion to make the distinction between langue and parole the foundation of his contribution to the philosophy of language in the early twentieth century. Like Bakhtin, I think **it is important to acknowledge the dialogical aspect of human existence.** As Michael Holquist explains in Dialogism: Bakhtin and His World, Bakhtin negotiates the individual-social question by viewing the individual and the social not as mutually exclusive terms but as mutually implicated ones:

One wayi n whicht he uniquenesso f my placei n life mayb e judgedi s by the unique-ness of the death that will be mine. However, this uniqueness-in what only appears to be a paradox-is shared. We shalla ll die, buty ou cannotd ie in my place,a nym ore than you can live from that site. And of course the reverse is also true: I cannot be in the unique place you occupy in the event of existence. (24) By virtue of the concept of heteroglossia, Bakhtin sees dialogism as involving the intermingling of languages. He observes in his essay "Discourse in the Novel": The word in language is half someone else's[ emphasis added].I t becomes" one's own" only when the speakerp opulatesi t with his own intention,h is own accent,w hen he appropriatesth e word,a daptingit to his own semantica nde xpressivein tention.P rior to this momento f appropriation,th e word [ . .] existsi n other people'sm ouths,i n other people's contexts, serving other people's intentions: it is from there that one must take the word, and make it one's own [...]. Language is not a neutral medium that passes freely and easily into the private property of the speaker's intentions; it is populated-overpopulated-with the intentions of others. Expropriating it , forcing it to submitt o one'so wn intentionsa nd accents, is a difficult and complicated process. (293-94) Bakhtin's claim that words are inevitably "half someone else's" recalls David Bleich's notion of "new and used" language. As Bleich puts it in The Double Perspec-tive, "Our aim is to understand how all sentences are, at one and the same time 'new' and 'already' used, and that the reasons for this simultaneity are traceable to the **social circumstances of language use**, or, in the other term I have been using, the institutions of literacy" (87). When Bleich posits this phenomenon of "new" and "used" language, he wants to focus attention on the psychosocial, intersubjective contexts in which language use always occurs. In his discussion of the "syntactical" and "dialectical" way in which language use occurs, Bleich conceives language use as an event that has both a nominative and a communicative function. Using the sub-ject-predicate structure of the sentence as a model, Bleich notes that "[s]entences have two parts, the subject and predicate, each dependent on one another, but not arranged symmetrically in the sentence: each part has a different role, but when the sentence is considered as a whole, its two parts are implicated in one another" (97). In conceiving of the naming operation of language in this way, Bleich describes a dynamic that drives both the psychology of language use and the operation of language as a communicative phenomenon. That is, language operates according to a logic that observes principles of reciprocity, mutuality, and reversibility. Furthermore, because at the same time, as Bleich puts it, "every word always counts" (111), lan-guage is sensitive to the effects of paraphrase and synonymity. That is, the fact that language has reciprocal and reversible properties does not necessarily translate into a license for the ad hoc interchangeability of all words or sentences. In keeping with Susan Handelman's discussion of the conception of language in the Rabbinic tradi-tion, we must remember that "the name, indeed, is the real referent for the thing, its essential character" (32). When language is viewed in this way, its asymmetrical, yet reciprocal, properties come into sharper focus. Each "thing" in the world-whether we take "thing" to refer to a material object or a word-in-use-has both a collective (or generic) and an individual, specific, and local status. Yet while some "things" might seem to resemble each other, they are never the "same thing." A sufficient sense of "difference" inheres in each object and phenomenon, thereby constituting the groundwork for what we understand as "the individual." At the same time, how-ever, each "thing" is **not so uniquely constituted** as to prohibit levels of relatedness from fleshing out its connection to other "things."

A good example of this phenomenon is the reference work known as a thesau-rus. In A Teacher'I ntroductionto Deconstruction, Sharon Crowley cites the thesaurus as an illustration of Derrida's notion of the "supplement," a concept with simulta-neous connotations of "addition" and "substitution." Crowley defines supplementa-tion as "one movement of differance"a nd then notes: The notionso f supplementationan dd ifferance, infact,p roblematizeth e assumption that synonyms-names which exactly substitute for other names-can be found in languagea t all. Roget'sT hesauruspr ovidesa splendide xampleo f the supplementary movemento f language, insofara s its listso f supposedlys imilart ermsa ctuallyd emon-strateh ow wordsd ifferf romo ne another, proliferatingn ew shadeso f meaningi n the process. (56) Thus, the notion of the synonym emerges as an example of the principle of the simultaneity of sameness and difference in language-of asymmetry, yet reciprocity. In The DoubleP erspective, Bleich goes on to extend this concept of asymmetry and reciprocity beyond an analysis of the sentence to the psychosocial conditions that drive people's use of language. He explains: Just as the wordst hemselves" count,"e ach speaker" countso n" each word and de-pendso nt he other'su sageb y virtueo f eacho ne'sp regivend ependencyo n others.O ne cannotg et out of countingo n others'u sages[ .. .]. Any misunderstandingor dispute aboutw ordsi s inseparablefr om disputesa boutr elatedness.(1 11-12) In this passage, Bleich describes the language process by using the trope of interde-pendency. While I have noted that there are similarities between Bakhtin's and Bleich's conceptualizations of language use, a key difference emerges in the moods that each one associates with people's language activities. For example, Bakhtin comes across, at times, as more inclined to conceptualize the intersubjective language scene as a site ofstruggle rather than of cooperation and reciprocity. And with this emphasis on struggle, perhaps we have come full circle, returning to the loudness, the tension, and anxieties about social change that were expressed in the Bunker household. Admittedly, communication is an endeavor fraught with challenges. In this con-nection, I am reminded of the tale of the Tower of Babel in the book of Genesis. "The whole world spoke the same language, using the same words [.. .]. Then the Lord said [...] 'Let us go down and there confuse their language, so that one will not understand what another one says"' (Gen. 11:1, 6-7). Among the many accounts in myth and history that seek to explain the origins of the plethora of world languages, the tale of the Tower of Babel is memorable for its elements of anger and punish-ment. God disrupts a seemingly halcyon existence typified by monoglossia when the people dare to "build ourselves a city and a tower with its top in the sky, and so make a name for ourselves; otherwise we shall be scattered all over the earth" (Genesis 11:4). As it turns out, the people's ambition, industry, and desire for notoriety pro-voke God's wrath, resulting in diaspora and the loss of their common language. The story of the Tower of Babel continues to exert a powerful hold on the human imagi-nation. Phenomena such as gender problems (as demonstrated most vividly in Deborah Tannen's work) and geopolitical disputes often have been interpreted in the light of a diagnosis of linguistic dysfunction: literally or figuratively, people's failure to "speak the same language" is cited as a cause of conflict and misunder-standing in everyday life. Not every instance of language use, however, results in the rancorous cacophony that took place in the Bunker household. And in fairness to the show, not every episode of All in the Family was a clinic in literally "living out loud." Moments of profound human connection and quiet, simple understanding also occurred in the lives of the characters. These, too, are forms of "living out loud," and they are "forms of life." In PhilosophicalIn vestigations,o ne of Wittgenstein's most important points was to reject the notion of a "private language," the existence of which he doubted because he came to conceive of language as a rule-governed system. As Avrum Stroll notes: "**A linguistic rule is an instruction about how to use various elements of a language.** As such, it can be understood by anyone and therefore is public [...]. If there were a 'private language,' there would be no meaningful distinction between correctly and incorrectly following a rule" (641). Thus, Wittgenstein's rejection of the solipsism implicit in the idea of a "private language" represents a vital contribution to the materiality of language. Stroll highlights Wittgenstein's preoccupation in PhilosophicalIn vestigationsw ith the theme of "ordinaryl ife." By making a case for the notion that "all of us are reared in a community in which we learn to recognize certain persons (our parents and others), learn to speak a language, and eventually come to participate unselfconsciously in a wide range of human interactions, prac-tices, and institutions" (Stroll 642-43), Wittgenstein's succinct phrase "form of life" encompasses a dynamic way of viewing the place of language in the scope of everybody's "real" experiences.

