# Neg Doc – USC

## Neg v. Frenso State – 1NC

### 1 – Framework

A. Interpretation – debate is a game that requires the aff to ultimately defend a restriction in presidential war powers in one of the resolutional areas

#### Restrictions on authority must prohibit actions

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Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

B. Violation – they claim to win for reasons entirely dependent of the desirability of that action

C. Reasons to prefer:

#### 1. Predictability – debate games open up dialogue which fosters information processing – they open up infinite frameworks making the game impossible

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Debate games are often based on pre-designed scenarios that include descriptions of issues to be debated, educational goals, game goals, roles, rules, time frames etc. In this way, debate games differ from textbooks and everyday classroom instruction as debate scenarios allow teachers and students to actively imagine, interact and communicate within a domain-specific game space. However, instead of mystifying debate games as a “magic circle” (Huizinga, 1950), I will try to overcome the epistemological dichotomy between “gaming” and “teaching” that tends to dominate discussions of educational games. In short, educational gaming is a form of teaching. As mentioned, education and games represent two different semiotic domains that both embody the three faces of knowledge: assertions, modes of representation and social forms of organisation (Gee, 2003; Barth, 2002; cf. chapter 2). In order to understand the interplay between these different domains and their interrelated knowledge forms, I will draw attention to a central assumption in Bakhtin’s dialogical philosophy. According to Bakhtin, all forms of communication and culture are subject to centripetal and centrifugal forces (Bakhtin, 1981). A centripetal force is the drive to impose one version of the truth, while a centrifugal force involves a range of possible truths and interpretations. This means that any form of expression involves a duality of centripetal and centrifugal forces: “Every concrete utterance of a speaking subject serves as a point where centrifugal as well as centripetal forces are brought to bear” (Bakhtin, 1981: 272). If we take teaching as an example, it is always affected by centripetal and centrifugal forces in the on-going negotiation of “truths” between teachers and students. In the words of Bakhtin: “Truth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction” (Bakhtin, 1984a: 110). Similarly, the dialogical space of debate games also embodies centrifugal and centripetal forces. Thus, the election scenario of The Power Game involves centripetal elements that are mainly determined by the rules and outcomes of the game, i.e. the election is based on a limited time frame and a fixed voting procedure. Similarly, the open-ended goals, roles and resources represent centrifugal elements and create virtually endless possibilities for researching, preparing, 51 presenting, debating and evaluating a variety of key political issues. Consequently, the actual process of enacting a game scenario involves a complex negotiation between these centrifugal/centripetal forces that are inextricably linked with the teachers and students’ game activities. In this way, the enactment of The Power Game is a form of teaching that combines different pedagogical practices (i.e. group work, web quests, student presentations) and learning resources (i.e. websites, handouts, spoken language) within the interpretive frame of the election scenario. Obviously, tensions may arise if there is too much divergence between educational goals and game goals. This means that game facilitation requires a balance between focusing too narrowly on the rules or “facts” of a game (centripetal orientation) and a focusing too broadly on the contingent possibilities and interpretations of the game scenario (centrifugal orientation). For Bakhtin, the duality of centripetal/centrifugal forces often manifests itself as a dynamic between “monological” and “dialogical” forms of discourse. Bakhtin illustrates this point with the monological discourse of the Socrates/Plato dialogues in which the teacher never learns anything new from the students, despite Socrates’ ideological claims to the contrary (Bakhtin, 1984a). Thus, discourse becomes monologised when “someone who knows and possesses the truth instructs someone who is ignorant of it and in error”, where “a thought is either affirmed or repudiated” by the authority of the teacher (Bakhtin, 1984a: 81). In contrast to this, dialogical pedagogy fosters inclusive learning environments that are able to expand upon students’ existing knowledge and collaborative construction of “truths” (Dysthe, 1996). At this point, I should clarify that Bakhtin’s term “dialogic” is both a descriptive term (all utterances are per definition dialogic as they address other utterances as parts of a chain of communication) and a normative term as dialogue is an ideal to be worked for against the forces of “monologism” (Lillis, 2003: 197-8). In this project, I am mainly interested in describing the dialogical space of debate games. At the same time, I agree with Wegerif that “one of the goals of education, perhaps the most important goal, should be dialogue as an end in itself” (Wegerif, 2006: 61).

#### 2. Ground – the resolution exists to create balanced difficulty, creating a topic that is supposed to be moral and controversial – games requires acceptance of rules whose purpose is to forbid the easiest means to a goal – this makes the game meaningful

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I take this admiration to rest on the judgement that excellence in games is good in itself, apart from any pleasure it may give the player or other people but just for the properties that make it excellent. The admiration, in other words, rests on the perfectionist judgement that skill in games is worth pursuing for its own sake and can add value to one’s life. This skill is not the only thing we value in this way; we give similar honours to achievements in the arts, science, and business. But one thing we admire, and to a significant degree, is excellence in athletic and nonathletic games. Unless we dismiss this view, one task for philosophy is to explain why such excellence is good. But few philosophers have attempted this, for a well-known reason. A unified explanation of why excellence in games is good requires a unified account of what games are, and many doubt that this is possible. After all, Wittgenstein famously gave the concept of a game as his primary example of one for which necessary and sufficient conditions cannot be given but whose instances are linked only by looser “family resemblances.”2 If Wittgenstein was right about this, 2 there can be no single explanation of why skill in games is good, just a series of distinct explanations of the value of skill in hockey, skill in chess, and so on. But Wittgenstein was not right, as is shown in a little-known book that is nonetheless a classic of twentieth-century philosophy, Bernard Suits’s The Grasshopper: Games, Life and Utopia. Suits gives a perfectly persuasive analysis of playing a game as, to quote his summary statement, “the voluntary attempt to overcome unnecessary obstacles.”3 And in this paper I will use his analysis to explain the value of playing games. More specifically, I will argue that the different elements of Suits’s analysis give game-playing two distinct but related grounds of value, so it instantiates two related intrinsic goods. I will also argue that game-playing is an important intrinsic good, which gives the clearest possible expression of what can be called a modern as against a classical, or more specifically Aristotelian, view of value. But first Suits’s analysis. It says that a game has three main elements, which he calls the prelusory goal, the constitutive rules, and the lusory attitude. To begin with the first, in playing a game one always aims at a goal that can be described independently of the game. In golf, this is that a ball enter a hole in the ground; in mountain-climbing, that one stand on top of a mountain; in Olympic sprinting, that one cross a line on the track before one’s competitors. Suits calls this goal “prelusory” because it can be understood and achieved apart from the game, and he argues that every game has such a goal. Of course, in playing a game one also aims at a goal internal to it, such as winning the race, climbing the mountain, or breaking par on the golf course. But on Suits’s view this “lusory” goal is derivative, since achieving it involves achieving the prior prelusory goal in a specified way. This way is identified by the second element, the game’s constitutive rules. According to 3 Suits, the function of these rules is to forbid the most efficient means to the prelusory goal. Thus, in golf one may not carry the ball down the fairway and drop it in the hole by hand; one must advance it using clubs, play it where it lies, and so on. In mountain-climbing one may not ride a gondola to the top of the mountain or charter a helicopter; in 200-metre sprinting, one may not cut across the infield. Once these rules are in place, success in the game typically requires achieving the prelusory goal as efficiently as they allow, such as getting the ball into the hole in the fewest possible strokes or choosing the best way up the mountain. But this is efficiency within the rules, whose larger function is to forbid the easiest means to the game’s initial goal. These first two elements involve pursuing a goal by less than the most efficient means, but they are not sufficient for playing a game. This is because someone can be forced to use these means by circumstances he regrets and wishes were different. If this is the case – if, for example, a farmer harvests his field by hand because he cannot afford the mechanical harvester he would much rather use – he is not playing a game. Hence the need for the third element in Suits’s analysis, the lusory attitude, which involves a person’s willingly accepting the constitutive rules, or accepting them because they make the game possible. Thus, a golfer accepts that he may not carry the ball by hand or improve his lie because he wants to play golf, and obeying those rules is necessary for him to do so; the mountaineer accepts that he may not take a helicopter to the summit because he wants to climb. The restrictions the rules impose are adhered to not reluctantly but willingly, because they are essential to the game. Adding this third element gives Suits’s full definition: “To play a game is to attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by the rules ..., where the rules prohibit the use of more efficient in favour of less efficient means [constitutive rules], and where the rules are 4 accepted just because they make possible such activity [lusory attitude].” Or, in the summary statement quoted above, “playing a game is the voluntary attempt to overcome unnecessary obstacles.”4 This analysis will doubtless meet with objections, in the form of attempted counterexamples. But Suits considers a whole series of these in his book, showing repeatedly that his analysis handles them correctly, and not by some ad hoc addition but once its elements are properly understood. Nor would it matter terribly if there were a few counterexamples. Some minor lack of fit between his analysis and the English use of “game” would not be important if the analysis picks out a phenomenon that is unified, close to what is meant by “game,” and philosophically interesting. But the analysis is interesting if, as I will now argue, it allows a persuasive explanation of the value of excellence in games. Suits himself addresses this issue of value. In fact, a central aim of his book is to give a defence of the grasshopper in Aesop’s fable, who played all summer, against the ant, who worked. But in doing so he argues for the strong thesis that playing games is not just an intrinsic good but the supreme such good, since in the ideal conditions of utopia, where all instrumental goods are provided, it would be everyone’s primary pursuit. The grasshopper’s game-playing, therefore, while it had the unfortunate effect of leaving him without food for the winter, involved him in the intrinsically finest actvity. Now, I do not accept Suits’s strong thesis that gameplaying is the supreme good – I think many other states and activities have comparable value – and I do not find his arguments for it persuasive. But I will connect the weaker thesis that playing games is one intrinsic good to the details of his analysis more explicitly than he ever does.

#### 3. Education – debate as a competitive political game is the best framework to solve dogmatism and human brutality

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Vico asked his audience at the University of Naples in 1708 to debate two competing ways of knowing: Cartesian rationality versus the poetic world of the ancients. Vico, the “pre-law advisor” of his day, saw law as a rhetorical game. That is, he understood the civic (ethical) value of competi-tion itself.12 He understood that Cartesian rationality, like religious and ideological fundamentalism, generates a kind of certainty that shuts down robust debate. Vico’s comprehensive vision suggests, in effect, that people should practice law and politics not as the search for the most rational or logically correct outcomes but rather as passionate and embodied yet peaceful competitive play. Vico inspires this vision of law and politics as play because he sees that all things in the human mind, including law and politics, are at one with the human body. As Vico put it as he concluded his 1708 address, “[T]he soul should be drawn to love by means of bodily images; for once it loves it is easily taught to believe; and when it believes and loves it should be inflamed so that it wills things by means of its normal intemperance.”13 Vico had no hope that such abstract moral principles as liberty, equality, justice, and tolerance could effectively offset the “crude and rough” nature of men.14 The Holy Bible and the Qur’an contain normative principles of love, tolerance, equal respect, and peace, but these commands have not forestalled ancient and modern religious warfare. This essay proposes that humans learn how to keep the peace not by obeying the norms, rules, and principles of civil conduct but by learning how to play, and thereby reintegrating the mind and the body. People do law, politics, and economic life well when they do them in the same ways and by the same standards that structure and govern good competitive sports and games. The word “sport” derives from “port” and “portal” and relates to the words “disport” and “transport.” The word at least hints that the primitive and universal joy of play carries those who join the game across space to a better, and ideally safer, place—a harbor that Vico him-self imagined. This essay’s bold proposition honors Vico in many ways. Its “grand theory” matches the scope of Vico’s comprehensive and integrated vision of the human condition. It plausibly confirms Vico’s hope for a “concep-tion of a natural law for all of humanity” that is rooted in human historical practice.15 Seeing these core social processes as play helps us to escape from arid academic habits and to “learn to think like children,” just as Vico urged.16 Imagining law and politics as play honors Vico above all because, if we attain Ruskin’s epigraphic ideal,17 we will see that the peace-tending qualities of sports and games already operate under our noses. Seeing law and politics as play enables us “to reach out past our inclination to make experience familiar through the power of the concept and to engage the power of the image. We must reconstruct the human world not through concepts and criteria but as something we can practically see.”18 If at its end readers realize that they could have seen, under their noses, the world as this essay sees it without ever having read it, this essay will successfully honor Vico. As Vico would have predicted, formal academic theory has played at best a marginal role in the construction of competitive games. Ordinary people have created cricket and football, and common law and electoral politics and fair market games, more from the experience of doing them than from formal theories of competitive games. When they play interna-tional football today, ordinary people in virtually every culture in the world recreate the experience of competitive games. Playing competitive games unites people across cultures in a common normative world.19 Within Vico’s social anthropological and proto-scientific framework, the claim that competitive play can generate peaceful civic life is purely empirical: law and politics in progressively peaceful political systems already are nothing more or less than competitive games. All empirical description operates within some, though too often ob-scured, normative frame. This essay’s normative frame is clear. It holds, with Shaw’s epigraph, above: Human brutalities waged against other hu-mans—suicide bombings, genocides, tribal and religious wars that provoke the indiscriminate rape, murder, torture, and enslavement of men, women, and children, often because they are labeled “evil”—are the worst things that we humans do. We should learn not to do them. In Vico’s anti-Cartesian, non-foundational world, no method exists to demonstrate that this essay’s normative core is “correct,” or even “better than,” say, the core norm holding that the worst thing humans do is dishonor God. Readers who reject Shaw’s and this essay’s normative frame may have every reason to reject the essay’s entire argument. However, this essay does describe empirically how those whose core norm requires honoring any absolute, including God, above all else regu-larly brutalize other human beings, and why those who live by the norms of good competitive play do not. People brutalize people, as Shaw’s Caesar observed, in the name of right and honor and peace. Evaluated by the norm that human brutality is the worst thing humans do, the essay shows why and how the human invention of competitive play short circuits the psy-chology of a righteousness-humiliation-brutality cycle. We cannot help but see and experience on fields of contested play testosterone-charged males striving mightily to defeat one another. Yet at the end of play, losers and winners routinely shake hands and often hug; adult competitors may dine and raise a glass together.20 Whether collectively invented as a species-wide survival adaptation or not, institutionalized competitive play under-cuts the brutality cycle by displacing religious and other forms of funda-mentalist righteousness with something contingent, amoral, and thus less lethal. Play thereby helps humans become Shaw’s “race that can under-stand.”