The work begun by Bakhtin and Wittgenstein emphasizes the pertinence of Michel Foucault's question, "What does it matter who is speaking?" ("What" 141). No doubt a humanist, liberatory educator such as Paulo Freire would have responded that it matters a good deal who is speaking. Only when we conclude that it does not matter who is speaking, or when we declare that we do not want to know who is speaking, or that we cannot find out who is speaking-only in these cases does an oppressive situation result. Interestingly, Foucault's point in "What Is an Author?" seems to be at odds with an observation he makes in another work, The Archaeology of Knowledge, which dates from roughly the same time period (1969). In TheA rchae-ologyo f Knowledge, Foucault raises questions about the rights, powers, and privileges that apparently confer upon some people the opportunity to speak within a given society: Who, amongt he totalityo f speakingin dividuals,is accordedt he rightt o use this sort of language[ i.e., a specificd iscoursew ithin a specificd iscursivep aradigm]?W ho is qualifiedt o do so?W ho derivesf romi t his own specialq uality, his prestige,a ndf rom whom, in return,d oes he receivei f not the assurance, at least the presumptionth at what he says is true?W hat is the statuso f the individualsw ho-alone-have the right, sanctionedb y law or tradition,j uridicallyd efinedo r spontaneouslya ccepted, to proffers ucha discourse?(5 0) In this passage, Foucault suggests that to be interested in who is speaking is not such a specious concern after all. This question "Who is speaking?" serves as a vital touch-stone for a materialist concept of language and of the pedagogical practices that can be derived from such a view of language. In order to recognize the heteroglossia that traverses the classroom, teachers and students alike must be willing to ask, "Who is speaking?" even before they ask, "What is being said and why?" To ask "Who is speaking?" reveals a concern with the sociopolitical situatedness of speakers, writ-ers, interpreters, and interlocutors. This concern, in turn, emphasizes the interrelationships between the private and the public, between the individual and the collective, and the ways in which these terms are always mutually implicated. To neglect the importance of "Who is speaking?" is to make invisible not just the physical body of the speaker, but the body of the letter as well. A materialist view of language amounts to more than just the "trace of a trace," to use Derrida's parlance. As Paulo Freire contends, to be able to name one's world is to be able "at least to some degree" to understand one's situation in it, and to understand how one is positioned in relation-ship to others. In short, a materialist view of language seeks to restore the palpability and social consequentiality of language that some language philosophers for centu-ries have ignored or diminished.

As Berel Lang notes, the Nazi decision to use the word Endlosung ("Final Solution") as the touchstone of its genocide plan marks a moment when language was purposely severed from its human and material context. Lang says that the Endlosung established itself as such a superseding social and political goal that it rationalized and permitted the perversion of the rules of language, and this perversion permeated Nazi society. Actually rather than taking place behind closed doors, the Nazi effort to stifle dissenting voices was open, normalized, and institutionalized. If we do not want something this nefarious to happen again, **we must choose to live out loud as loudly as possible in the midst of the body of the letter.**

Legal engagement is good—

The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

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

Rejecting state-based legal solutions creates ineffective activism, undermining progressive forces

Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

Both the practical failures and the fallacy of rigid boundaries generated by extralegal activism rhetoric permit us to broaden our inquiry to the underlying assumptions of current proposals regarding transformative politics — that is, attempts to produce meaningful changes in the political and socioeconomic landscapes. The suggested alternatives produce a new image of social and political action. This vision rejects a shared theory of social reform, rejects formal programmatic agendas, and embraces a multiplicity of forms and practices. Thus, it is described in such terms as a plan of no plan,211 “a project of projects,”212 “anti-theory theory,”213 politics rather than goals,214 presence rather than power,215 “practice over theory,”216 and chaos and openness over order and formality. As a result, the contemporary message rarely includes a comprehensive vision of common social claims, but rather engages in the description of fragmented efforts. As Professor Joel Handler argues, the commonality of struggle and social vision that existed during the civil rights movement has disappeared.217 There is no unifying discourse or set of values, but rather an aversion to any metanarrative and a resignation from theory. Professor Handler warns that this move away from grand narratives is self-defeating precisely because only certain parts of the political spectrum have accepted this new stance: “[T]he opposition is not playing that game . . . . [E]veryone else is operating as if there were Grand Narratives . . . .”218 Intertwined with the resignation from law and policy, the new bromide of “neither left nor right” has become axiomatic only for some.219 The contemporary critical legal consciousness informs the scholarship of those who are interested in progressive social activism, but less so that of those who are interested, for example, in a more competitive securities market. Indeed, an interesting recent development has been the rise of “conservative public interest lawyer[ing].”220 Although “public interest law” was originally associated exclusively with liberal projects, in the past three decades conservative advocacy groups have rapidly grown both in number and in their vigorous use of traditional legal strategies to promote their causes.221 This growth in conservative advocacy is particularly salient in juxtaposition to the decline of traditional progressive advocacy. Most recently, some thinkers have even suggested that there may be “something inherent in the left’s conception of social change — focused as it is on participation and empowerment — that produces a unique distrust of legal expertise.”222 Once again, **this conclusion reveals flaws** parallel **to the** original **disenchantment with legal reform**. Although the new extralegal frames present themselves as apt alternatives to legal reform models and as capable of producing significant changes to the social map, in practice they generate very limited improvement in existing social arrangements. Most strikingly, the cooptation effect here can be explained in terms of the most profound risk of the typology — that of legitimation. The common pattern of extralegal scholarship is to describe an inherent instability in dominant structures by pointing, for example, to grassroots strategies,223 and then to **assume** that specific instances of counterhegemonic activities translate into a more complete transformation. This celebration of multiple micro-resistances seems to rely on an aggregate approach — an idea that the multiplication of practices will evolve into something substantial. **In fact, the myth of engagement obscures the** actual lack of change being produced**, while the broader pattern of equating extralegal activism with social reform produces a** false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of **extralegal** **activism** — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all **produce a fantasy that change can be brought about through small-scale, decentralized transformation**. The emphasis is local, but the locality **is** described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. In reality, although there has been a recent proliferation of associations and grassroots groups, few new local-statenational federations have emerged in the United States since the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? **It is important for next-generation progressive legal scholars**, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We must differentiate, for example, between inward-looking groups, which tend to be self-regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, **within critical discourse there is a need to recognize the limited capacity of small-scale action**. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change. Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

Decision-Making—

Debate over a controversial point of action creates argumentative stasis—that’s key to avoid a devolution of debate into competing truth claims, which destroys the decision-making benefits of the activity