#### 4. Decision-making – debate gaming through dramatic rehearsal strengthens decision-making – only maintained by a confined educational space

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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 meansendsschemes (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). 86 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 87 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.

#### Decisionmaking is a trump impact—it improves all aspects of life regardless of its specific goals

Shulman 9, president emeritus – Carnegie Foundation for the Advancement of Teaching, (Lee S, Education and a Civil Society: Teaching Evidence-Based Decision Making, p. ix-x)

These are the kinds of questions that call for the exercise of practical reason, a form of thought that draws concurrently from theory and practice, from values and experience, and from critical thinking and human empathy. None of these attributes is likely to be thought of no value and thus able to be ignored. Our schools, however, are unlikely to take on all of them as goals of the educational process. The goal of education is not to render practical arguments more theoretical; nor is it to diminish the role of values in practical reason. Indeed, all three sources—theoretical knowledge, practical knowhow and experience, and deeply held values and identity—have legitimate places in practical arguments. An educated person, argue philosophers Thomas Green (1971) and Gary Fenstermacher (1986), is someone who has transformed the premises of her or his practical arguments from being less objectively reasonable to being more objectively reasonable. That is, to the extent that they employ probabilistic reasoning or interpret data from various sources, those judgments and interpretations conform more accurately to well-understood principles and are less susceptible to biases and distortions. To the extent that values, cultural or religious norms, or matters of personal preference or taste are at work, they have been rendered more explicit, conscious, intentional, and reflective. In his essay for this volume, Jerome Kagan reflects the interactions among these positions by arguing: We are more likely to solve our current problem, however, if teachers accept the responsibility of guaranteeing that all adolescents, regardless of class or ethnicity, can read and comprehend the science section of newspapers, solve basic mathematical problems, detect the logical coherence in non-technical verbal arguments or narratives, and insist that all acts of maliciousness, deception, and unregulated self-aggrandizement are morally unacceptable. Whether choosing between a Prius and a Hummer, an Obama or a McCain, installing solar panels or planting taller trees, a well-educated person has learned to combine their values, experience, understandings, and evidence in a thoughtful and responsible manner. Thus do habits of mind, practice, and heart all play a significant role in the lives of citizens.

### 2 – Harms DA

#### Nothing about voting aff solves any of the harms isolated – they have not met their stock issues – the 1ac has harms and inherency but is missing solvency – telling stories that illustrate the master subject don’t change anything within this debate space – vote neg on presumption

Prager 90 -- debate coach in Michigan (John R., 1990, "Introduction to Policy Debate," Ch. 2)

The first stock issue is known as harm or need. The second is called inherency (or, sometimes, uniqueness). The third issue is called solvency, and the fourth, disadvantages (or, rarely, cost). To provide a prima facie speech, the first Affirmative Constructive must provide a plan and address the harm, inherency, and solvency issues. Notice how our playground example a few paragraphs ago fits into this system of analysis. The Harm issue is considered in the dangers to children from the current playground structure. The fact that nobody else is taking action satisfies the Inherency issue. The detailed proposal for new equipment provides the plan, and the claims that it would be a **functional solution** meets the Solvency requirement. Why isn't the Disadvantages stock issue part of a prima facie casef We assume that the Affirmative plan has a tiny amount of risk, but we trust the Affirmative enough to suspend judgement on any disadvantages until later in the debate. We expect that any bad side-effects will be brought up by the Negative team in their speeches. The Affirmative will, of course, deny that there are any major defects in their plan. If the Affirmative had the duty to anticipate and answer all possible side-effects in their first speech, they couldn't possibly fulfill their burden of proof in eight minutes. So, in the interests of fairness, Disadvantages are excluded from prima facie consideration. Explain the Need stock issue. To meet the need issue, the Affirmative must prove that there is a significant amount of suffering going on due to present policy. They can take two approaches: they can prove a quantitative harm, showing that many people are affected, or they can show a qualitative harm, demonstrating that relatively few people are hurt deeply. Consider a resolution calling for stricter federal control over pornography. One Affirmative case may choose to show that millions of people are exposed to pornography, and each exposure corrupts them slightly; the net effect is widespread, even universal, harm. This quantitative approach suggests a big, but not necessarily intense, problem. Another case on the same topic might suggest that, for a few individuals, pornography causes criminally violent sexual behavior: it leads to rapes, assaults, and child molesting. Clearly, not all people are sexually assaulted in the course of a year not even a large fraction of the population are so harmed. But those who are harmed are hurt greatly. This is a qualitative approach. Remember that the need analysis is equally valid as an advantage instead of a harm. For example, the Affirmative could demonstrate that cutting pornography would cut assaults, resulting in a savings of thousands of hours of police time, and millions of dollars in court and prison costs. This quantitative advantage is just as legitimate as a quantitative harm approach. Both types of analysis demonstrate a need for the Affirmative proposal. Explain Inherency. Inherency is the hardest of the stock issues for the beginning debater to understand. The crux of inherency is the nature of cause-and-effect: the Affirmative wants to demonstrate that there are features in the status quo which cause the problems discussed in the Need issue. Proving that this causal link exists means that the harms can't be cured except by reforming the status quo. There are four basic types of inherency that you might meet. For demonstration purposes, we will assume that the Affirmative is proposing a plan to increase federal aid to people living in poverty. Structural inherency is the strongest type of inherent barrier to establish. A structural analysis suggests that a law, or rule, or fact of life is causing the harms. For example, the Affirmative may argue that people who do not get a good education have low productivity, and thus earn low wages, and thus are condemned to poverty. The causal link of poor education to low income is based on economic facts. Similarly, the government rule that people who have given up looking for jobs are not counted as "unemployed" means that the unemployment figures underestimate the number of people in need of work; a law demonstrates structural inherency. Gap inherency is weaker than structural inherency. The Affirmative notes that the present system has identified a problem and is taking steps against it, but those steps fall short of curing the harms. There is a gap between the solution now in existence and the harm that needs to be cured. For example, federal welfare payments are designed to relieve poverty, but the money a family receives from welfare is too little to raise it above the poverty line a gap exists. Gap inherency is weaker than structural inherency because it shows that the status quo is already making some effort to remove the problem, as we will see when we discuss First Negative tactics. Attitudinal inherency claims that the problems are caused by people's beliefs, feelings, or opinions. For example, racial prejudice an attitudinal problem prevents many blacks from getting good-paying jobs, thus causing poverty to strike at the African-American family more often than the white family. Another example is that people find it humiliating to ask for charity (an attitude), and so many poor people refuse out of pride to participate in welfare and food stamp programs, and thus suffer poverty and malnutrition (the harm). Attitudinal inherency, also, is weaker than structural inherency; the opposition will argue that the attitudes are not really strong (in 1NC), and that they will thwart the working of the plan (in 2NC). Attitudinal inherency can be effective, but you must be careful when you use it. Finally, existential inherency argues that, since there's a problem, something must be causing it ...and leaves the question at that point. The Affirmative claims that the mere existence of a problem is enough; we don't have to worry about causes. This is a flawed analysis; existential inherency must never be used! Unless they show a true barrier, the Affirmative can't prove that the harms will not evaporate overnight and so they will lose the debate. Existential inherency is considered a valid approach in some debate circuits, but the consensus among most high school judges is that it is not acceptable. Avoid it. What is Solvencyf In many ways, solvency is the opposite of inherency. Again, you are trying to prove a causal relationship, but the Affirmative's goal is to show that the plan will work to **solve the problems they have mentioned**. Usually this means finding evidence in which an authority supports the specific proposal the Affirmatives are suggesting. The important thing for Affirmatives to remember is that the claim for solvency must specifically **fix** the problems described in the Harm analysis.

### 3 – Pres Powers DA

#### Obama’s war powers maintain his presidential power

Rozell 12

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And yet, as Jack Goldsmith accurately details in his latest book, President Barack Obama not only has not altered the course of controversial Bush-era practices, he has continued and expanded upon many of them. On initiating war, as a candidate for the presidency in 2007, Obama said that “the president doesn’t have the power under the Constitution to unilaterally authorize a military attack,” yet that is exactly what he did in exercising the war power in Libya. He has also said that he will exercise the power to act on his own to initiate military action in Syria if it’s leader ever crosses the “red line” (i.e., use of chemical weapons). He has issued a number of signing statements that directly violate congressional intent. He has vastly expanded, far beyond Bush’s actions, the use of unconfirmed and unaccountable executive branch czars to coordinate policies and to make regulatory and spending decisions. The president has made expanded use of executive privilege in circumstances where there is no legal merit to making such a claim and he has abused the principle of the state secrets privilege. His use of the recess appointment power on many occasions has been nothing more than a blatant effort to make an end-run around the Senate confirmation process. He has continued, and expanded upon, the practice of militarily detaining persons without trial or pressing charges (on the condition that the detention is not “indefinite”). In a complete reversal of his past campaign rhetoric, the president on a number of occasions has declared his intention to act unilaterally on a variety of fronts, and to avoid having to go to Congress whenever he can do so. There are varied explanations for the president’s total reversals. The hard-core cynics of course simply resort to the “they all lie” explanation. Politicians of all stripes say things to get elected but don’t mean much of it. Recently I saw a political bumper sticker announcing “BUSH 2.0” with a picture of Obama. Many who enthusiastically supported Obama are profoundly disappointed with his full-on embrace of Bush-like unilateralism and this administration’s continuation of many of his predecessor’s policies. Goldsmith, a law professor who led the Department of Justice’s (DOJ) Office of Legal Counsel from October 2003 to June 2004, during George W. Bush’s first term, says that there were powerful forces at work in the U.S. governmental system that ensured that the president would continue many of the policies and practices of his predecessor. The president reads the daily terrorism threat reports, which has forced him to understand that things really do look differently from the inside. From this standpoint, Obama likely determined that many of Bush’s policies actually were correct and needed to be continued. “The personal responsibility of the president for national security, combined with the continuing reality of a frightening and difficult-to-detect threat, unsurprisingly led Obama, like Bush, to use the full arsenal of presidential tools,” writes Goldsmith. He further argues that Obama lacked leeway to change course in part because many of Bush’s policies “were irreversibly woven into the fabric of the national security architecture.” For example, former president Bush’s decision to use the Guantanamo detention facility created an issue for Obama that he otherwise never would have confronted. And the use of coercion on suspects made it too complicated to then employ civilian courts to try them. In perhaps the most telling example of the limits of effecting change, Obama could not end what Bush had started, even though the president issued an executive order (never carried out) to close the detention center. Here Goldsmith somewhat overstates his case. Obama was not necessarily consigned to following Bush’s policies and practices, although undoubtedly his options may have been constrained by past decisions. But consider the decision whether the government should have investigated and then taken action against illegal and unconstitutional acts by officials in the Bush Administration, particularly in the DOJ, NSA, and CIA. President Obama said it was time to look forward, not backward, thus sweeping all under the rug. Nothing “irreversibly woven” there, but rather the new president made a choice that he absolutely did not have to make. Finally, Goldsmith adds that Obama, like most of his predecessors, assumed the executive branch’s institutional perspective once he became president. If it is true about Washington that where you stand on executive powers depends on where you sit, then should it be any surprise that President Obama’s understanding differs fundamentally from Senator Obama’s? Honestly, I find that quite sad. Do the Constitution and principles of separation of powers and checks & balances mean so little that we excuse such a fundamental shift in thinking as entirely justified by switching offices? Goldsmith’s analysis becomes especially controversial when he turns to his argument that, contrary to the critiques of presidential power run amok, the contemporary chief executive is more hampered in his ability to act in the national interest than ever before. In 2002, Vice President Richard Cheney expressed the view that in his more than three decades of service in both the executive and legislative branches, he had witnessed a withering of presidential powers and prerogatives at the hands of an overly intrusive and aggressive Congress. At a time when most observers had declared a continuing shift toward presidential unilateralism and legislative fecklessness, Cheney said that something quite opposite had been taking place. Goldsmith is far more in the Cheney camp on this issue than of the critics of modern exercises of presidential powers. Goldsmith goes beyond the usual emphasis on formal institutional constraints on presidential powers to claim that a variety of additional forces also are weighing down and hampering the ability of the chief executive to act. As he explains, “the other two branches of government, aided by the press and civil society, pushed back against the Chief Executive like never before in our nation’s history”. Defenders of former president Bush decry what they now perceive as a double standard: critics who lambasted his over expansive exercises of powers don’t seem so critical of President Obama doing the same. Goldsmith makes the persuasive case that in part the answer is that Bush was rarely mindful of the need to explain his actions as necessities rather than allow critics to fuel suspicions that he acted opportunistically in crisis situations to aggrandize power, whereas Obama has given similar actions a “prettier wrapping”. Further, Obama, to be fair, on several fronts early in his first term “developed a reputation for restraint and commitment to the rule of law”, thus giving him some political leeway later on. A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms. Just as he describes how a seemingly once idealistic candidate for president as Barack Obama could see things differently from inside government, so too was Goldsmith at one time on the inside, and thus perhaps it is no surprise that he would perceive more strongly than other academic observers the forces that he believes are constantly hamstringing the executive. But he is no apologist for unfettered executive power and he takes to task those in the Bush years who boldly extolled theories of the unitary executive and thereby gave credibility to critics of the former president who said that his objective was not merely to protect the country from attack, but to empower himself and the executive branch. Goldsmith praises institutional and outside-of-government constraints on the executive as necessary and beneficial to the Republic. In the end, he sees the balance shifting in a different direction than many leading scholars of separation of powers. And unlike a good many presidency scholars and observers, he is not a cheerleader for a vastly powerful chief executive. Goldsmith’s work too is one of careful and fair-minded research and analysis. He gives substantial due to those who present a counter-view to his own, and who devote their skills and resources to battling what they perceive as abuses of executive power. Whereas they see dangers to an unfettered executive, Goldsmith wants us to feel safe that there are procedural safeguards against presidential overreaching, although he also wants us to be uncomfortable with what he believes now are intrusive constraints on the chief executive’s ability to protect the country. Goldsmith may be correct that there are more actors than ever involved in trying to trip up the president’s plans, but that does not mean that our chief executives are losing power and control due to these forces. Whether it is war and anti-terrorism powers, czars, recess appointments, state secrets privilege, executive privilege, signing statements, or any of a number of other vehicles of presidential power, our chief executives are using more and more means of overriding institutional and external checks on their powers. And by any measure, they are succeeding much more than the countervailing forces are limiting them.

#### War powers are the lynchpin of presidential power

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The President’s power is also enhanced by the vast military and intelligence capabilities under his command. In his roles as Commander-in-Chief and head of the Executive Branch, the President directly controls the most powerful military in the world and directs clandestine agencies such as the Central Intelligence Agency and National Security Agency.75 That control provides the President with immensely effective, non-transparent capabilities to further his political agenda and/or diminish the political abilities of his opponents. 76 Whether a President would cynically use such power solely for his political advantage has, of course, been the subject of political thrillers and the occasional political attack. President Clinton, for one, was accused of ordering the bombing of terrorist bases in Afghanistan to distract the nation from the Lewinsky scandal,77 and President Nixon purportedly used the Federal Bureau of Investigation to investigate his political enemies.78 But regardless whether such abuses actually occurred, there is no doubt that control of covert agencies provides ample opportunity for political mischief, particularly since the inherently secretive nature of these agencies means their actions often are hidden from public view. And as the capabilities of these agencies increase through technological advances in surveillance and other methods of investigation, so does the power of the President. Presidential power also has increased because of the exigencies of decision making in the modern world. At the time of the founding, it would take weeks, if not months, for a foreign government to attack American soil. In the twentyfirst century, the weapons of war take only seconds to arrive. The increased speed of warfare necessarily vests power in the institution that is able to respond the fastest – the presidency, not the Congress.79 Consequently, the President has unparalleled ability to direct the nation’s political agenda.80 The power that comes with being the first to act, moreover, does not end when the immediate emergency is over. Decisions made in times of emergency are not easily reversed; this is particularly true in the context of armed conflict. The President’s commitment of troops inevitably creates a “rally round the flag” reaction that reinforces the initial decision.81 As Vietnam and now Iraq have shown, Congress is likely to be very slow in second guessing a President’s decision that places soldiers’ lives in harm’s way. That Congress would use its powers (as opposed to its rhetoric) to directly confront the President by cutting off military appropriations seems fanciful.

#### K2 generate action on warming

PCAP 08 (Presidential Climate Action Project, Nonpartisan Project at the University of Colorado Denver, “Climate Action Brief: The Use of Presidential Power”, 2008 is the last date cited,<http://www.climateactionproject.com/docs/briefs/Climate_Brief_Presidential_Power.pdf>)

This legacy could lead the Congress, the courts and the voters to push the presidential power pendulum to the opposite extreme, handcuffing the executive branch even in areas where its powers are clear. Yet the 44th President will need all the tools he or she commands to deal with the serious problems the next administration will have to tackle, including **global climate change**. To address this issue, the Presidential Climate Action Project commissioned the Center for Energy and Environmental Security at the University of Colorado School of Law to analyze presidential powers. The result is a 200-page analysis based on a review of 140 legal cases and numerous scholarly articles. Ii In its analysis, the Center notes that America’s past presidents have interpreted their authority differently. President William Taft believed the president could not do anything without specific permission from Congress. Theodore Roosevelt was more willing to be assertive under the “stewardship theory” – the idea that presidents have an affirmative duty to pursue the common good unless prevented by a direct constitutional or legislative prohibition. Franklin D. Roosevelt’s philosophy was the most expansive. “In the event that the Congress should fail to act, and act adequately, I shall accept the responsibility and I will act,” he told Congress in his Labor Day address of 1942. As it turned out, FDR did not need to engage in a power struggle with the legislative branch. He was a popular president in a time of crisis. He asked Congress to delegate to him the new authority he felt he needed to deal with the Depression, and Congress did so. As a result, FDR became a strong and enabled leader with the full consent of the legislative branch at a time when strong leadership was critical. That is the precedent the next President should follow in dealing with energy, the climate and the economy. The President will have many traditional tools at his or her disposal, including executive orders, directives, proclamations, signing statements, national security directives, executive communications with Congress, the ability to call Congress into special session, the veto, the execution of treaties and the creation of executive agreements, a type of international agreement that falls short of a formal treaty and does not require Senate ratification. And, of course, the President has the bully pulpit. In regard to climate change, the next administration’s authority includes the power to: •Regulate greenhouse gas emissions under the Clean Air Act; •Institute a carbon cap-and-trade regime as EPA did for SO2 and NOx in 1995; •Propose and champion national goals for energy efficiency, renewable energy use, greenhouse gas reductions and other critical objectives; •Enter into executive agreements to collaborate with other nations on research and policies that will reduce energy vulnerability and greenhouse gas emissions; •Restore the federal government’s capacity for climate action by appointing highly qualified experts in climate science and policy to key government leadership positions; •Rescind Executive Order 13422, in which President Bush established political oversight of federal science; •Restore specific greenhouse gas reduction goals for federal agencies, which were eliminated in another executive order issued by President Bush. **But like FDR, the next President may need new powers to deal with climate change and the other urgent issues.** As the Center for Energy and Environmental Security notes, “One of the key actions to be taken by a future president to address climate change policy would be to work with Congress for the appropriate and necessary delegations of authority that will give him or her the power to act with flexibility, without delay and with certainty within the framework of the Constitution.” As in FDR’s era, the 44th President will be most able to lead boldly on climate change when there is a clear mandate from the voters that the time has come for strong national action. As University of Chicago Professor William Howell has noted, “Not once in the modern era have the courts overturned a president who enjoys broad-based support from Congress, interest groups and the public.” Creating that mandate for strong but legitimate use of**presidential power is** one of the **key** responsibilities facing the presidential candidates in this election season – and one of the key challenges for the many organizations working **to build grassroots support for climate action**.

#### Solves warming

Wold 12

[Chris, Professor of Law & Director, Internationai Environmental Law Project (IELP), Lewis & Clark Law School, CLIMATE CHANGE, PRESIDENTIAL POWER, AND LEADERSHIP: "WE CAN'T WAIT", CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW • VOL. 45 • 2012, 359]

For the first time since the United States became one of the first ratifiers of the UNFCCC in 1992, the United States has a climate change policy focused on reducing CO2 and other GHGs. Most of this policy has been generated by the Obama Administration through executive action, primarily within the EPA but also within other agencies.^'' Unfortunately, this is not enough. To put the United States on a path closer to meeting its pledge to reduce GHG emissions by 17% by 2020 and 83% by 2050, President Obama or any subsequent president must do more. In the short term, it is clear that the action must come from the executive branch as **Congress has shown no signs of addressing climate change**. As described in Section IV, there is much more the president can do with his treaty-making authority and other powers granted to the executive. Many of these actions can bring significant climate benefits with known technologies, such as eliminating 99% of black carbon emissions on existing trucks by requiring the use of filters. Directly regulating methane from existing and new oil and gas production and transmission operations would reduce emissions of methane, a GHG much more potent that GO2. September 16, 2012, we learned that Arctic sea ice once again hit an all-time low for ice cover.^^\* The six lowest ice extents in .the satellite record have now occurred in the last six years (2007 to 2012).'1' New research shows that Greenland and Antarctica are losing three times as much ice as twenty years ago and contributing significantly to sea level rise.'^" In this political climate. President Obama must use the presidency to act. When Lyndon Johnson was counseled not to try and resuscitate a civil rights bill that seemed as doomed as many previous civil rights bills, he famously responded, "Well, what the hell's the presidency for?"^^' This is the question that President Obama must ask. He staked his first term on achieving something many other presidents, including Lyndon Johnson, had failed to do: adopting national health legislation. He must stake his second term on passage of meaningful climate change legislation. With the Senate " unwilling to lead, the president must grab the leadership reins and move the United States as close as it can to achieving its pledges. We can't wait.

#### **Warming causes mass starvation**

Strom 7 (Robert, University of Arizona planetary science emeritus professor, studied climate change for 15 years, the former Director of the Space Imagery Center at NASA Regional Planetary Image Facility, “Hot House”, SpringerLink, p.211-216)

The future consequences of global warming are the least known aspect of the problem. They are based on highly complex computer models that rely on inputs that are sometimes not as well known or factors that may be completely unforeseen. Most models assume certain scenarios concerning the rise in greenhouse gases. Some assume that we continue to release them at the current rate of increase while others assume that we curtail greenhouse gas release to one degree or another. Furthermore, we are in completely unknown territory. The current greenhouse gas content of the atmosphere has not been as high in at least the past 650,000 years, and the rise in temperature has not been as rapid since civilization began sonic 10,000 years ago. What lies ahead for us is not completely understood, but it certainly will not be good, and it could be catastrophic. We know that relatively minor climatic events have had strong adverse effects on humanity, and some of these were mentioned in previous chapters. A recent example is the strong El Niño event of 1997—1998 that caused weather damage around the world totaling $100 billion: major flooding events in China, massive fires in Borneo and the Amazon jungle, and extreme drought in Mexico md Central America. That event was nothing compared to what lies in store for us in the future if we do nothing to curb global warming. We currently face the greatest threat to humanity since civilization began. This is the crucial, central question, but it is very difficult to answer (Mastrandea and Schneider, 2004). An even more important question is: “At what temperature and environmental conditions is a threshold crossed that leads to an abrupt and catastrophic climate change?” It is not possible to answer that question now, but we must be aware that in our ignorance it could happen in the not too distant future. At least the question of a critical temperature is possible to estimate from studies in the current science literature**.** This has been done by the Potsdam Institute for Climate Impact Research, Germany’s leading climate change research institute (Hare, 2005). According to this study, global warming impacts multiply and accelerate rapidly as the average global temperature rises. We are certainly beginning to see that now. According to the study, as the average global temperature anomaly rises to i °C within the next 25 years (it is already 0.6°C in the Northern Hemisphere), some specialized ecosystems become very stressed, and in some developing countries food production will begin a serious decline, water shortage problems will worsen, and there will be net losses in the gross domestic product (GDP). At least one study finds that because of the time lags between changes in radiative forcing we are in for a I °C increase before equilibrating even if the radiative forcing is fixed at today’s level (Wetherald et al., 2001). It is apparently when the temperature anomaly reaches 2°C that serious effects will start to come rapidly and with brute force (International Climate Change Taskfòrce, 2005). At the current rate of increase this is expected to happen sometime in the middle of this century. At that point there is nothing to do but try to adapt to the changes. Besides the loss of animal and plant species and the rapid exacerixation of our present problems. there are likely to be large numbers of hungry, diseased and starving people, and at least 1.5 billion people facing severe water shortages. GDP losses will be significant and the spread of diseases will be widespread (see bd ow).We are only about 30 years away from the 440 ppm CO2 level where the eventual 2°C global average temperature is probable. When the temperature reaches 3°C above today’s level, the effects appear to become absolutely critical. At the current rate of greenhouse gas emission that point is expected to be reached in the second half of the century. For example, it is expected that the Amazon rainforest will become irreversibly damaged leading to its collapse, and that the complete destruction of coral reefs will be widespread. As these things are already happening, this picture may be optimistic. As for humans, there will be widespread hunger and starvation with up to 5.5 billion people living in regions with large crop losses and another 3 billion people with serious water shortages. If the Amazon rainforest collapses due w severe drought it would result in decreased uptake of CO2 from the soil and vegetation of about 270 billion tons, resulting in an enormous increase in the atmospheric level of CO2**.** This, of course, would lead to even hotter temperatures with catastrophic results for civilization.A Regional Climate Change Index has been established that estimates the impact of global warming on various regions of the world (Giorgi, 2006). The index is based on fi’mr variables that include changes in suthce temperature and precipitation in 2080—2099 compared to the period 1960—1979. All regions of the world are affected significantly, but some regions are much more vulnerable than others. The biest impacts occur in the Mediterranean and northeastern European regions, followed by high—latitude Northern Hemisphere regions and Central America. Central America is the most affected tropical region Íillowed by southern equatorial Africa and southeast Asia. Other prominent mid—latitude regions very vulnerable to global warming are eastern North America and central Asia. It is entirely obvious that we must start curtailing greenhouse gas emissions now, not 5 or 10 or 20 years from now**.** Keeping the global average temperature anomaly under 2°C will not be easy according to a recent report (Scientific Expert Group Report on Climate Change, 2007). It will require a rapid worldwide reduction in methane, and global CO2 emissions must level off to a concentration not much greater than the present amount by about 2020**.** Emissions would then have to decline to about a third of that level by 2100. Delaying action will only insure a grim Future for our children and grandchildren. If the current generation does not drastically reduce its greenhouse gas emission, then, unfortunately, our grandchildren will get what we deserve.There are three consequences that have not been discussed in previous chapters but could have devastating impacts on humans: food production, health, and the economy. In a sense, all of these topics are interrelated, because they affect each other. Food Production Agriculture is critical to the survival of civilization. Crops feed not only us but also the domestic animals we use for food. Any disruption in food production means a disruption of the economy, government, and health. The increase in CO2 will result in some growth of crops, and rising temperatures will open new areas to crop production at higher latitudes and over longer growing seasons; however,the overall result will be decreased crop production in most parts of the world**.** A 1993 study of the effects of a doubling of CO2 (550 ppm) above pre industrial levels shows that there will be substantial decreases in the world food supply (Rosenzweig et al., 1993). In their research they studied the effects of global warming on four crops (wheat, rice, protein feed, and coarse grain) using four scenarios involving various adaptations of crops to temperature change and CO2 abundance. They found that the amount of world food reduction ranged from 1 to 27%. However, the optimistic value of 1% is almost certainly much too low, because it assumed that the amount of degradation would be offset by more growth from “CO2 fertilization.” We now know that this is not the case, as explained below and in Chapter 7. The most probable value is a worldwide food reduction between 16 and 27%. These scenarios are based on temperature and CO2 rises that may be too low, as discussed in Chapter 7. However, even a decrease in world food production of 16% would lead to large-scale starvation in many regions of the world. Large-scale experiments called Free-Air Concentration Enrichment have shown that the effects of higher C 02 levels on crop growth is about 50% less than experiments in enclosure studies (Long et aL, 2006). This shows that the projections that conclude that rising CO2 will fully offset the losses due to higher temperatures are wrong. The downside of climate change will fair outweigh the benefits of increased CO2 and longer growing seasons. One researcher (Prof. Long) from the University of Illinois put it this way: Growing crops much closer to real conditions has shown that increased levels of carbon dioxide in the atmosphere will have roughly half the beneficial 214 What’s in Store for Us? Officials previously hoped for in the event of climate change. In addition, ground—level ozone, which is also predicted to rise but has not been extensively studied before, has been shown to result in a loss of photosynthesis and 20 per cent reduction in crop yield. Both these results show that we need to seriously re-examine our predictions for future global food production, as they are likely to be tàr lower than previously estimated. Also, studies in Britain and Denmark show that only a few days of hot temperatures can severely reduce the yield of major food crops such as wheat, soy beans, rice, and groundnuts if they coincide with the flowering of these crops. This suggests that there are certain thresholds above which crops become very vulnerable to climate change. The European heat wave in the summer of 2003 provided a large-scale experiment on the behavior of crops to increased temperatures. Scientists from several European research institutes and universities found that the growth of plants during the heat wave was reduced by nearly a third (Ciais et al., 2005). In Italy, the growth of corn dropped by about 36% while oak and pine had a growth reduction of 30%. In the affected areas of the mid-west and California the summer heat wave of 2006 resulted in a 35% loss of crops, and in California a 15% decline in dairy production due to the heat-caused death of dairy cattle. It has been projected that a 2°C rise in local temperature will result in a $92 million loss to agriculture in the Yakima Valley of Washington due to the reduction of the snow pack. A 4°C increase will result in a loss of about $163 million. For the first time, the world’s train harvests have fallen below the consumption level fbr the past tour years according to the Earth Policy Institute (Brown, 2003). Furthermore, the shortfall in grain production increased each year, from 16 million tons in 2000 to 93 million tons in 2003. These studies were done in industrialized nations where agricultural practices are the best in the world. In developing nations the impact will be much more severe. It is here that the impact of global warming on crops and domestic animals will be most felt. In general, the world’s most crucial staple food crops could fall by as much as one-third because of resistance to flowering and setting of seeds due to rising temperatures. Crop ecologists believe that many crops grown in the tropics are near, or at, their thermal limits. Already research in the Philippines has linked higher night—time temperatures to a reduction in rice yield. It is estimated that for rice, wheat, and corn, the grain yields are likely to decline by 10% for every local 1 °C increase in temperature. With a decreasing availability of food, malnutrition will become more frequent accompanied by damage to the immune system. This will result in a greater susceptibility to spreading diseases. For an extreme rise in global temperature ( 6°C), it is likely that worldwide crop failures will lead to mass starvation, and political and economic chaos with all their ramifications (be civilization. Health Rising temperatures will result in the spread of disease (Pata et al., 2005). The incidence of certain diseases depends to a large extent on the climate. Diseases that are now found in the tropics will spread to higher latitudes and greater altitudes as the climate warms. Those that occur in subtropical and temperate regions for only short periods each year will afflict residents for longer durations as warming intensifies. There are a number of tropical diseases that are likely to spread northward as the climate warms (McMichel et al., 2003; Martens et al., 1995). These include malaria, dengue fever, schistomiasis, onchoncercia sis, lymphatic filariasis, sleeping sickness, leishmaniisis, chagas disease, and yellow fever. Currently, these diseases infect a total of about 800 million people, but the disease with the greatest potential for dissemination to higher latitudes is malaria. Figure 12.1 shows the potential risk of malaria epidemics for an increase of the global mean temperature of only 1.2°C compared for the risk during the 1931—1981 baseline climate. According to this projection, much of North America and Europe are at risk of large outbreaks of the disease with only moderate amounts of global warming. As the climate warms, human populations will become far more vulnerable to heat—related mortality, air pollution—related illnesses, infectious diseases, and malnutrition. Areas of increased rainfall will become much more susceptible to the spread of waterborne and foodborne disease. Increased local rainfall will also nuke it easier for the insects and animals that carry some human diseases to flourish. At present about 9 million cases of waterbome disease occur each year in the United States where most people have access to treated water. Global warming will almost certainly increase that number. The World Health Organization estimates that currently 150,000 people die annually from the climate changes that have taken place in the past 30 years, and projects that millions of people will die from climate—rated diseases in the coining decades. In fact, the spread of disease has already begun. Malaria has quadrupled between 1995 and 2000 due, at least in part, to warmer climates. Malaria is reappearing both north and south of the tropics. It is showing up more frequently in the United States, and has returned to the Korean peninsula, parts of southern Europe, Russia, and to the coast of South Africa along the Indian Ocean.