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

Debate is a means of settling differences, so there must be a controversy, a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a feet or value or policy, there is no need or opportunity 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 of issues, there is no debate. Controversy invites decisive choice between competing positions. 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 live 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 are best understood when seated clearly such that all parties to the debate share an understanding about the objec­tive of the debate. This enables focus on substantive and objectively identifiable issues facilitating comparison of competing argumentation leading to effective decisions. Vague understanding results in unfocused deliberation and poor deci­sions, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For exam­ple, claims are presented and supported within speeches, editorials, and advertise­ments even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audi­ence or judge to make a forced choice among competing claims. Informal dis­course occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, by definition, debate requires "reasoned judgment on a proposition. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumenta­tion calling upon their audience or adjudicator to decide. The proposition pro­vides focus for the discourse and guides the decision process. Even when a decision will be made through a process of compromise, it is important to iden­tify the beginning positions of competing advocates to begin negotiation and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates (“Vote for me!”); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be explicitly expressed (“the defendant is guilty!”). In aca­demic debate, the proposition provides essential guidance for the preparation of the debaters prior to the debate, the case building and discourse presented during the debate, and the decision to be made by the debate judge after the debate. 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. This focus contributes to better and more informed decision making with the potential for better results. In aca­demic debate, it provides better depth of argumentation and enhanced opportu­nity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. 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 a topic, such as ‘"homeless­ness,” or “abortion,” Or “crime,” or “global warming,” we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet by itself fails to provide much basis for dear argumen­tation. If we take this statement to mean *Iliad* 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, perhaps promoting positive social change. (Note that “loose” propositions, such as the example above, may be defined by their advocates in such a way as to facilitate a clear contrast of competing sides; through definitions and debate they “become” clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote weII-organized argument. What sort of writing are we concerned with—poems, novels, government documents, web­site development, advertising, cyber-warfare, disinformation, or what? What does it mean to be “mightier" 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.

Decisionmaking is the most portable and flexible skill—key to all facets of life and advocacy

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

In the spring of 2011, facing a legacy of problematic U.S, military involvement in Bosnia, Iraq, and Afghanistan, and criticism for what some saw as slow sup­port of the United States for the people of Egypt and Tunisia as citizens of those nations ousted their formerly American-backed dictators, the administration of President Barack Obama considered its options in providing support for rebels seeking to overthrow the government of Muammar el-Qaddafi in Libya. Public debate was robust as the administration sought to determine its most appropriate action. The president ultimately decided to engage in an international coalition, enforcing United Nations Security Council Resolution 1973 through a number of measures including establishment of a no-fly zone through air and missile strikes to support rebels in Libya, but stopping short of direct U.S. intervention with ground forces or any occupation of Libya. While the action seemed to achieve its immediate objectives, most notably the defeat of Qaddafi and his regime, the American president received both criticism and praise for his mea­sured yet assertive decision. In fact, the past decade has challenged American leaders to make many difficult decisions in response to potentially catastrophic problems. Public debate has raged in chaotic environment of political division and apparent animosity, The process of public decision making may have never been so consequential or difficult. Beginning in the fall of 2008, Presidents Bush and Obama faced a growing eco­nomic crisis and responded in part with '’bailouts'' of certain Wall Street financial entities, additional bailouts of Detroit automakers, and a major economic stimu­lus package. All these actions generated substantial public discourse regarding the necessity, wisdom, and consequences of acting (or not acting). In the summer of 2011, the president and the Congress participated in heated debates (and attempted negotiations) to raise the nation's debt ceiling such that the U.S. Federal Govern­ment could pay its debts and continue government operations. This discussion was linked to a debate about the size of the exponentially growing national debt, gov­ernment spending, and taxation. Further, in the spring of 2012, U.S. leaders sought to prevent Iran from developing nuclear weapon capability while gas prices in the United States rose, The United States considered its ongoing military involvement in Afghanistan in the face of nationwide protests and violence in that country1 sparked by the alleged burning of Korans by American soldiers, and Americans observed the actions of President Bashir Al-Assad and Syrian forces as they killed Syrian citizens in response to a rebel uprising in that nation and considered the role of the United States in that action. Meanwhile, public discourse, in part generated and intensified by the cam­paigns of the GOP candidates for president and consequent media coverage, addressed issues dividing Americans, including health care, women's rights to reproductive health services, the freedom of churches and church-run organiza­tions to remain true to their beliefs in providing (or electing not to provide) health care services which they oppose, the growing gap between the wealthiest 1 percent of Americans and the rest of the American population, and continued high levels of unemployment. More division among the American public would be hard to imagine. Yet through all the tension, conflict was almost entirely ver­bal in nature, aimed at discovering or advocating solutions to growing problems. Individuals also faced daunting decisions. A young couple, underwater with their mortgage and struggling to make their monthly payments, considered walking away from their loan; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job and a teenager decided between an iPhone and an iPad. 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 scorn 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 engage in discourse surrounding our necessary 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? Should we watch 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, Twitter, Wikipedia, and many other “wikis," and social networking sites, knowledge and truth are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. Through a quick keyword search, we have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? Much of what suffices as information is not reliable, or even ethically motivated. 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, And, critical thinking offers tools enabling the user to better understand the' nature and relative quality of the message under consider­ation. 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 arid deductive processes, including an under­standing of die 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 our 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 die 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.11'1 Much of the most significant communication of our lives is conducted in the form of debates, formal or informal, These take place in intrapersonal commu­nications, with which we weigh the pros and cons of an important decision in our own minds, and 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. Some people make decision by flipping a coin. Others act on a whim or respond unconsciously to “hidden persuaders.” If the problem is trivial—such as whether to go to a concert or a film—the particular method used is unimportant. For more crucial matters, however, mature adults require a reasoned methods of decision making. Decisions should be justified by good reasons based on accurate evidence and valid reasoning.

### 2

Demands for presencing of those marked as abject reinscribes the Hegelian dialectic of life and death that makes the social death possible in the first place.

Peterson ‘6

Christopher, “The Return of the Body: Judith Butler's Dialectical Corporealism,” Discourse, 28.2&3, Spring & Fall 2006, pp. 153-177 (Article)