#### Turns case – warming locks in global suffering – voting Neg is the only ethical position

Cerutti 7 (Furio, Professor of Political Philosophy – University of Florence, Global Challenges for Leviathan: A Political Philosophy of Nuclear Weapons and Global Warming, p. 112-113)

In ethical terms the inertia phenomenon burdens on us a still greater responsibility towards future generations (granted we recognize any such responsibility, a fundamental problem which shall be discussed later in this book). If we live in an environment threatened by possibly irreversible inertial processes, we are responsible for not worsening the life conditions of those who will later dwell on a planet that will be more endangered than it is for us, because the amount of greenhouse gases in the atmosphere and their inertial impact will be in any case greater than it is in our time. Hence arises to us an obligation to decrease emissions as far as it is compatible with the preserva­tion not of our "life style," but of acceptable standards of civilization and consumption, which entails economic growth, but not growth of any kind and at any cost. Further enhancement of our knowledge about climate change and especially the role of inertia may justify strengthening or abating the precautionary measures the present stand of knowledge leads us to take. The "precautionary principle" is a wide and (because of its costs) problematic ethical matter, which shall not be examined in this book. For our inquiry suffice it to say that precaution in matters of global challenges establishes an obligation to act for the care of future generations with measures whose volume may seem to be disproportionate to the present degree of certainty about the threat level. In other words, if our doing nothing or little can endanger their elementary life conditions, we are justified by the dimension of what might be at stake if we take those measures. Even if there is no certainty, the simple likelihood of a very large human suffering is reason enough to be cautious, as we have seen in the risk chapter (one) of this book. The need to learn more and not draw wholesome and hurried conclusions is one thing, cheap skepticism on present knowledge versus reasonable preoccupation with it is another."

### 4 – K

#### Anti-colonial strategies should be made under the table – we shouldn’t organize and discuss, we should attempt to make territories unreadable and opaque to authority

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

More and more reformists today agree that with “the approach of peak oil,” and in order to “reduce greenhouse gas emissions,” we will need to “relocalize the economy,” encourage regional supply lines, small distribution circuits, renounce easy access to imports from faraway, etc. What they forget is that what characterizes everything that’s done in a local economy is that it’s done under the table, in an **“informal” way**; that this simple ecological measure of relocalizing the economy implies nothing less than total freedom from state control. **Or else total submission to it.** Today’s territory is the product of many centuries of police operations. People have been pushed out of their fields, then their streets, then their neighborhoods, and finally from the hallways of their buildings, in the **demented hope of containing all life between the four sweating walls of privacy**. The territorial question isn’t the same for us as it is for the state. For us it’s not about possessing territory. Rather, it’s a matter of increasing the density of the communes, of circulation, and of solidarities to the point that the territory becomes unreadable, opaque to all authority. We don’t want to occupy the territory, we want to be the territory. Every practice brings a territory into existence – a dealing territory, or a hunting territory; a territory of child’s play, of lovers, of a riot; a territory of farmers, ornithologists, or flaneurs. The rule is simple: the more territories there are superimposed on a given zone, the more circulation there is between them, the harder it will be for power to get a handle on them. Bistros, print shops, sports facilities, wastelands, second-hand book stalls, building rooftops, improvised street markets, kebab shops and garages can all easily be used for purposes other than their official ones if enough complicities come together in them. Local self-organization superimposes its own geography over the state cartography, scrambling and blurring it: it produces its own secession.

#### Your form of social activism is where revolutions go to die – taking comfort in past defeats means we don’t seize possibilities of the present

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

Far more dreadful are social milieus, with their supple texture, their gossip, and their informal hierarchies. Flee all milieus. Each and every milieu is orientated towards the neutralization of some truth. Literary circles exist to smother the clarity of writing. Anarchist milieus to blunt the directness of direct action. Scientific milieus to withhold the implications of their research from the majority of people today. Sport milieus to contain in their gyms the various forms of life they should create. **Particularly to be avoided are the cultural and activist circles**. They are the old people’s homes where all revolutionary desires traditionally go to die. The task of cultural circles is to spot nascent intensities and to explain away the sense of whatever it is you’re doing, while the task of activist circles is to sap your energy for doing it. Activist milieus spread their diffuse web throughout the French territory, and are encountered on the path of every revolutionary development. They offer nothing but **the story of their many defeats and the bitterness these have produced**. Their exhaustion has made them incapable of **seizing the possibilities of the present**. Besides, to nurture their wretched passivity **they talk far too much and this makes them unreliable when it comes to the police**. Just as it’s useless to expect anything from them, it’s stupid to be disappointed by their sclerosis. It’s best to just abandon this dead weight. All **milieus are counter-revolutionary because they are only concerned with the preservation of their sad comfort.**

#### We should refuse restorative justice – it sets up the same system of credit that maintains social relations

Harney & Moten 13 -- \*Professor of Strategic Management Education at Singapore Management University AND \*\*Helen L. Bovington Professor of Modern Poetry at Duke University (Stefano and Fred, The Undercommons: Fugitive Planning & Black Study, p. 63-65)

Debt cannot be forgiven, **it can only be forgotten to be remembered again**. To forgive debt is to restore credit. It is **restorative justice**. Debtcan be abandoned for bad debt. It can be forgotten for bad debt, but it cannot be forgiven. Only creditors can forgive, and only debtors, baddebtors, can offer justice. Creditors forgive debt to offer credit, to of-fer **the very source of the pain of debt**, a pain for which there is only one justice, bad debt, forgetting, remembering again, remembering itcannot be paid, cannot be credited, stamped received. Tere will be a jubilee when the North spends its own money, is left with nothing,and spends again, on credit, on stolen cards, on a friend who knowshe will never see that again. There will be a jubilee when the Global South does not get credit for discounted contributions to world civi-lisation and commerce but keeps its debts, changes them only for thedebts of others, a swap among those who never intend to pay, who will never be allowed to pay, in a bar in Penang, in Port of Spain, inBandung, where your credit is no good.Credit can be restored, restructured, rehabilitated, but debt forgiven is **always unjust, always unforgiven**. Restored credit is restored justice and restorative justice is always the renewed reign of credit, a **reign of terror**, a hail of obligations to be met, measured, meted, endured. Justice is **only possible** where debt **never obliges, never demands, never equals credit, payment, payback**. Justice is possible only where it is never asked, in the refuge of bad debt, in the fugitive public of strangers not communities, of undercommons not neighbourhoods,among those who have been there all along from somewhere. **To seek justice through restoration is to return debt to the balance sheet** and the balance sheet never balances. It plunges toward risk, volatil-ity, uncertainty, more credit chasing more debt, more debt shackledto credit. fo restore is not to conserve, again. Tere is no refuge inrestoration. Conservation is always new. It comes from the place westopped while we were on the run. It’s made from the people whotook us in. It’s the space they say is wrong, the practice they say needsfxing, the homeless aneconomics of visiting. Fugitive publics do not need to be restored. They need to be con-served, which is to say **moved, hidden, restarted** with the same joke,the same story, always elsewhere than where the long arm of the cred-itor seeks them, conserved from restoration, beyond justice, beyondlaw, in bad country, in bad debt. Tey are planned when they are leastexpected, planned when they don’t follow the process, planned whenthey escape policy, evade governance, forget themselves, remem-ber themselves, have no need of being forgiven. Tey are not wrong though they are not, fnally communities; they are debtors at distance,bad debtors, forgotten but never forgiven. Give credit where credit isdue, and render unto bad debtors only debt, only that mutuality thattells you what you can’t do. You can’t pay me back, give me credit, getfree of me, and I can’t let you go when you’re gone. If you want to dosomething, forget this debt, and remember it later.Debt at a distance is forgotten, and remembered again. Tink of au-tonomism, its debt at a distance to the black radical tradition. Inautonomia, in the militancy of post-workerism, there is no outside,refusal takes place inside and makes its break, its fight, its exodusfrom the inside. Tere is biopolitical production and there is empire. Tere is even what Franco ‘Bifo’ Berardi calls soul trouble. In other words there is this debt at a distance to a global politics of blackness emerging out of slavery and colonialism, **a black radical politics**, apolitics of debt without payment, **without credit, without limit**. Tisdebt was built in a struggle with empire before empire, where power was not with institutions or governments alone, where any owner orcolonizer had the violent power of a ubiquitous state. Tis debt at-tached to those who through dumb insolence or nocturnal plans ranaway without leaving, left without getting out. Tis debt got shared with anyone whose soul was sought for labor power, whose spirit wasborne with a price marking it. And it is still shared, never creditedand never abiding credit, a debt you play, a debt you walk, and debt you love. And without credit this debt is infnitely complex. It doesnot resolve in proft, seize assets, or balance in payment. Te black radical tradition is the movement that works through this debt. Teblack radical tradition is debt work. It works in the bad debt of thosein bad debt. It works intimately and at a distance until autonomia, for instance, remembers, and forgets. Te black radical tradition is un-consolidated debt.

#### Your performance makes you uniquely visible and vulnerable – introducing your ideas in a public forum exposes you to the state – seeking recognition is actually what causes social death in the first place

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

In a demonstration, a union member tears the mask off of an anonymous person who has just broken a window. “**Take responsibility for what you’re doing** instead of hiding yourself.” To be visible is to be exposed, that is to say above all, vulnerable. When leftists everywhere continually make their cause more “**visible**” – whether that of the homeless, of women, or of undocumented immigrants – in hopes that it will get dealt with, they’re doing exactly the contrary of what must be done. **Not making ourselves visible**, but instead **turning the anonymity to which we’ve been relegated to our advantage**, and through conspiracy, nocturnal or faceless actions, creating an invulnerable position of attack. The fires of November 2005 offer a model for this. **No leader, no demands, no organization, but words, gestures, complicities**. **To be socially nothing is not a humiliating condition, the source of** some **tragic** lack of recognition **– from whom do we seek recognition? –** but **is on the** contrary the condition for maximum freedom of action. Not claiming your illegal actions, only attaching to them some fictional acronym – we still remember the ephemeral BAFT (Brigade Anti-Flic des Tarterêts)- is a way to preserve that freedom. Quite obviously, one of the regime’s first defensive maneuvers was the creation of a “banlieue” subject to treat as the author of the “riots of November 2005.” Just looking at the faces on some of this society’s somebodies illustrates why there’s such joy in being nobody. **Visibility must be avoided**. But a force that gathers in the shadows can’t avoid it forever. Our appearance as a force must be pushed back until the opportune moment. **The longer we avoid visibility, the stronger we’ll be when it catches up with us**. And once we become visible our days will be numbered. Either we will be in a position to pulverize its reign in short order, or we’ll be crushed in no time.