In contemporary cultural studies, the body is laden with intense desires and expectations. Emerging with the eclipse of poststructuralism in the late 1980s, “the body” promised to weigh in on contemporary political debates, to give material substance to a discipline supposedly evacuated by what some felt to **be the excessively linguistic or textual focus** of contemporary theory. But what if the very turn to the body occasioned a certain return of **the metaphysics of presence**, only now bearing the name, or rather, the spirit of “the body”? Indeed, scholars in race, gender, and sexuality studies have often invoked the body as a **marker of both identity and self-presence**. Given the violence of erasure, invisibility, and death (both social and material) to which minority bodies have historically been subjected, it has also seemed to many that the ontology of these bodies must be **insisted upon** in the face of this nihilistic threat. As Sharon Holland announces in Raising the Dead: Readings of Death and (Black) Subjectivity, “bringing back the dead (or saving the living from the shadow of death) is the ultimate queer act.”1 And in the introduction to her seminal, 1991 collection of essays on queer theory, Inside/Out, Diana Fuss notes how “a striking feature of many of the essays collected in this volume is a fascination with the specter of abjection, a certain preoccupation with the figure of the homosexual as specter and phantom, as spirit and revenant, abject and undead.”2 Yet, queer scholarship for the most part has addressed the problem of the spectral only by way of contesting its pervasiveness in dominant representations of homosexuality. If saving us from the shadow of death names the “ultimate queer act,” such so-called “raising” of the dead relieves us of any sustained engagement with what Jacques Derrida calls **spectrality**, understood, in part, as an originary process of mourning that is the condition of all life, indeed, **of any body**. For Derrida, spectrality does not originate with one’s social or biological death. As he argues in a brief reading of Poe’s “The Facts in the Case of M. Valdemar,” our “future” absence divides our present/presence from the very beginning. Derrida takes Valdemar’s catachrestic utterance-—”I have been sleeping-—and now-—now-—I am dead”3-—to make a point about the function of language: My death is structurally necessary to the pronouncing of the I. . . . The utterance “I am living” is accompanied by my being-dead and its possibility requires the possibility that I be dead; and conversely. This is not an extraordinary story by Poe here, but the ordinary story of language. . . . I am thus originally means I am mortal.4 While Derrida’s point is that the iterability of a speech act requires the possibility of one’s absence from future scenes of utterance (and thus already implies one’s absence in the present), this living death also names the experience of “being” more generally. As Heidegger puts it, being “is always already dying” in its “beingtowardits-end.”5 For Heidegger, death is not a punctual event that one might mark on a calendar; rather, death always already belongs to our being. The conventional reduction of death to a calculable moment is precisely what Poe’s story parodies. While his doctors assert that his “disease [is] of that character which would admit of exact calculation in respect to the epoch of its termina- tion in death,” Valdemar (aided by the magic of mesmerism) continues to live beyond the estimated moment of decease, a prolongation of dying that allegorizes how life stretches along a path marked at every step by death (51). Valdemar’s protracted dying also echoes Emily Dickinson’s poem “Because I could not stop for death,” in which death “kindly” stops for the speaker and bears her forward through each stage of life. **If**, as in Dickinson’s poem, **death** haunts our “being” from the very beginning, then the spectral condition of sexual minorities is not reducible to a problem of representation, or rather, mis-representation, as queer scholarship tends to suppose. When Holland caricatures “postmodernism” as “the attractive zombie theory of the academy, a place where the living travel through death and are reborn to utter the truths of such a journey,” she suggests that postmodernism articulates a dialectical relation between life and death, a sublation of being and nonbeing that ultimately triumphs over finitude (166). Such a dialectical view of the relation between life and death, however, **opposes** **itself to the spectral**, **which is neither present nor absent**. But perhaps Holland’s caricature is to be expected, for as Derrida notes in Specters of Marx, “the traditional scholar does not believe in ghosts—nor in all that one would call the virtual space of spectrality.” 6 If the traditional scholar does not believe in ghosts, that is because “there has never been a scholar who, as such, did not believe in the clear-cut distinction between the real and the unreal, the actual and the inactual, the living and the non-living, being and non-being” (34). For Derrida, a capacity to speak to “ghosts” would be the mark of a scholar.7 Although it might seem odd to yoke queer critics to the figure of the traditional scholar, so ingrained is the anti-spectral character of queer scholarship that Holland can declare the ultimate queerness of raising the dead as a “fact,” and support this claim only by referring us to ACT UP’s famous political slogan: “**silence = death.”** To insist on this “fact,” however, **is to sidestep the problem of finitude altogether**. When scholars in race, gender, and sexuality studies write about the body, what is typically **invoked is the living body**, **the body that is present to itself, untainted by mortality**. For cultural studies, spectrality is merely an effect of racism, sexism, homophobia, and other social injustices. **Subtracted from** such **external violence**, **the body can be made present,** its ontology no longer in question. But spectrality, as Derrida uses the term (and as I propose to track it here in the context of racial and sexual politics) **does not have its origin in social inequality**. Naming a process of originary mourning that animates corporeal life, spectrality has no proper beginning or end. The abjection that sexual and racial minorities endure might be better understood as a mode of **redoubled ghostliness** that harnesses the spectrality inherent **to all life** and attaches it to those on the margins of sociality: the figure of the gay man dying of AIDS functions as the “proof” of the homophobic white male’s ontological security; the representation of AfricanAmericans as “spooks” (to cite a somewhat antiquated yet illustrative racist epithet) works to ward off the death that **always already haunts** the ontology of the white body.8 No doubt the emergence of gay and lesbian studies in the midst of the AIDS crisis and the cruelty of those discourses that sought to invoke AIDS as further proof of the “death style” of (male) homosexuality inspired many queer critics and theorists to resist the equation of homosexuality and death. Yet, the contestation of this equation, I would argue, has also had the consequence of **disavowing finitude.** My claim is that the specific, historical effects of homophobia, racism, and sexism must also be thought in relation to the generalizable **principle of spectrality**. Certainly there are good reasons to be wary of entertaining general principles, given the risk that they might come to saturate the social and political field, to erase differences altogether. Indeed, the turn to the body has been occasioned by a renewed faith in particularity that often eschews the large claims of “theory.” Yet rejecting general principles altogether risks a certain overparticularization that fails to imagine how the general and the particular might be held in perpetual tension without either finally coming to absorb the other. If “social death” names an ontological deprivation that attends the lives of racial and sexual minorities, there is no reason why these specificities cannot and should not be brought to bear on the generalizable condition of spectrality, and vice versa. Not to negotiate this tension between general and particular, between spectrality and social death, is to miss the opportunity to interrogate **how** the **social death of racial and sexual others** **is produced** in and **through the disavowal of the spectral.** The insistence on the ontology of the socially dead, in other words, merely reverses and reinscribes the division between life and death, presence and absence, that conditions the abjection of queer lives. In a passage from The Psychic Life of Power, for instance, Judith Butler addresses how we might counter the abjection of those bodies deemed expendable, “gay people, prostitutes, drug users, among others . . . [who] are dying or already dead.”9 While she asks us to consider if “‘social existence’” for the majority is purchased through “the production and maintenance of the socially dead,” she does not pursue the question of how the construction of the socially dead is predicated on the **fiction of social being, of being as presence** (PLP 27). Dedicating her work toward expanding “a field of possibilities for bodily life,” she theorizes against the insidious means by which the abjection of minority bodies produces them as “shadowy contentless figure[s] for something not yet made real.”10 **But this invocation of ontology**—**intoned in the suggestion that these ghostly shadows might someday be embodied**— would appear to conflate social death or abjection with what we are calling spectrality. **This conflation denies the possibility of the specter**, of that which is neither spirit nor body. As Derrida notes in Specters of Marx: “For there is no ghost, there is never any becoming specter of the spirit without at least an appearance of flesh. . . . For there to be a ghost, there must be a return to a body, but to a body that is more abstract than ever” (202). Although the possibility of the specter requires a certain return to the body, that body never fully returns to itself. Indeed, the return of the body to itself is forever deferred by its “hauntological” condition. Following Derrida, we might consider that all bodies live in the “shadowy regions of ontology,” **all bodies are hauntological**, not ontological. Only by virtue of the fiction of ontology do certain bodies appear to be more present than others. The social existence of the majority, of those white, male bodies that supposedly matter, is conditioned by a certain **disavowal and projection** **of** the body’s **finitude**. The socially dead are thus made to stand in for the death that haunts each and every life. While the interrogation of the body as a stable marker of identity would appear to have received its most well-known and persistent challenge in Butler’s anti-epistemological accounts of corporeality, **the equation of the body with presence remains very much intact.** Indeed, I would suggest that, despite the frequent characterization of her theorizations of corporeality as “deconstructive” by both her supporters and her most virulent critics (Nussbaum or ˇZizˇek for instance), they remain squarely within a metaphysical tradition of presence that disavows finitude, that is, within that very tradition that deconstruction has made it its mission to displace.11

Disawoval of finitude is the foundational condition for all American violence—the impact is ever-escalating cycles of destruction.