#### This is not an advocacy with an alternative – we’re challenging how you’re using this debate round in the first place – rather than deciding actions, our actions should occur to us naturally – you reinstate expertism

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

The same goes for deciding on actions. By starting from the principle that “the action in question should govern the assembly’s agenda” **we make** both **vigorous debate and effective action impossible**. A large assembly made up of people who don’t know each other is **obliged to call on action specialists**, that is, to abandon action for the sake of its control. On the one hand, people with mandates are by definition hindered in their actions, on the other hand, nothing hinders them from deceiving everyone. There’s no ideal form of action. What’s essential is that action assume a certain form, that it give rise to a form instead of having one imposed on it. This presupposes a shared political and geographical position – like the sections of the Paris Commune during the French Revolution – as well as the circulation of a shared knowledge. As for deciding on actions, the principle could be as follows: each person should do their own reconnaissance, the information would then be put together, and **the decision will occur to us rather than being made by us**. The circulation of knowledge cancels hierarchy; it equalizes by raising up. Proliferating horizontal communication is also the best form of coordination among different communes, the best way to put an end to hegemony.

### Case

#### **Personal narratives reproduce hegemonic power relations and inequality – protects dominant narratives from criticism – this is an epistemological indict**

PatriciaEwick andSusan S. Silbey Law & Society Review, 00239216, 1995, Vol. 29, Issue 2

In the previous section, we discussed how narratives, like the lives and experiences they recount, are cultural productions. Narratives are generated interactively through normatively structured performances and interactions. Even the most personal of narratives rely on and invoke collective narratives — symbols, linguistic formulations, structures, and vocabularies of motive — without which the personal would remain unintelligible and uninterpretable. Because of the conventionalized character of narrative, then, our stories are likely to express **ideological effects and hegemonic assumptions.**[ [10](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib10)] We are as likely to be **shackled by** the stories we tell (or that are culturally available for our telling) as we are by the form of oppression they might **seek to reveal.** In short, the structure, the content, and the performance of stories as they are defined and regulated within social settings often articulate and **reproduce existing ideologies and hegemonic relations of power and inequality**. It is important to emphasize that narratives do more than simply reflect or express existing ideologies. Through their telling, our **stories come to constitute the hegemony that in turn shapes social lives and conduct "**The hegemonic is not simply a static body of ideas to which members of a culture are obliged to conform" (Silberstein 1988:127). Rather, Silberstein writes, hegemony has "a protean nature in which dominant relations are preserved while their manifestations remain highly flexible. **The hegemonic must continually evolve** so as to recuperate alternative hegemonies." In other words, the hegemonic gets **produced and evolves** within individual, seemingly unique, discrete personal narratives. Indeed, the **resilience** of ideologies and hegemony **may derive from their articulation within personal stories.** Finding expression and **being refashioned within the stories of countless individuals may lead to a polyvocality that inoculates and protects the master narrative from critique.** The hegemonic strength of a master narrative derives, Brinkley Messick (1988:657) writes, from "its textual, and lived heteroglossia … [, s]ubverting and dissimulating itself at every … turn"; thus ideologies that are encoded in particular stories are "effectively protected from sustained critique" § Marked 12:26 § by the fact that they are constituted through variety and **contradiction**. Research in a variety of social settings has demonstrated the *hegemonic* potential of narrative by illustrating how narratives can contribute to the reproduction of existing structures of meaning and power. First, narratives can function specifically as mechanisms of social control (Mumby 1993). At various levels of social organization — ranging from families to nation-states — storytelling instructs us about what is expected and warns us of the consequences of nonconformity. Oft-told family *tales* about lost fortunes or spoiled reputations enforce traditional definitions and values of family life (Langellier & Peterson 1993). Similarly, bureaucratic organizations exact compliance from members through the articulation of managerial prerogatives and expectations and the consequences of violation or challenge (Witten 1993). Through our narratives of courtship, lost accounts, and failed careers, cultures are constructed; we "do" family, we "do" organization, through the *stories* we tell (Langellier & Peterson 1993). Second, the hegemonic potential of narrative is further enhanced by narratives' ability to **colonize consciousness**. Well-plotted *s*tories cohere by relating various (selectively appropriated) events and details into a temporally organized whole (see part I above). The coherent whole, that is, the configuration of events and characters arranged in believable plots, **preempts alternative stories.** The events seem to speak for themselves; the tale appears to tell itself. Ehrenhaus (1993) provides a poignant example of a cultural meta-narrative that operates to stifle alternatives. He describes the currently dominant cultural narrative regarding the United States's involvement in the Vietnam War as one that relies on themes of dysfunction and rehabilitation. The story, as Ehrenhaus summarizes it, is structured as a social drama which characterizes both the nation and individual Vietnam veterans as having experienced a breakdown in normal functioning only recently resolved through a process of healing. This narrative is persuasive because it reiterates and elaborates already existing and dominant metaphors and interpretive frameworks in American culture concerning what Philip Rieff (1968) called the "triumph of the therapeutic" (see also Crews 1994). Significantly, the therapeutic motif underwriting this narrative depicts veterans as emotionally and psychologically fragile and, thus, disqualifies them as creditable witnesses. The connection between what they saw and experienced while in Vietnam and what the nation did in Vietnam is severed. In other words, what could have developed as a powerful critique of warfare as national policy is contained through the image of illness and rehabilitation, an image in which "'healing' is privileged over 'purpose' [and] the rhetoric of recovery and reintegration subverts the emergence of rhetoric that seeks to examine the reasons that recovery is even necessary" (Ehrenhaus 1993:83). Constituent and distinctive features of narratives make them particularly potent forms of **social control** and **ideological penetration and homogenization**. In part, their potency derives from the fact that narratives put "forth powerful and persuasive truth claims — claims about appropriate behavior and values — **that are shielded from testing or debate"** (Witten 1993:105). Performative features of narrative such as repetition, vivid concrete details, particularity of characters, and coherence of plot **silence epistemological challenges** and often generate **emotional identification** and commitment. Because narratives make **implicit rather than explicit** claims regarding causality and truth as they are dramatized in particular events regarding specific characters, **stories elude challenges, testing, or debate**. Van Dijk (1993) has reported, for instance, that stories containing negative images and stereotypes of nonwhite persons are less subject to the charge of racism when they recount personal experiences and particular events. Whereas a general claim that a certain group is inferior or dangerous might be contested on empirical grounds, an individual *story* about being mugged, a *story* which includes an incidental reference to the nonwhite race of the assailant, communicates a similar message but under the protected guise of simply stating the "facts." The causal significance or relevance of the assailant's race is, in such a tale, strongly implied but not subject to challenge or falsifiability. Thus representations, true and/or false, made implicitly without either validation or contest, are routinely exchanged in social interactions and thereby occupy social space. Third, narratives contribute to hegemony to the extent that they **conceal the social organization of their production and plausibility**. Narratives embody general understandings of the world that by their deployment and repetition come to constitute and sustain the life-world. Yet because narratives depict specific persons existing in particular social, physical, and historical locations, those general understandings often remain unacknowledged. By failing to make these manifest, narratives draw on unexamined assumptions and causal claims without displaying these assumptions and claims or laying them open to challenge or testing. Thus, as narratives depict understandings of particular persons and events, they reproduce, without exposing, the connections of the specific story and persons to the structure of relations and institutions that made the story plausible. To the extent that the hegemonic is "that order of signs and practices, relations and distinctions, images and epistemologies … that come to be taken-for-granted as the natural and received shape of the world and everything that inhabits it" (Comaroff & Comaroff 1991), the unarticulated and unexamined plausibility is the story's contribution to hegemony. The following two examples drawn from recent sociolegal research illustrate the ways in which legally organized narrativity helps produce the taken-for-granted and naturalized world by effacing the **connections between the particular and the general.** Sara Cobb (1992) examines the processes through which women's stories of violence are "domesticated" (tamed and normalized) within mediation sessions. Cobb reports that the domestication of women's stories of violence are a consequence of the organization of the setting in which they are told: within mediation, the storyteller and her audience are situated within a normative organization that recognizes the values of narrative participation over any substantive moral or epistemological code or standard. Being denied access to any external standards, the *stories* the women tell cannot therefore be adjudged true or compelling. The stories are interpreted as one version of a situation in which "multiple perspectives are possible." Cobb demonstrates how this particular context of elicitation specifically buries and silences stories of violence, effectively reproducing women's relative powerlessness within their families. With women deprived of the possibility of corroboration by the norms of the mediation session, their stories of violence are minimized and "disappeared." As a consequence, the individual woman can get little relief from the situation that brought her to mediation: she is denied an individual legal remedy (by being sent from court to mediation) and at the same time denied access to and connections with any collective understanding of or response to the sorts of violence acknowledged by the law (through the organization of the mediation process). Through this process, "violence, as a disruption of the moral order in a community, is made familiar (of the family) and natural — the extraordinary is tamed, drawn into the place where we eat, sleep and [is] made ordinary" (ibid., p. 19). Whereas mediation protects narratives from an interrogation of their truth claims, other, formal legal processes are deliberately organized to adjudicate truth claims. Yet even in these settings, certain types of truth claims are disqualified and thus shielded from examination and scrutiny. The strong preference of courts for individual narratives operates to impede the expression (and validation) of truth claims that are not easily represented through a particular *story*. Consider, for example, the Supreme Court's decision in the McClesky case (1986). The defendant, a black man who had been convicted of the murder of a police officer, was sentenced to death. His Supreme Court appeal of the death sentence was based on his claim that the law had been applied in a racially discriminatory way, thus denying him equal protection under the law. As part of McClesky's appeal, David Baldus, a social scientist, submitted an amicus brief in which he reported the results of his analysis of 2,000 homicide cases in that state (Baldus 1990). The statistical data revealed that black defendants convicted of killing white citizens were significantly more likely to receive the death sentence than white defendants convicted of killing a black victim. Despite this evidence of racial discrimination, the Court did not overturn McClesky's death sentence. The majority decision, in an opinion written by Justice Powell, stated that the kind of statistical evidence submitted by Baldus was simply not sufficient to establish that any racial discrimination occurred in this particular case. The court declared, instead, that to demonstrate racial discrimination, it would be necessary to establish that the jury, or the prosecutor, acted with discriminatory purpose in sentencing McClesky.[ [11](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib11)] Here, then, an unambiguous pattern of racial inequity was sustained through the very invocation of and demand for subjectivity (the jury's or prosecutor's state of mind) and particularity (the refusal to interpret this case as part of a larger category of cases) that are often embodied in narratives. In this instance, relative powerlessness and injustice (if one is to believe Baldus's data) were preserved, rather than challenged, by the demand for a particular narrative about specific concrete individuals whose interactions were bounded in time and space. In other words, the Court held that the legally cognizable explanation of the defendant's conviction could not be a product of inferential or deductive comprehension (Mink 1970; Bruner 1986). Despite its best efforts, the defense was denied discursive access to the generalizing, and authoritative, language of social logico-deductive science and with it the type of "truths" it is capable of representing. The court insists on a narrative that effaces the relationship between the particular and the general, between this case and other capital trials in Georgia. Further, the McClesky decision illustrates not only how the demand for narrative particularity may reinscribe relative powerlessness by obscuring the connection between the individual case and larger patterns of institutional behavior; it also reveals how conventionalized legal procedures impede the demonstration of that connection.[ [12](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib12)] The court simultaneously demanded evidence of the jurors' states of mind and excluded such evidence. Because jury deliberations are protected from routine scrutiny and evaluation, the majority demanded a kind of proof that is institutionally unavailable. Thus, in the McClesky decision, by insisting on a narrative of explicit articulated discrimination, the court calls for a kind of narrative truth that court procedures institutionally impede. As these examples suggest, a reliance on or demand for narrativity is neither unusual nor subversive within legal settings. In fact, given the ideological commitment to individualized justice and case-by-case processing that characterizes our legal system, narrative, relying as it often does on the language of the particular and subjective, **may more often operate to sustain, rather than subvert, inequality and injustice**. The law's insistent demand for personal narratives achieves a kind of radical individuation that disempowers the teller by effacing the connections among persons and the social organization of their experiences. This argument is borne out if we consider that being relieved of the necessity, and costs, of telling a *story* can be seen as liberatory and collectively empowering. Insofar as particular and subjective narratives reinforce a view of the world made up of autonomous individuals interacting only in immediate and local ways, they may hobble collective claims and solutions to social inequities (Silbey 1984). In fact, the progressive achievements of workers' compensation, no-fault divorce, no-fault auto insurance, strict liability, and some consumer protection regimes derive directly from the provision of legal remedies without the requirement to produce an individually crafted narrative of right and liability.

#### **Advocacy which prioritizes personal experience makes public deliberation impossible – opponents don’t have room to speak because any challenge is reduced to a personal attack**

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Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that the minority scholar himself or herself hurts and hurts badly.

An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [\*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, "I hurt bad"? n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74

"Precarious." "Obliterating." These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition. n77

 [\*696] Last, as we have seen, it precludes the possibility of open and structured conversation with others. n78 [\*697] It is because ofthis conversation-stopping effect of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny.

If through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of cynicism in white audiences which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. It drives the American public to the rightand ensures that anything CRT offers is reflexively rejected.

In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are too important in their implications  [\*698]  for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of great importance that white thinkers and doers participate in open discourse to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

This turns the case—allowing them to universalize the experience of the oppressed grants them ownership over experience for the purpose of a ballot. This silences the oppressed they attempt to liberate.