Peterson ‘7

Christopher, *Kindred Specters*: *Death, Mourning and American Affinity*, University of Minnesota Press

The popularity of Six Feet Under notwithstanding, American culture tends not to acknowledge the intimate relation among death, mourning, and kinship —no doubt because in the modern West we tend to see the barrier that separates the living and the dead as insurmountable. If we follow historian Philippe Aries on this subject, however we see that things were not always so. In contrast to the Middle Ages, in which a certain familiarity with death was displayed, a promiscuous coexistence of the living and the dead, Aries argues that the rise of **modernity witnessed an effacement and interdiction of death**. Death was to be put in its proper place, whether Its place" be the newly constructed cemeteries on the outside of the city walls or the hospitals where patients now came to die rather than to get well: "Mourning is thus no longer a necessary period on which society imposes respect. It has become a morbid state that needs to be nurtured, abridged, and erased.'!^ According to Aries, the interdiction of mourning is **nowhere more vigilant than** **in the** U**nited** S**tates,** where death is treated almost as an aberration of life. Indeed, the present study focuses on American culture precisely because the American disavowal of death is **so vehement**. Aries reads the advent of the mortuary business and the practice of embalming in the United States during the late nineteenth century as a testament to the American denial of mortality. Death could no longer be either too familiar or common, too frightening or painful: "To sell death, one must make it pleasant" (69). This transformation of death into something pleasant—in other words, something that is not death—is symptomatic of the modern segregation of the living and the dead. Following Aries, Gary Laderman traces the emergence of this peculiarly modern interdiction of death specifically to the postbellum era, which bore witness to the "birth of the death industry."^ During the Civil War, a doctor by the name of Thomas Holmes claimed to have embalmed thousands of fallen soldiers. Because most Civil War battles were fought on Southern land, the practice of embalming allowed for the preservation and repatriation of the bodies of fallen Union soldiers. Following the wartime emergence of embalming, Abraham Lincoln became the first U.S. president to have his body embalmed. Lincoln's body, as is well known, was paraded before thousands of mourning citizens on a long, cross-country journey from Washington, D.C. to Springfield, Illinois. As Laderman notes, the parading of Lincoln's body "ensured that embalming—an unacceptable treatment before the war—would change the practice of American deathways" (163). The living could now "look at the face of death and not be confronted by the gruesome details of decomposition and decay" (174). As Jessica Mitford observed in her well-known expose of the American funeral industry, The American Way of Death (1963), the undertaker "put[s] on a well-oiled performance in which the concept of death...play[s] no part whatsoever....He and his team...score an upset victory over death. While this study accords with the claim that American culture disavows mortality, I do not argue for any simple reversal of this interdiction with an aim toward affirming finitude per se. If death is beyond our experience (as Heidegger among others has observed), if I am ultimately absent from "my" own death, then strictly speaking there is nothing for me to recognize or avow. Yet **dying is something that I do every day**. Indeed, it might be more accurate to say that American culture disavows dying, understood as a process that extends from our birth to our biological demise.^ Even with such an amended formulation, however, it is not entirely clear whether dying can ever be fully affirmed or avowed. That "we live as if we were not going to die," as Zygmunt Bauman observes, "is a remarkable achievement," especially given the ease with which we disavow dying on a daily basis/ Some degree of disavowal would seem both unavoidable and necessary for our survival. Any effort to prolong one's life, from simply eating well and exercising to taking medications to prevent or treat illness, evidences this disavowal. For Bauman, however, **the disavowal of dying often has** violent **political and social** consequences. Noting the wartime imperative "to limit **our** casualties,'" for instance, Bauman remarks that ::the price of that limiting **is multiplying the dead on the other side** of the battleline" (34). Drawing from Freud's claim that, "at bottom no one believes in his own death," Bauman argues that death is "socially managed "by securing the Immortality" of the few through the mortalization of others (35, his emphasis).1^ The belief in my self-presence, which is also always a belief in my immortality, is thus **dialectically conditioned** by the nonpresence of others. Scholars in race and sexuality studies have done much to bring our attention to the ways in which American culture represents racial and sexual minorities as dead—both figuratively and literally. Indeed, this gesture both accompanies and reinforces the larger cultural dissimulation of mortality by making **racial** and **sexual others stand in for the death that haunts every life**. The history of American slavery tells a familiar story of how American consciousness disavows and projects mortality onto its ''others." Orlando Patterson has described the institution of slavery in terms of a process of kinship delegitimation that constructs slaves as "socially dead."^ For Patterson, slavery—across its various historical forms—emerges as a substitute for death, a forced bargain by which the slave retains his/her life only to enter into the liminal existence of the socially dead. As a substitution for death, slavery does not "absolve or erase the prospect of death," for the specter of material death looms over the slave's existence as an irreducible remainder (5). This primary stage in the construction of the socially dead person is followed by what Patterson refers to as the slave's "natal alienation," his/her alienation from all rights or claims of birth: in short, a severing of all genealogical ties and claims both to the slave's living blood relatives, and to his/her remote ancestors and future descendants. Although Patterson does not approach the problem of social death through a psychoanalytic vocabulary of disavowal and projection, one might say that the presumptive ontology of slave-owning, legally recognized kinship, was dependent on a deontologization of slave kinship that worked to deny the death that each life bears within itself. Building on Patterson's argument, Toni Morrison observes in Playing in the Dark that, ::for a people who made much of their newness'—their potential, freedom, and innocence—it is striking how dour, how troubled, how frightened and haunted our early and founding literature truly is."^ For Morrison, African-American slaves came to shoulder the burden of the darkness (both moral and racial) against which America defined itself. The shadow of a racialized blackness did not so much threaten the ostensible "newness" of American life as it conditioned the latter's appearance as new and free. Hence "freedom," she writes, "has no meaning...without the specter of enslavement" (56). Echoing Morrison, Russ Castronovo asserts in Necro Citizenship that nineteenth-century American politics constructed the citizen in relation to a morbid fascination with ghosts, seances, spirit rappings, and mesmerism. Taking his point of departure from Patrick Henry's infamous assertion, "give me liberty or give me death," Castronovo explores how admission into the domain of citizenship required a certain depoliticization and pacification of the subject: "The afterlife emancipates souls from passionate debates, everyday engagements, and earthly affairs that animate the political field.From Lincoln's rumored dabbling in spiritualism, to attempts by mediums to contact the departed souls of famous Americans, to a senator's introduction of a petition in 1854 asking Congress to investigate communications with the "other side"—so numerous are Castronovo's examples of what he calls "spectral politics" that we would have a difficult time contesting his diagnosis that nineteenth-century American political discourse worked to produce politically and historically dead citizens. That these citizens were constructed in tandem with the production of large slave populations— noncitizens who were urged by slavery proponents and abolitionists alike to believe that emancipation existed in a promised afterlife —would lend still more credence to the argument that nineteenth-century America propagated a dematerialized politics. One wonders, however, how Castronovo's argument sits in relation to Aries's contention that American life tends toward an interdiction of death, and if Castronovo's rejection of necropolitics, moreover, is not finally symptomatic of this very disavowal. Castronovo maintains that, 'for cultures that fear death...necrophilia promotes fascination with and helps tame an unknowable terror" (5). American necrophilia, according to Castronovo, responds to an overwhelming fear and denial of death. Castronovo thus aims to turn us away from such preoccupation with ghosts, spirits, and the afterlife toward "specific forms of corporeality," such as the laboring body, the slave body, and the mesmerized body, in order to avoid "reinserting] patterns of abstraction" (17). Yet, this move away from general to specific forms of embodiment still retains the notion of "the body," and therefore of a **self-contained, self-present entity**. If nineteenth-century politics required that the citizen be disembodied and dematerialized, it does not follow that a move toward embodiment remedies such a spiritualized politics. Although Castronovo cautions that recourse to the body "does not automatically guarantee resistance," the overall tenor of his project pathologizes the spectral (18). Indeed, one has the sense that Castronovo would like to untether politics from death altogether—as if political life is not always haunted by finitude. Reversing the terms of political necrophilia, he offers something like a political necrophobia that sees every intrusion of the spectral as synonymous with depoliticization. If nineteenth-century spiritualism infused American political life with a familiar set of distinctions between spirit/matter, soul/body, that says nothing about how these binaries might be displaced rather than merely reversed. A binaristic approach to the subject of mortality is also legible in Sharon Holland's Raising the Dead, which asserts that "bringing back the dead (or saving the living from the shadow of death) is the ultimate queer act."^ Drawing from the activist slogan "silence=death" from the early years of the AIDS epidemic, and extending this activist imperative to address the social death of sexual and racial minorities more generally, Holland observes that the deaths of queer and racial subjects serve "to ward off a nation's collective dread of the inevitable" (38). Yet, as in Castronovo's critique of necropolitics, **this imperative to "raise the dead"** reverses **rather than** **displaces** the logic through which dominant, white, heterosexual culture disavows and projects mortality onto racial and sexual minorities. While we must address the particular effects that social death has on racial and sexual minorities, this social reality must also be thought in relation to a more generalizable principle of mourning. For the "shadow of death" haunts all lives, not just queer ones. The "ultimate queer act," pace Holland, would be to deconstruct rather than reinscribe the binary between life and death**, to resist the racist and heterosexist disavowal of finitude.**

# 2nc

### Topical version

Topical version of the aff – statutorily restrictiong war powers of pres by prohibiting drones solves – solves unconditional ethics – they are conditional -

Orly Lobel, University of San Diego Assistant Professor of Law, 2007, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

V. RESTORING CRITICAL OPTIMISM IN THE LEGAL FIELD

“La critique est aisée; l’art difficile.”

A critique of cooptation often takes an uneasy path. Critique has always been and remains not simply an intellectual exercise but a political and moral act. The question we must constantly pose is how critical accounts of social reform models contribute to our ability to produce scholarship and action that will be constructive. To critique the ability of law to produce social change is inevitably to raise the question of alternatives. In and of itself, the exploration of the limits of law and the search for new possibilities is an insightful field of inquiry. However, the contemporary message that emerges from critical legal consciousness analysis has often resulted in the distortion of the critical arguments themselves. This distortion denies the potential of legal change in order to illuminate what has yet to be achieved or even imagined. Most importantly, cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement. When claims of legal cooptation are compared to possible alternative forms of activism, the false necessity embedded in the contemporary story emerges — a story that privileges informal extralegal forms as transformative while assuming that a conservative tilt exists in formal legal paths. In the triangular conundrum of “law and social change,” law is regularly the first to be questioned, deconstructed, and then critically dismissed. The other two components of the equation — social and change — are often presumed to be immutable and unambiguous. Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need, in any effort for social reform, to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action. **Despite its weaknesses, however, law is an optimistic discipline**. It operates both in the present and in the future. **Order without law is often the privilege of the strong**. Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories. **Rather than experiencing a** disabling disenchantment **with the legal system, we can learn from both the successes and failures of past models, with the aim of** constantly redefining the boundaries of legal reform **and making visible law’s broad reach**.

We link turn the whole case—only decision-making and dialogue allow for effective engagement and advocacy outside of debate

Carolan, professor of sociology – Colorado State University, ‘6

(Michael S., “Ecological Representation in Deliberation: the Contribution of Tactile Spaces,” Environmental Politics, Vol. 15, No. 3, p. 345 – 361, June)

Mark Warren (1996: 242) once wrote, speaking of the value of a deliberative political process:

Democracy works poorly when individuals hold preferences and make judgments **in isolation** from one another, as they often do in today’s liberal democracies. When individuals lack the opportunities, incentives, and necessities to test, articulate, defend, and ultimately act on their judgments, they will also be lacking in empathy for others, poor in information, and unlikely to have the critical skills necessary to articulate, defend, and revise their views. [my emphasis]

While much has been written on forming processes of open, empathetic and reasoned talk (what Habermas (1984) calls ‘communicative action’) within the deliberative sphere, attention has yet to centre on the non-communicative aspects of such spaces. Yet, as Warren notes above, deliberation involves more than simply articulating and defending one’s values and knowledge claims. Also important is the testing of those claims and thus allowing individuals to ‘see for themselves’ what works (for the situation at hand) and what does not. As argued earlier, **this could prove particularly important when seeking to resolve environmental conflicts**, as many of them involve entities and processes that have little meaning to peoples’ everyday lives. In this paper, I provide an example of a space that works to make more intimate and local phenomena that are for many individuals removed from their lived worlds. As illustrated, Seed Savers Exchange creates this tactile space by translating things such as ‘genes’ and ‘biodiversity’ within agriculture into tangible arraignments that people can walk through, touch, smell, hear and even (in some cases) taste. In so doing, it exposes its visitors to a much richer form of knowing than if they were simply to read or be told about such phenomena in a non-tactile, passive way.

Within such a space, individuals could thus ‘see’ and ‘test’ for themselves competing knowledge claims, actions that, in the end, further enrich the deliberative processes. Such a space would also generate grounds for a more legitimate and trustworthy decision-making structure, for as individuals come to experience the phenomena under debate as having meaning to their everyday lives they will also more probably feel a greater embeddedness in the decision-making process itself.

[LINK TURNS THE AFF]

### at: can’t influence policy

Can influence national security policy

Silliman ‘5

Scott, A.B. 1965, J.D. 1968, University of North Carolina. After serving for 25 years as a

uniformed judge advocate in the United States Air Force, Professor Silliman retired in the grade

of colonel in 1993. He joined the faculty at Duke University Law School, where he is a

Professor of the Practice of Law, as well as Executive Director of Duke’s Center on Law, Ethics,

and National Security. He teaches national security law not only at Duke, but also in adjunct

status at the University of North Carolina and at North Carolina Central University, “Teaching National Security Law”

Why Teach (or Study) National Security Law?

One of the principal reasons I retired from the United States Air Force after 25 years of service as a judge advocate was the tremendous excitement and lure of being able to teach national security law at Duke Law School. I wanted to engage my students on issues of great national importance. That excitement has not waned throughout the years I have been teaching, and student interest in the course material is as strong as ever. In the very first class of each semester, I ask each student why he or she is taking the class, and the answers are illuminating. **Some are drawn to national security law because they want to plumb the limits of presidential power in times of crisis**, notably the ongoing war on terrorism. Others, reflecting back on the terrorist attacks of 9/11, feel compelled to practice law in one of the governmental agencies because of a desire to do something for their country. Still others simply want to study an area of law that is as timely as the morning’s headlines. Although reasons for enrolling in the course differ, the fact that it is always oversubscribed at my school attests to its continuing popularity. From the perspective of one who teaches, conducts research, and writes in the field of national security law, **there is the unique opportunity not only to deal in “cutting edge” legal concepts but also to** influence the formulation of governmental policy

 **in a way few other areas of the law afford**. Many of us have testified before House and Senate committees on the balance to be struck between national security and civil liberties. Others have been asked to be **consultants to executive branch agencies**. **Many have helped to inform public debate on the war on terrorism through interviews** with radio, television, and print media. I have invited local television stations here in North Carolina to tape class discussions of particularly newsworthy issues, such as the Abu Ghraib prison scandal, the “torture memos,” and possible criminal sanctions against DOD contractors and CIA personnel operating as interrogators in Iraq and Afghanistan. The students have thoroughly enjoyed the experience (and their new “celebrity” status), and the stations have benefitted from the expert commentary on their evening news programs. Perhaps the greatest satisfaction for me as a teacher of national security law is to follow my former students as they pursue careers prompted by their having taken the course. Many apply for federal court clerkships in the District of Columbia Circuit, which has an unusually heavy docket of cases involving national security issues, and a few are accepted each year. Others apply to federal agencies where they can become directly involved in the practice of national security law. Still others seek out law firms that have an established national security litigation practice. I cannot think of more important positions for young attorneys in these perilous times.