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Regardless of the 9/11 family members’ success in emblazoning such a narrative of innocence onto the memorial at Ground Zero, their endeavors to attain placemaking authority raise larger questions about where the authority to transform space to place ultimately lies and illustrates the tensions between top-down and bottom-up approaches to defining place. Traditionally, we expect that space is transformed into place from the top down. The victors in warfare carve up disputed territories. Legislators gerrymander districts. Yet, place-making authority is not always located in positions of power. For example, environmental activists advance claims to placemaking authority in battling hegemonic discourses of industrialization over their conceptions of nature as a place (DeLuca 76–77).

In terms of other memorial efforts, John Bodnar cites the struggle over the Vietnam Veterans Memorial as a representative anecdote showcasing the tension between official and vernacular expressions of public memory. Official expressions of public memory account for the viewpoints that emanate from those in positions of power or authority while vernacular expressions represent ‘‘specialized interests’’ (14). As a result of this tension’s role in shaping the face of public memorials, Bodnar argues to speak of public memory is to speak ‘‘primarily about the structure of power in society’’ (15). The mnemonic battles over Ground Zero exemplify this power struggle between the official and the vernacular or the top-down and bottom-up approaches to defining place. Though TBM activists seek the power to define place from the disempowered position of loss, ultimately their memorial efforts will only be successful insofar as they are recognized by the powers that possess the literal— not the metaphoric—ownership rights to the site.

Still, what remains unique to TBM activists is the extent to which their authority is derived from subjectivities of suffering, meriting critical attention to the ways in which rhetorical tropes of suffering function ideologically. Those thought to be suffering—and particularly individuals who are in the throes of grief—are ceded privileged status as their claims become unassailable in many respects. When advocates operate from a subjectivity of suffering, the ethos of their argument is bound up in their personal experience of loss. As a result of such conflation, to challenge the argument of the sufferer is to border on declaring their feelings illegitimate. Few viable means of countering arguments advanced from subjectivities of suffering exist because of the leeway culturally afforded to the bereaved in making meaning of their loss coupled with the general poignancy of their discourse. By contrast, those who do attempt to offer challenges concerning how the bereaved make meaning of loss (in this instance, the commercial, political, and academic voices) are more easily refuted for their acts of effrontery in failing to acknowledge the authority of the sufferer to make meaning of tragedy.

But what TBM members are producing is not idiosyncratic meaning of 9/11, they are offering their interpretation of the event as the appropriate way of collectively understanding the attacks. Herein is where the authority ceded to the sufferer is rendered problematic. Of course, each individual should be afforded the latitude to make meaning of loss howsoever he or she pleases; yet to claim my experience with suffering trumps the voices of ‘‘non-sufferers’’ is to shut down discourse and foreclose alternative means of understanding traumatic events. 9/11 must be understood as more than the aggregate of nearly three thousand individual deaths. To read the event through such a lens is to lapse into the process of historical and political abstraction and the promotion of rhetorics of American innocence and blamelessness (Sturken, Tourists of History). To be sure, the voices of those suffering demand an ear, but to conclude they are the only voices—or even the chief voices—meriting consideration is to truncate our ways of understanding trauma.

#### Their performance and narrative is not an effective mode of resistance---it gives too much power to the audience because the performer is structurally blocked from controlling the (re)presentation of their representations

Phelan 96 (Peggy, chair of New York University's Department of Performance Studies, Unmarked: the politics of performance, p. 146-9)

Performance’s only life is in the present. Performance cannot be saved, recorded, documented, or otherwise participate in the circulation of representations of representations: once it does so, it becomes something other than performance. To the degree that performance attempts to enter the economy of reproduction it betrays and lessens the promise of its own ontology. Performance’s being, like the ontology of subjectivityproposed here, becomes itself through disappearance.¶ The pressures brought to bear on performance to succumb to thelaws of the reproductive economy are enormous. For only rarely in this culture is the “now” to which performance addresses its deepest questions valued. (This is why the now is supplemented and buttressedby the documenting camera, the video archive.) Performance occursover a time which will not be repeated. It can be performed again, butthis repetition itself marks it as “different.” The document of a performance then is only a spur to memory, an encouragement of memory to become present.¶ The other arts, especially painting and photography, are drawnincreasingly toward performance. The French-born artist Sophie Calle,for example, has photographed the galleries of the Isabella StewartGardner Museum in Boston. Several valuable paintings were stolen fromthe museum in 1990. Calle interviewed various visitors and membersof the muse um staff, asking them to describe the stolen paintings. She then transcribed these texts and placed them next to the photographs of the galleries. Her work suggests that the descriptions and memories of the paintings constitute their continuing “presence,” despite the absence of the paintings themselves. Calle gestures toward a notion of the interactive exchange between the art object and the viewer. While such exchanges are often recorded as the stated goals of museums and galleries, the institutional effect of the gallery often seems to put the masterpiece under house arrest, controlling all conflicting and unprofessional commentary about it. The speech act of memory and description (Austin’s constative utterance) becomes a performative expression when Calle places these commentaries within the¶ 147¶ representation of the museum. The descriptions fill in, and thus supplement (add to, defer, and displace) the stolen paintings. The factthat these descriptions vary considerably—even at times wildly—onlylends credence to the fact that the interaction between the art objectand the spectator is, essentially, performative—and therefore resistantto the claims of validity and accuracy endemic to the discourse of reproduction. While the art historian of painting must ask if thereproduction is accurate and clear, Calle asks where seeing and memoryforget the object itself and enter the subject’s own set of personalmeanings and associations. Further her work suggests that the forgetting(or stealing) of the object is a fundamental energy of its descriptiverecovering. The description itself does not reproduce the object, it ratherhelps us to restage and restate the effort to remember what is lost. Thedescriptions remind us how loss acquires meaning and generatesrecovery—not only of and for the object, but for the one who remembers.The disappearance of the object is fundamental to performance; itrehearses and repeats the disappearance of the subject who longs alwaysto be remembered.¶ For her contribution to the Dislocations show at the Museum of Modern Art in New York in 1991, Calle used the same idea but this time she asked curators, guards, and restorers to describe paintings that were on loan from the permanent collection. She also asked them to draw small pictures of their memories of the paintings. She then arranged the texts and pictures according to the exact dimensions of the circulating paintings and placed them on the wall where the actual paintings usually hang. Calle calls her piece Ghosts, and as the visitor discovers Calle’s work spread throughout the museum, it is as if Calle’s own eye is following and tracking the viewer as she makes her way through the museum.1 Moreover, Calle’s work seems to disappear because it is dispersed throughout the “permanent collection”—a collection which circulates despite its “permanence.” Calle’s artistic contribution is a kind of self-concealment in which she offers the words of others about other works of art under her own artistic signature. By making visible her attempt to offer what she does not have, what cannot be seen, Calle subverts the goal of museum display. She exposes what the museum does not have and cannot offer and uses that absence to generate her own work. By placing memories in the place of paintings, Calle asks that the ghosts of memory be seen as equivalent to “the permanent collection” of “great works.” One senses that if she asked the same people over and over about the same paintings, each time they would describe a slightly different painting. In this sense, Calle demonstrates the performative quality of all seeing.¶ 148¶ I Performance in a strict ontological sense is nonreproductive. It is this quality which makes performance the runt of the litter of contemporary art. Performance clogs the smooth machinery of reproductive representation necessary to the circulation of capital. Perhaps nowhere was the affinity between the ideology of capitalism and art made more manifest than in the debates about the funding policies for the National Endowment for the Arts (NEA).2 Targeting both photography and performance art, conservative politicians sought to prevent endorsing the “real” bodies implicated and made visible by these art forms. Performance implicates the real through the presence of living bodies. In performance art spectatorship there is an element of consumption: there are no left-overs, the gazing spectator must try to take everything in. Without a copy, live performance plunges into visibility—in a maniacally charged present—and disappears into memory, into the realm of invisibility and the unconscious where it eludes regulation and control. Performance resists the balanced circulations of finance. It saves nothing; it only spends. While photography is vulnerable to charges of counterfeiting and copying, performance art is vulnerable to charges of valuelessness and emptiness. Performance indicates the possibility of revaluing that emptiness; this potential revaluation gives performance art its distinctive oppositional edge.3 To attempt to write about the undocumentable event of performance is to invoke the rules of the written document and thereby alter the event itself. Just as quantum physics discovered that macro-instruments cannot measure microscopic particles without transforming those particles, so too must performance critics realize that the labor to write about performance (and thus to “preserve” it) is also a labor that fundamentally alters the event. It does no good, however, to simply refuse to write about performance because of this inescapable transformation. The challenge raised by the ontological claims of performance for writing is to re-mark again the performative possibilities of writing itself. The act of writing toward disappearance, rather than the act of writing toward preservation, must remember that the after-effect of disappearance is the experience of subjectivity itself. This is the project of Roland Barthes in both Camera Lucida and Roland Barthes by Roland Barthes. It is also his project in Empire of Signs, but in this book he takes the memory of a city in which he no longer is, a city from which he disappears, as the motivation for the search for a disappearing performative writing. The trace left by that script is the meeting-point of a mutual disappearance; shared subjectivity is possible for Barthes because two people can recognize the same Impossible. To live for a love whose goal is to share the Impossible is both a humbling project and an exceedingly ambitious one, for it seeks to find connection only in that which is no longer there. Memory. Sight. Love. It must involve a full seeing of the Other’s absence (the ambitious part), a seeing which also entails the acknowledgment of the Other’s presence (the humbling part). For to acknowledge the Other’s (always partial) presence is to acknowledge one’s own (always partial) absence. In the field of linguistics, the performative speech act shares with the ontology of performance the inability to be reproduced or repeated. “Being an individual and historical act, a performative utterance cannot be repeated. Each reproduction is a new act performed by someone who is qualified. Otherwise, the reproduction of the performative utterance by someone else necessarily transforms it into a constative utterance.”4 ¶ 149¶ Writing, an activity which relies on the reproduction of the Same(the three letters cat will repeatedly signify the four-legged furry animalwith whiskers) for the production of meaning, can broach the frame of performance but cannot mimic an art that is nonreproductive. Themimicry of speech and writing, the strange process by which we put words in each other’s mouths and others’ words in our own, relies on a substitutional economy in which equivalencies are assumed and re-established. Performance refuses this system of exchange and resists the circulatory economy § Marked 12:28 § fundamental to it. Performance honors the idea that a limited number of people in a specific time/space frame can have an experience of value which leaves no visible trace afterward. Writing about it necessarily cancels the “tracelessness” inaugurated within this performative promise. Performance’s independence from mass reproduction, technologically, economically, and linguistically, is its greatest strength. But buffeted by the encroaching ideologies of capitaland reproduction, it frequently devalues this strength. Writing aboutperformance often, unwittingly, encourages this weakness and falls inbehind the drive of the document/ary. Performance’s challenge to writingis to discover a way for repeated words to become performative utterances, rather than, as Benveniste warned, constative utterances.

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

Scott 92 (Joan, Harold F. Linder Professor at the School of Social Science in the Institute for Advanced Study in Princeton, “Multiculturalism and the Politics of Identity,” October Summer p. 16-19)

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

#### Resistance/empowerment via the ballot can only instill an adaptive politics of being and effaces the institutional constraints that reproduce structural violence

Brown 95 (Wendy, prof at UC Berkley, States of Injury, p. 21-3)

For some, fueled by opprobrium toward regulatory norms or other mo- dalities of domination, the language of "resistance" has taken up the ground vacated by a more expansive practice of freedom. For others, it is the discourse of “empowerment” that carries the ghost of freedom's valence ¶ 22¶. Yet as many have noted, insofar as resistance is an effect of the regime it opposes on the one hand, and insofar as its practitioners often seek to void it of normativity to differentiate it from the (regulatory) nature of what it opposes on the other, it is at best politically rebellious; at worst, politically amorphous. Resistance stands against, not for; it is re- action to domination, rarely willing to admit to a desire for it, and it is neutral with regard to possible political direction. Resistance is in no way constrained to a radical or emancipatory aim. a fact that emerges clearly as soon as one analogizes Foucault's notion of resistance to its companion terms in Freud or Nietzsche. Yet in some ways this point is less a critique of Foucault, who especially in his later years made clear that his political commitments were not identical with his theoretical ones (and un- apologetically revised the latter), than a sign of his misappropriation. For Foucault, resistance marks the presence of power and expands our under- standing of its mechanics, but it is in this regard an analytical strategy rather than an expressly political one. "Where there is power, there is resistance, and yet. or rather consequently, this resistance is never in a position of exteriority to power. . . . (T]he strictly relational character of power relationships . . . depends upon a multiplicity of points of resis- tance: these play the role of adversary, target, support, or handle in power relations.\*39 This appreciation of the extent to which resistance is by no means inherently subversive of power also reminds us that it is only by recourse to a very non-Foucaultian moral evaluation of power as bad or that which is to be overcome that it is possible to equate resistance with that which is good, progressive, or seeking an end to domination. ¶ If popular and academic notions of resistance attach, however weakly at times, to a tradition of protest, the other contemporary substitute for a discourse of freedom—“empowerment”—would seem to correspond more closely to a tradition of idealist reconciliation. The language of resistance implicitly acknowledges the extent to which protest always transpires inside the regime; “empowerment,” in contrast, registers the possibility of generating one’s capacities, one’s “self-esteem,” one’s life course, without capitulating to constraints by particular regimes of power. But in so doing, contemporary discourses of empowerment too often signal an oddly adaptive and harmonious relationship with domination insofar as they locate an individual’s sense of worth and capacity in the register of individual feelings, a register implicitly located on some- thing of an otherworldly plane vis-a-vis social and political power. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—§ Marked 12:27 § the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is key to the fictional sovereign individualism of liberalism. Moreover, in its almost exclusive focus on subjects’ emotionalbearing and self-regard, empowerment is a formulation that converges with a regime’s own legitimacy needs in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also draw so heavily on an undeconstructed subjectivity that they risk establishing a wide chasm between the (experience of) empowerment and an actual capacity to shape the terms of political, social, or economic life. Indeed, the possibility that one can “feel empowered” without being so forms an important element of legitimacy for the antidemocratic dimensions of liberalism.