### 2nc at: roleplaying bad

No link –we don’t think pretending to be the state is good, just that the USFG provides a predictable and balanced forum to learn decisionmaking skills and develop clash.

Arguing that a current government policy is bad is not roleplaying

Scott Harris, Director of Debate, Kansas University, 2013, This Ballot, http://www.cedadebate.org/forum/index.php?topic=4762.0

While this ballot has meandered off on a tangent I’ll take this opportunity to comment on an unrelated argument in the debate. Emporia argued that oppressed people should not be forced to role play being the oppressor. This idea that debate is about role playing being a part of the government puzzles me greatly. While I have been in debate for 40 years now never once have I role played being part of the government. When I debated and when I have judged debates I have never pretended to be anyone but Scott Harris. Pretending to be Scott Harris is burden enough for me. Scott Harris has formed many opinions about what the government and other institutions should or should not do without ever role playing being part of those institutions. I would form opinions about things the government does if I had never debated. I cannot imagine a world in which people don’t form opinions about the things their government does. I don’t know where this vision of debate comes from. I have no idea at all why it would be oppressive for someone to form an opinion about whether or not they think the government should or should not do something. I do not role play being the owner of the Chiefs when I argue with my friends about who they should take with the first pick in this year’s NFL draft. I do not role play coaching the basketball team or being a player if I argue with friends about coaching decisions or player decisions made during the NCAA tournament. If I argue with someone about whether or not the government should use torture or drone strikes I can do that and form opinions without ever role playing that I am part of the government. Sometimes the things that debaters argue is happening in debates puzzle me because they seem to be based on a vision of debate that is foreign to what I think happens in a debate round.

Analysis of policy is particularly empowering, even if we’re not the USFG

**Shulock 99**

Nancy, PROFESSOR OF PUBLIC POLICY --- professor of Public Policy and Administration and director of the Institute for Higher Education Leadership & Policy (IHELP) at Sacramento State University, The Paradox of Policy Analysis: If It Is Not Used, Why Do We Produce So Much of It?, Journal of Policy Analysis and Management, Vol. 18, No. 2, 226–244 (1999)

In my view, none of these radical changes is necessary. **As interesting as our politics might be with the kinds of changes outlined by proponents of** participatory and **critical policy analysis,** **we do not need these changes to justify our investment in policy analysis.** **Policy analysis already involves discourse, introduces ideas** into politics, **and affects policy outcomes**. The problem is not that policymakers refuse to understand the value of traditional policy analysis or that policy analysts have not learned to be properly interactive with stakeholders and reflective of multiple and nontechnocratic perspectives. The problem, in my view, is only that policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. **Policy analysis has changed**, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizen preferences, and to provide the appearance of rationality in an increasingly complex political environment. Regardless of what the textbooks say, there does not need to be a client in order for ideas from policy analysis to resonate through the policy environment.10¶ Certainly there is room to make our politics more inclusive. But **those critics who see policy analysis as a tool of the power elite might be less concerned if they understood that analysts are only adding to the debate**—they are unlikely to be handing ready-made policy solutions to elite decisionmakers for implementation. Analysts themselves might be more contented if they started appreciating the appropriation of their ideas by the whole gamut of policy participants and stopped counting the number of times their clients acted upon their proposed solutions. And **the cynics disdainful of the purported objectivism of analysis might relax if analysts themselves would acknowledge that they are seeking not truth**, **but to elevate the level of debate with a compelling, evidence-based presentation of their perspectives. Whereas critics call**, **unrealistically** in my view, **for analysts to** present competing perspectives on an issue or to “**design a discourse among multiple perspectives,” I see no reason why an individual analyst must do this** when multiple perspectives are already in abundance, brought by multiple analysts. If we would acknowledge that policy analysis does not occur under a private, contractual process whereby hired hands advise only their clients, we would not worry that clients get only one perspective.¶ **Policy analysis is used, far more extensively than is commonly believed**. Its **use could be appreciated and expanded if policymakers, citizens, and analysts themselves began to present it more accuratel**y, not as a comprehensive, problem-solving, scientific enterprise, but **as a contributor to informed discourse**. For years Lindblom [1965, 1968, 1979, 1986, 1990] has argued that we should understand policy analysis for the limited tool that it is—just one of several routes to social problem solving, and an inferior route at that. Although I have learned much from Lindblom on this odyssey from traditional to interpretive policy analysis, my point is different. Lindblom sees analysis as having a very limited impact on policy change due to its ill-conceived reliance on science and its deluded attempts to impose comprehensive rationality on an incremental policy process. I, with the benefit of recent insights of Baumgartner, Jones, and others into the dynamics of policy change, see that **even with** these **limitations, policy analysis can have a major impact on policy. Ideas, aided by institutions and embraced by citizens, can reshape the policy landscape. Policy analysis can supply the ideas.**

# 1nr

## 2nc perm

It’s impossible—the specter cannot be assimilated into the logic of presence

Peterson ‘7

Christopher, *Kindred Specters, Death, Mourning, and American Affinity*, University of Minnesota Press 2007

To displace the dialectic of immortality/mortality requires the introduction of a third term, the specter, which cannot be reduced to either spirit or body. Derrida characterizes the specter as being "of the spirit," appearing as "its phantom double."17 As the ghost of spirit, the specter is **neither present nor absent**, neither immortal nor mortal. Spec-trality thus corresponds to the logic of the revenant, that is, to a "body" that can never fully return to itself as a living presence. Irreducible to the construction of racial and sexual others as abject or socially dead, then, spectrality names the condition of being-toward-death to which no-body is immune.18

Self-recognition DA—the permutation leads to mourning mediated by kinship practices—we mourn the loss of others in order to create the fantasy of our own self-presence—only a primordial concept of mourning can activate a notion of responsibility that doesn’t collapse into narcissism

Peterson ‘7

Christopher, *Kindred Specters, Death, Mourning, and American Affinity*, University of Minnesota Press 2007

From Melancholia to Originary Mourning

To understand kinship as a process of mourning without any proper beginning or end requires a revision of the Freudian paradigm of mourning, a model that pathologizes any deviation from the supposedly finite process of mourning. Indeed, the very division between "healthy" (finite mourning) and "unhealthy" (interminable mourning) works to efface the originary alterity and absence of the other: first, by assuming that the other becomes lost on/yon the occasion of his/her physical absence; and second, by supposing that this loss might be overcome through the substitution of a new love object. For Freud, "the work of mourning is completed [and] the ego becomes free and uninhibited again" after "reality-testing" shows that "the loved object no longer exists."^ The melancholic, however, is unable to displace his libidinal investment in the lost object onto a new one, which results in an incorporation of the object into the ego. The melancholic thus refuses the act of substitution that would put an end to mourning. It remains unclear, however, how this substitution can be separated from the work of mourning that it ostensibly terminates. Indeed, in The Ego and the Id (1923), Freud remarks that "the character of the ego is a precipitate of abandoned object-cathexes and that it contains the history of those object-choices. Although Freud writes that, in melancholia, “the shadow of the object [falls] upon the ego," it might be said that this "shadow" haunts all egos, despite their having substituted a "new" object for the lost one. That is why Derrida insists that mourning is "interminable, without possible normality, without reliable limit" (Specters 160). If melancholia is in some sense the precondition of mourning—in that both modes of grief must struggle with an attachment to a lost love object—the substitution of a new object for the old one does not mean that in mourning the loss has been overcome. "It is the end of mourning that we would be able to dream," Derrida remarks. "But this end is the process normally completed by mourning. How to affirm another end?'"^ Derrida goes on to imagine a "beyond of the principle of mourning," only to confirm that this "beyond of mourning can always be put in the service of the work of mourning" (101). This mourning of "successful" mourning can no longer "sound a death knell that is its own (its knell) without breakage or debris" (100, his emphasis). Indeed, the notion that loss can be overcome through substitution relies on a **dialectic of self-recognition** in which the "presence" of the other is enlisted **as the "guarantee" and "proof" of one's self-presence**. The Freudian model of mourning thus involves a fetishization of **the other that assumes that the other is or was at one time "mine**." This logic of possession, however, is itself melancholic insofar as it effaces the alterity of the love object, and thus **disavows** the **originary loss** of the other. In this sense, melancholia might be understood as a synonym for what Derrida has often called "**the metaphysics of presence.**" Notwithstanding the ethics of the singular that says "this Other and no other Other," the dialectic of presence requires a certain obliteration of the other, one that recognizes the other as "present" if only to negate its presence through one's own coming into being, one's own selfpresence. To understand one's self-presence in terms of an originary mourning, however, would be to eschew the priority granted to being over the other, to affirm a pre-ontological responsibility to the other, an openness to alterity that does not begin with the self. The "I" that says "I am mourning (someone or something)" might be read, then, less transitively than reflexively, insofar as the "I" that announces its selfpresence is always already mourning its own death.

## 2nc alt

It’s try or die—the affirmative simply flips the dialectic of life and death, which turns the case.

Peterson ‘7

Christopher, *Kindred Specters*: *Death, Mourning and American Affinity*, University of Minnesota Press

The Betrayal of Presence

I borrow the term "hauntology" from Derrida, whose coinage in Specters of Marx means to displace the binary opposition between presence and absence, being and nonbeing, life and death. Hauntology is thus another name for the spectrality **that conditions all life**. No kinship relations—even those of the socially alive—can claim immunity from the spectral. And this is neither to say that we are all socially dead in one form or another, nor to affirm the spectrality of kinship as an alibi for not addressing the alienation of slaves and other abject populations. What Patterson calls social death or what Butler (following Kristeva) understands as social abjection is not synonymous with what I am calling spectrality.^ For the latter is implicated in —but not fully reducible to—the social effects of racism, sexism, and homophobia that engender a field of unlivable, abject beings. The abjection and social death of racial and sexual others is **initiated** by the white, male, heterosexual's denial of his own being-toward-death. While this spectrality is a generalizable condition of all "beings," this is not to say that its effects **homogenize the social** field: the social deaths of slaves, racial minorities, women, and queers are the effects of incommensurate—yet often intersecting—sociohistorical forces. To be socially dead, then, is in some sense to be doubly ghosted: for an African-American, this may mean that one's lived experience is one of being both a specter (in the generalizable sense) and a spook (to invoke the familiar racist trope of utter disembodiment). The presumptive ontology of whiteness is thus purchased precisely through the construction of the racial other as spook While "being" black can mean that one is dematerialized, however, it can also mean, paradoxically, that one is burdened with a body that is figured within dominant racist discourses as menacing and violent. In Richard Wright's Native Son, for instance, Bigger finds himself in the bedroom of an inebriated and sleeping Mary Dalton, protected from discovery only by the blind eyes of her mother who stands by the bedroom door, "a white blur..silent, ghostlike."^ Although whiteness has become ghostly in this dialectical reversal, Bigger's corporeality fails to exonerate him of the threat that he supposedly is to white womanhood. Indeed, Bigger stands petrified, ''afraid to move for fear of bumping into something in the dark and betraying his presence" (97, my emphasis). The entire scene hinges on this "betrayal," which connotes, on the one hand, Bigger's inadvertent revelation of his presence, and on the other, the recuperation of this presence according to the cultural stereotype of the sexually violent black male. Bigger is betrayed by his own presence, or rather by the racist construction of that presence as a threat. Bigger's "agency" in Mary's murder is circumscribed by his effort to guard against becoming the violent presence that the murder only shows him to be. He murders Mary, who is beginning to stir from her slumber, so that she will not reveal his presence to the blind, white eyes of Mrs. Dalton, eyes that, in their very blindness, can only see the black male body as a threatening presence. Wright's account of Bigger's betrayed presence prefigures the famous opening passage in Ellison's The Invisible Man where the narrator remarks upon what it is like to be "bumped against by those of poor vision," that is, by those who can see the black male only as a "spook" or a "phantom."^ Angered by the blindness of white eyes, the narrator begins to :;bump people back" (4). Rather than demonstrating that he is a ''man of substance," however, his violent, bodily confrontation with a white man in the street only seems to affirm his ghostliness (3): n my outrage I got out my knife and prepared to slit his throat, right there beneath the lamplight in the deserted street, holding him in the collar with one hand, and opening the knife with my teeth—when it occurred to me that the man had not seen me, actually; that he, as far as he knew, was in the midst of a walking nightmare! And I stopped the blade, slicing the air as I pushed him away, letting him fall back to the street....He lay there, moaning on the asphalt; a man almost killed by a phantom. (4, his emphasis) Whereas Bigger's violence makes him menacingly present, almost overly corporeal, the invisible man's violence fails to materialize his body. But if Bigger becomes the "man of substance" that the invisible man endeavors to be, he does so only to experience the betrayal of that corporealization. When the invisible man asserts that he is "not a spook like those who haunted Edgar Allan Poe," this rejection of the racist stereotype demands to be read other than as a move from the incorporeal to the corporeal (3). That he is not a "spook" would seem irrefutable. But this refusal of pure disembodiment does not preclude the possibility of his spectralization. spectrality, as I use the term, is inclusive of the material while not being reducible to corporeality. As the narrator informs us, "I did not become alive until I discovered my invisibility," which suggests a move from spook to specter that displaces **the racist construction of the black male** **as both all and no body**, as both menacingly present yet irrevocably absent (7). In promoting a move from spook to specter (rather than from spook to body), this study contends that political and theoretical responses to the social death of racial and sexual others too often sustain the ontological presumptions through which the binary between social life and social death emerges. From Butler's effort to endow the socially dead with ontology, to Castronovo's substitution of necrophobia for necrophilia, to Holland's raising of the dead, these political moves rely on a logic of **dialectical reversal** whereby the excluded are imagined as coming to inhabit the ontological field. But if the ontological emerges through the suppression of the hauntological, then **reanimating the socially dead** **through a logic of reversal** only preserves the ontological differentiation that recognizes some lives as present and others as "dead."