#### Uniting different coalitions is necessary to overcome white supremacy---them trying to create competition with their K is white “divide and conquer” tactics

hooks 3 (bell, feminist and social critic extraordinaire, “Beyond Black Only: Bonding Beyond Race”, <http://prince.org/msg/105/50299?pr>)

African Americans have been at the forefront of the struggle to end racism and white supremacy in the United States since individual free black immigrants and the larger body of enslaved blacks first landed here. Even though much of that struggle has been directly concerned with the plight of black people, all gains received from civil rights work have had tremendous positive impact on the social status of all non-white groups in this country. Bonding between enslaved Africans, free Africans, and Native Americans is well documented. Freedom fighters from all groups (and certainly there were many traitors in all three groups who were co-opted by rewards given by the white power structure) understood the importance of solidarity-of struggling against the common enemy, white supremacy. The enemy was not white people. It was white supremacy. ¶ Organic freedom fighters, both Native and African Americans, had no difficulty building coalitions with those white folks who wanted to work for the freedom of everyone. Those early models of coalition building in the interest of dismantling white supremacy are often forgotten. Much has happened to obscure that history. The construction of reservations (many of which were and are located in areas where there are not large populations of black people) isolated communities of Native Americans from black liberation struggle. And as time passed both groups began to view one another through Eurocentric stereotypes, internalizing white racist assumptions about the other. Those early coalitions were not maintained. Indeed the bonds between African Americans struggling to resist racist domination, and all other people of color in this society who suffer from the same system, continue to be fragile, even as we all remain untied by ties, however frayed and weakened, forged in shared anti-racist struggle. ¶ Collectively, within the United States people of color strengthen our capacity to resist white supremacy when we build coalitions. Since white supremacy emerged here within the context of colonization, the conquering and conquest of Native Americans, early on it was obvious that Native and African Americans could best preserve their cultures by resisting from a standpoint of political solidarity. The concrete practice of solidarity between the two groups has been eroded by the divide-and-conquer tactics of racist white power and by the complicity of both groups. Native American artist and activist of the Cherokee people Jimmie Durham, in his collection of essays A Certain Lack of Coherence, talks about the 1960’s as a time when folks tried to regenerate that spirit of coalition: “In the 1960’s and ‘70’s American Indian, African American and Puerto Rican activists said, as loudly as they could, “This country is founded on the genocide of one people and the enslavement of another.” This statement, hardly arguable, was not much taken up by white activists.” As time passed, it was rarely taken up by anyone. Instead the fear that one’s specific group might receive more attention has led to greater nationalism, the showing of concern for one’s racial or ethnic plight without linking that concern to the plight of other non-white groups and their struggles for liberation. ¶ Bonds of solidarity between people of color are continuously ruptured by our complicity with white racism. Similarly, white immigrants to the United States, both past and present, establish their right to citizenship within white supremacist society by asserting it in daily life through acts of discrimination and assault that register their contempt for and disregard of black people and darker-skinned immigrants mimic this racist behavior in their interactions with black folks. In her editorial “On the Backs of Blacks” published in a recent special issue of TIME magazine Toni Morrison discusses the way white supremacy is reinscribed again and again as immigrants seek assimilation: ¶ All immigrants fight for jobs and space, and who is there to fight but those who have both? As in the fishing ground struggle between Texas and Vietnamese shrimpers, they displace what and whom they can…In race talk the move into mainstream America always means buying into the notion of American blacks as the real aliens. Whatever the ethnicity or nationality of the immigrant, his nemesis is understood to be African American…So addictive is this ploy that the fact of blackness has been abandoned for the theory of blackness. It doesn’t matter anymore what shade the newcomer’s skin is. A hostile posture toward resident blacks must be struck at the Americanizing door. ¶ Often people of color, both those who are citizens and those who are recent immigrants, hold black people responsible for the hostility they encounter from whites. It is as though they see blacks as acting in a manner that makes things harder for everybody else. This type of scapegoating is the mark of the colonized sensibility which always blames those victimized rather than targeting structures of domination. ¶ Just as many white Americans deny both the prevalence of racism in the United States and the role they play in perpetuating and maintaining white supremacy, non-white, non-black groups, Native, Asian, Hispanic Americans, all deny their investment in anti-black sentiment even as they consistently seek to distance themselves from blackness so that they will not be seen as residing at the bottom of this society’s totem pole, in the category reserved for the most despised group. Such jockeying for white approval and reward obscures the way allegiance to the existing social structure undermines the social welfare of all people of color. White supremacist power is always weakened when people of color bond across differences of culture, ethnicity, and race. It is always strengthened when we act as though there is no continuity and overlap in the patterns of exploitation and oppression that affect all of our lives. ¶ To ensure that political bonding to challenge and change white supremacy will not be cultivated among diverse groups of people of color, white ruling groups pit us against one another in a no-win game of “who will get the prize for model minority today.” They compare and contrast, affix labels like “model minority,” define boundaries, and we fall into line. Those rewards coupled with internalized racist assumptions lead non-black people of color to deny the way racism victimizes them as they actively work to disassociate themselves from black people. This will to disassociate is a gesture of racism. ¶ Even though progressive people of color consistently critique these standpoints, we have yet to build a contemporary mass movement to challenge white supremacy that would draw us together. Without an organized collective struggle that consistently reminds us of our common concerns, people of color forget. Sadly forgetting common concerns sets the stage for competing concerns. Working within the system of white supremacy, non-black people of color often feel as though they must compete with black folks to receive white attention. Some are even angry at what they wrongly perceive as a greater concern on the part of white of the dominant culture for the pain of black people. Rather than seeing the attention black people receive as linked to the gravity of our situation and the intensity of our resistance, they want to make it a sign of white generosity and concern. Such thinking is absurd. If white folks were genuinely concerned about black pain, they would challenge racism, not turn the spotlight on our collective pain in ways that further suggest that we are inferior. Andrew Hacker makes it clear in Two Nations that the vast majority of white Americans believe that “members of the black race represent an inferior strain of the human species.” He adds: “In this view Africans-and Americans who trace their origins to that continent-are seen as languishing at a lower evolutionary level than members of other races.” Non-black people of color often do not approach white attention to black issues by critically interrogating how those issues are presented and whose interests the representations ultimately serve. Rather than engaging in a competition that sees blacks as winning more goodies from the white system than other groups, non-black people of color who identify with black resistance struggle recognize the danger of such thinking and repudiate it. They are politically astute enough to challenge a rhetoric of resistance that is based on competition rather than a capacity on the part of non-black groups to identify with whatever progress blacks make as being a positive sign for everyone. Until non-black people of color define their citizenship via commitment to a democratic vision of racial justice rather than investing in the dehumanization and oppression of black people, they will always act as mediators, keeping black people in check for the ruling white majority. Until racist anti-black sentiments are let go by other people of color, especially immigrants, and complain that these groups are receiving too much attention, they undermine freedom struggle. When this happens people of color war all acting in complicity with existing exploitative and oppressive structures. ¶ As more people of color raise our consciousness and refuse to be pitted against one another, the forces of neo-colonial white supremacist domination must work harder to divide and conquer. The most recent effort to undermine progressive bonding between people of color is the institutionalization of “multiculturalism”. Positively, multiculturalism is presented as a corrective to a Eurocentric vision of model citizenship wherein white middle-class ideals are presented as the norm. Yet this positive intervention is undermined by visions of multiculturalism that suggest everyone should live with and identify with their own self contained group. If white supremacist capitalist patriarchy is unchanged then multiculturalism within that context can only become a breeding ground for narrow nationalism, fundamentalism, identity politics, and cultural, racial, and ethnic separatism. Each separate group will then feel that it must protect its own interests by keeping outsiders at bay, for the group will always appear vulnerable, its power and identity sustained by exclusivity. When people of color think this way, white supremacy remains intact. For even though demographics in the United States would suggest that in the future the nation will be more populated by people of color, and whites will no longer be the majority group, numerical presence will in no way alter white supremacy if there is no collective organizing, no efforts to build coalitions that cross boundaries. Already, the white Christian Right is targeting large populations of people of color to ensure that the fundamentalist values they want this nation to uphold and represent will determine the attitudes and values of these groups. The role Eurocentric Christianity has played in teaching non-white folks Western metaphysical dualism, the ideology that under girds binary notion of superior/inferior, good/bad, white/black, cannot be ignored. While progressive organizations are having difficulty reaching wider audiences, the white-dominated Christian Right organizes outreach programs that acknowledge diversity and have considerable influence. Just as the white-dominated Christian church in the U.S. once relied on biblical references to justify racist domination and discrimination, it now deploys a rhetoric of multiculturalism to invite non-white people to believe that racism can be overcome through a shared fundamentalist encounter. Every contemporary fundamentalist white male-dominated religious cult in the U.S. has a diverse congregation. People of color have flocked to these organizations because they have felt them to be places where racism does not exist, where they are not judged on the basis of skin color. While the white-dominated mass media focus critical attention on black religious fundamentalist groups like the Nation of Islam, and in particular Louis Farrakhan, little critique is made of white Christian fundamentalist outreach to black people and other people of color. Black Islamic fundamentalism shares with the white Christian Right support for coercive hierarchy, fascism, and a belief that some groups are inferior and others superior, along with a host of other similarities. Irrespective of the standpoint, religious fundamentalism brainwashes individuals not to think critically or see radical politicization as a means of transforming their lives. When people of color immerse themselves in religious fundamentalism, no meaningful challenge and critique of white supremacy can surface. Participation in a radical multiculturalism in any form is discouraged by religious fundamentalism. ¶ Progressive multiculturalism that encourages and promotes coalition building between people of color threatens to disrupt white supremacist organization of us all into competing camps. However, this vision of multiculturalism is continually undermined by greed, one group wanting rewards for itself even at the expense of other groups. It is this perversion of solidarity the authors of Night Vision address when they assert: “While there are different nationalities, races and genders in the U.S., the supposedly different cultures in multiculturalism don’t like to admit what they have in common, the glue of it all-parasitism. Right now, there’s both anger among the oppressed and a milling around, edging up to the next step but uncertain what it is fully about, what is means. The key is the common need to break with parasitism.” A based identity politics of solidarity that embraces both a broad based identity politics which acknowledges specific cultural and ethnic legacies, histories, etc. as it simultaneously promotes a recognition of overlapping cultural traditions and values as well as an inclusive understanding of what is gained when people of color unite to resist white supremacy is the only way to ensure that multicultural democracy will become a reality.

#### Sole narrative focus is bad

Brown 95 (Wendy, prof at UC Berkely, States of Injury, p. 40-2)

In fact, postmodern decentcring, disunifying, and denaturalizing of the subject is far more threatening to the status of feminism's well of truth than to feminism’s raison d’etre. While often cast as concern with retaining an object of political struggle, feminist attachment to the subject is more critically bound to retaining women's experiences, feelings, and voices as sources and certifications of postfoundational political truth. When the notion of a unified and coherent subject is abandoned, we not only cease to be able to speak, of woman or of women in an unproblematic way, we forsake the willing, deliberate, and consenting "I" that liberalism's rational-actor model of the human being proffers, and we surrender the autonomous, rights-bearing fictional unity that liberalism promises to secure. Yet each of these terms and practices—woman, willing, deliberate. consenting, an “I," rational actors, autonomy, and rights—has been challenged by various modernist feminisms as masculinist, racist, ethno- centric. heterosexist, culturally imperialist, or all of the above. More- over. dispensing with the unified subject does not mean ceasing to be able to speak about our experiences as women, only that our words can- not be legitimately deployed or construed as larger or longer than the moments of the lives they speak from; they cannot be anointed as ¶ 41¶authentic” or “true" since the experience they announce is linguistically contained, socially constructed, discursively mediated, and never just individually “had.”¶ But this is precisely the point at which many contemporary North Atlantic feminists hesitate and equivocate: while insisting on the constructed character of gender, most also seek to preserve some variant of consciousness-raising as a mode of discerning and delivering the “truth" about women. Consider Catharine MacKinnon’s insistence that women are entirely the products of men’s construction and her ontologicallv contradictory project of developing a jurisprudence based on “an account of the world from women’s point of view.”-1 Consider the similar problematic in other theories of “the feminist standpoint.” The sharp but frequently elided tensions between adhering to social construction theory on one hand, and epistemologically privileging women’s accounts of so- cial life on the other. “The world from women’s point of view” and “the feminist standpoint” attempt resolution of the postfoundational cpiste- mologv problem by deriving from within women’s cxpcricncc the grounding for women's accounts. But this resolution requires suspend- ing recognition that women’s “experience” is thoroughly constructed, historically and culturally varied, and interpreted without endWithin feminist standpoint theory as well as much other modernist feminist the- ory. consciousness-raising thus operates as feminism’s epistemologically positivist moment. The material excavated there, like the material uncov- ered in psychoanalysis or delivered in confession, is valued as the hidden truth of women’s existence—true because it is hidden, and hidden be- cause women's subordination functions in part through silencing, marginalization, and privatization.¶ Indeed, those familiar with Foucault’s genealogy of confession will have discerned in this argument an implied homology between the cpistcmological-political operations of consciousness-raising and those he assigns to confcssional discourse. In his account of modem sexuality as structured by such discourse.Foucault argues that confession— inaugurated by the Catholic Church as a technique of power that works¶42 ¶by exposure and individuation—produces "truth" as a secret contained within.23 Confessional revelations are thus construed as liberation from repression or secrecy, and truth-telling about our desires or experiences is construed as deliverance from the power that silences and represses them (rather than as itself a site and effect of regulatory power). What Foucault terms the "internal ruse of confession" is reducible to this reversal of power and freedom: "Confession frees, but power reduces one to silence; truth does not belong to the order of power, but shares an original affin- ity with freedom."24 In believing truth-telling about our experiences to be our liberation. Foucault suggests, we forget that this truth has been established as the secret to our souls not by us but by those who would discipline us through that truth.¶ Since women's subordination is partly achieved through the construc- tion and positioning of us as private—sexual, familial, emotional—and is produced and inscribed in the domain of both domestic and psychic inte- riors, then within modernity the voicing of women's experience acquires an inherently confessional cast. Indeed, “breaking silence" is a standard feminist metaphor for what occurs in consciousness-raising sessions, speak-outs against sexual violence, and other forums for feminist truth telling. Consciousness-raising, as/like confession, delivers the "hidden truth" of women and women’s experience, which accounts for those symptomatically modernist paradoxes represented in Catharine MacKin- non's work: while women are socially constructed to the core, women's words about their experience, because they issue from an interior spacc and against an injunction to silence, are anointed as 1 ruth, and constitute the foundations of feminist knowledge. Within the confessional frame, even when social construction is adopted as method for explaining the making of gender, "feelings" and "experiences" acquire a status that is politically if not ontologically essentialist—beyond hermeneutics. This strand of feminist foundationalism transports the domain of Truth from reason to subjectivity, from Geist to inner voice, even while femininity itself is submitted to a methodology elaborating its fully fabricated nature.

You should use optimism as your starting point – their pessimistic account obscures history to justify the black body as dispossessed

Moten 8 (Fred, Helen L. Bevington Prof. of Modern Poetry @ Duke U., “Black Op,” Proceedings of the Modern Language Association of America, pp. 1745)

\*Paleonymic is the deconstruction term for creating new words for old terms

All this—which was always so essentially and authentically clear in its wrought, inventive, righteous obscurity—now often suffers being revealed and reviled in critique that advances by way of what is supposed to be the **closure of authenticity**, essence, **and experience**, all of which continue to be made to share the most precise and predictably easy-to-dismiss name, local habitation, and communal form of life. That blackness is often profiled and found wanting what it is and has, in work that involuntarily falls under the admittedly imprecise rubric of African American studies, is also unsurprising and is due not so much to chauvinistic reactions to real or perceived chauvinism but to the fact that blackness’s **distinction from a specific set of things that are called black remains largely unthought**. **Paraontological resistance** to this particular brand of orthodoxy requires a **paleonymic relation to blackness**, which is not in need of a highlight it already has or an extrachromatic saturation it already is or a rampant internal differentiation it already bears. As such, it need not be uncoupled from the forms that came to stand (in) for blackness, to which they could not be reduced and which could not be reduced to them. What is often **overlooked in blackness** is bound up with what **has often been overseen**. Certain experiences of being tracked, managed, cornered in seemingly open space are inextricably bound to an aesthetically and politically dangerous supplementarity, an **internal exteriority** waiting to get out, as if the prodigal’s return were to leaving itself. Black studies’ concern with what it is to **own one’s dispossession**, to mine what is held in having been possessed, makes it more possible to embrace the underprivilege of being sentenced to the gift of constant escape. The strain of black studies that **strains against this** interplay of itinerancy and identity—whether in the interest of putting down roots or disclaiming them—could be said, also, to constitute a departure, though it may well be into a **stasis more severe** than the one such work **imagines (itself to be leaving).** In contradistinction to such skepticism, one might plan, like Curtis Mayfield, to stay a believer and therefore to avow what might be called a kind of **metacritical optimism**. Such optimism, **black optimism**, is bound up with what it is to claim blackness and the appositional, runaway, phonoptic black operations—expressive of an autopoetic organization in which flight and inhabitation modify each other—that have been thrust upon it. The burden of this paradoxically aleatory goal is our historicity, animating the reality of escape in and the possibility of escape from.

Reject their essentialism

Moten 8 (Fred, Helen L. Bevington Prof. of Modern Poetry @ Duke U., “Black Op” Proceedings of the Modern Language Association of America, pp. 1746-1747)

Finally, one might plan to continue to believe that there is **such a thing as blackness** and that blackness has an essence given in striated, ensemblic, authentic experience (however much a certain natural bend is amplified by the force of every kind of event, however productive such constant inconstancy of shape and form must be of new understandings of essence and experience). It is obvious (particularly after the recent lessons of Lindon Barrett, Herman Bennett, Daphne Brooks, Nahum Chandler, Denise Ferreira da Silva, Brent Edwards, Saidiya Hartman, Sharon Holland, and Achilles Mbembe, among others) that blackness has always emerged as nothing other than the richest possible combination of dispersion and permeability in and as the mass improvisation and protection of the very idea of **the human.** Thus, concern over the supposedly stultifying force of authenticity exerted by supposedly restrictive and narrow conceptions of blackness, or worry over the supposed intranational dominance of blackness broadly and unrigorously conceived (in ways that presuppose its strict biological limitation within an unlimited minoritarian field), or anxiety over the putatively intradiasporic hegemony of a certain mode of blackness (which presumes national as well as biological determinations that are continually over- and underdetermined) indexes some other trouble, which we would do well to investigate. Such investigation is best accompanied by vigilant remembrance of and commitment to the fact that blackness is present (as E. P. Thompson said of the English working class) at its own making and that all the people who are called black are given in and to that presence, which exceeds them (in an irrevocable, antenational combination of terror and enjoyment, longing and rejection, that Hartman, in particular, illuminates). Ultimately, the paraontological force that is transmitted in the long chain of life and death performances that are the concern of black studies is horribly misunderstood if it is **understood as exclusive**. Everyone whom blackness claims, which is to say everyone, can claim blackness. That claim is neither the first nor the last anticipatory reorientation but is, rather, an irreducible element of the differentially repeating plane that intersects and animates the comparativist sphere.

In this regard, black studies might best be described as a location habitually lost and found within a moving tendency where one looks back and forth and wonders how utopia came to be submerged in the interstices and on the outskirts of the fierce and urgent now. The temporal paradox of optimism—that it is, on the one hand, a necessarily futurial attitude while being, on the other hand, in its proper Leibnizian formulation, an assertion of the necessity, rightness, and timelessness of the always already existing—resonates in the slim gap between analytic immersion and deictic reserve. This bitter earth is the best of all possible worlds, a fact that necessitates the renewed, reconstructed, realization of imaginative intensities that move through the opposition of voluntary secrecy and forced exposure in order to understand how the underground operates out in, and as, the open. What’s the relation between the limit and the open? Between blackness and the limit? Between a specific and materially redoubled finitude called blackness and the open? The new critical discourse on the relation between blackness and death has begun to approach these questions. That discourse reveals that optimism doesn’t require—indeed, it cannot persist within—the repression of that relation; rather, it always lives (which is to say, escapes) in the faithful, postfatal assertion of a right to refuse, in the prenatal instantiation of a collective negative tendency to differ, and in the resistance to the regulative powers that resistance, differing, and refusal call into being. The general insistence that we don’t mind leaving here is inseparable from the fact that it’s all right. Black optimism persists in thinking that we have what we need, that we can get there from here, that there’s nothing wrong with us or even, in this regard, with here, even as it also bears an obsession with why it is that difference calls the same, that resistance calls regulative power, into existence, thereby securing the simultaneously vicious and vacant enmity that characterizes here and now, forming and deforming us. However much trouble stays in mind and, therefore, in the light of a certain interest that the ones who are without interests have in making as much trouble as possible, there is cause for optimism as long as there is a need for optimism. Cause and need converge in the bent school or marginal church in which we gather together to be in the name of being otherwise.

## Neg v. Frenso State – Block

### Voting Aff Fails

#### Recognition is empty – reifies the system you're criticizing – the aff should refuse the ballot

Halberstam 13 -- Professor of American Studies and Ethnicity, Gender Studies and Comparative Literature at the University of Southern California (Jack, The Undercommons: Fugitive Planning & Black Study, p. 6)

If you want to know what the undercommons wants, what Moten and Harney want, what black people, indigenous peoples, queers and poor people want, what we (the “we” who cohabit in the space of theundercommons) want, it is this – we **cannot be satisfed with the rec-ognition and acknowledgement** generated by the **very system that denies** a) that **anything was ever broken** and b) that we deserved to be the broken part; so we refuse to ask for recognition and instead we want to take apart, dismantle, tear down the structure that, right now, limits our ability to fnd each other, to see beyond it and to access the places that we know lie outside its walls. We cannot say what new structures will replace the ones we live with yet, because once we have torn shit down, we will inevitably see more and see diferently and feel a new sense of wanting and being and becoming. What we want after “the break” will be diferent from what we think we want before the break and both are necessarily diferent from the desire that issues from being in the break.

### Turns Case

#### Insurrection does not wait on social movements, it recognizes that shit’s collapsing now – your attempt at reform only spreads the state’s influences

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

We can no longer even see how an insurrection might begin. Sixty years of pacification and containment of historical upheavals, sixty years of democratic anesthesia and the management of events, have dulled our perception of the real, **our sense of the war in progress**. We need to start by recovering this perception. It’s useless to get indignant about openly unconstitutional laws such as Perben II. It’s futile to legally protest the complete implosion of the legal framework. We have to get organized. It’s useless to get involved in this or that citizens’ group, in this or that dead-end of the far left, or in the latest “community effort.” **Every organization that claims to contest the present order mimics the form, mores and language of miniature states**. Thus far, every impulse to “do politics differently” has only contributed to the indefinite spread of the state’s tentacles. It’s useless to react to the news of the day; instead we should understand each report as a maneuver in a hostile field of strategies to be decoded, operations designed to provoke a specific reaction. It’s these operations themselves that should be taken as the real information contained in these pieces of news. It’s useless to wait-for a breakthrough, for the revolution, the nuclear apocalypse or a social movement. To go on waiting is madness. The catastrophe is not coming, it is here. We are already situated within the collapse of a civilization. It is within this reality that **we must choose sides**.

#### There is no solution to the problems you’ve isolated

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

There will be no social solution to the present situation. First, because the vague aggregate of social milieus, institutions, and individualized bubbles that is called, with a touch of antiphrasis, “society,” has no consistency. Second, because there’s no longer any language for common experience. And we cannot share wealth if we do not share a language. It took half a century of struggle around the Enlightenment to make the French Revolution possible, and a century of struggle around work to give birth to the fearsome “welfare state.” Struggles create the language in which a new order expresses itself. But there is nothing like that today. Europe is now a continent gone broke that shops secretly at discount stores and has to fly budget airlines if it wants to travel at all. No “problems” framed in social terms admit of a solution. The questions of “pensions,” of “job security,” of “young people” and their “violence” can only be held in suspense while the situation these words serve to cover up is continually policed for signs of further unrest. Nothing can make it an attractive prospect to wipe the asses of pensioners for minimum wage. Those who have found less humiliation and more advantage in a life of crime than in sweeping floors will not turn in their weapons, and prison won’t teach them to love society. Cuts to their monthly pensions will undermine the desperate pleasure-seeking of hordes of retirees, making them stew and splutter about the refusal to work among an ever larger section of youth. And finally, no guaranteed income granted the day after a quasi-uprising will be able to lay the foundation of a new New Deal, a new pact, a new peace. The social feeling has already evaporated too much for that. As an attempted solution, the pressure to ensure that nothing happens, together with police surveillance of the territory, **will only intensify**. The unmanned drone that flew over Seine-Saint-Denis last July 14th – as the police later confirmed – presents a much more vivid image of the future than all the fuzzy humanistic projections. That they were careful to assure us that the drone was unarmed gives us a clear indication of the road we’re headed down. The territory will be partitioned into ever more restricted zones. Highways built around the borders of “problem neighborhoods” already form invisible walls closing off those areas off from the middle-class subdivisions. Whatever defenders of the Republic may think, the control of neighborhoods “by the community” is manifestly the most effective means available. The purely metropolitan sections of the country, the main city centers, will go about their opulent lives in an ever more crafty, ever more sophisticated, ever more shimmering deconstruction. They will illuminate the whole planet with their glaring neon lights, as the patrols of the BAC and private security companies (i.e. paramilitary units) proliferate under the umbrella of an increasingly shameless judicial protection.

### How to Take Down the Police/State

#### Outright gun violence and guerilla warfare is wrong – we must have an armed presence without an armed struggle – armies are defeated politically, not through force

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

Take up arms. Do everything possible to make their use unnecessary. Against the army, the only victory is political. There is no such thing as a peaceful insurrection. Weapons are necessary: **it’s a question of doing everything possible to make using them unnecessary**. An insurrection is more about taking up arms and maintaining an “armed presence” than it is about armed struggle. We need to distinguish **clearly between being armed and the use of arms**. Weapons are a constant in revolutionary situations, but their use is infrequent and rarely decisive at key turning points: August 10th 1792, March 18th 1871, October 1917. **When power is in the gutter, it’s enough to walk over it.** Because of the distance that separates us from them, weapons have taken on a kind of double character of fascination and disgust that can be overcome only by handling them. An authentic pacifism cannot mean refusing weapons, but only **refusing to use them**. Pacifism without being able to fire a shot is nothing but the theoretical formulation of impotence. Such a priori pacifism is a kind of preventive disarmament, a pure police operation. In reality, the question of pacifism is serious only for those who have the ability to open fire. In this case, **pacifism becomes a sign of power**, since it’s only in an extreme position of strength that we are freed from the need to fire. From a strategic point of view, indirect, asymmetrical action seems the most effective kind, the one best suited to our time: you don’t attack an occupying army frontally. That said, the prospect of Iraq-style urban guerilla warfare, dragging on with no possibility of taking the offensive, is **more to be feared than to be desired**. The militarization of civil war is the defeat of insurrection. The Reds had their victory in 1921, but the Russian Revolution was already lost. We must consider two kinds of state reaction. One openly hostile, one more sly and democratic. The first calls for our out and out destruction, the second, a subtle but implacable hostility, seeks only to recruit us. We can be defeated both by dictatorship and by being reduced to opposing only dictatorship. Defeat consists as much in losing the war as in losing the choice of which war to wage. Both are possible, as was proven by Spain in 1936: the revolutionaries there were defeated twice-over, by fascism and by the republic. When things get serious, the army occupies the terrain. Whether or not it engages in combat is less certain. That would require that the state be **committed to a bloodbath**, which for now is no more than a threat, a bit like the threat of using nuclear weapons for the last fifty years. Though it has been wounded for a long while, the beast of the state is still dangerous. A massive crowd would be needed to challenge the army, invading its ranks and fraternizing with the soldiers. We need a March 18th 1871. **When the army is in the street, we have an insurrectionary situation**. Once the army engages, the outcome is precipitated. Everyone finds herself forced to take sides, to choose between anarchy and the fear of anarchy. **An insurrection triumphs as a political force.** It is not impossible to defeat an army politically.

### 2NC Case

#### **Personal narratives reproduce hegemonic power relations and inequality – protects dominant narratives from criticism – this is an epistemological indict**

PatriciaEwick andSusan S. Silbey Law & Society Review, 00239216, 1995, Vol. 29, Issue 2

In the previous section, we discussed how narratives, like the lives and experiences they recount, are cultural productions. Narratives are generated interactively through normatively structured performances and interactions. Even the most personal of narratives rely on and invoke collective narratives — symbols, linguistic formulations, structures, and vocabularies of motive — without which the personal would remain unintelligible and uninterpretable. Because of the conventionalized character of narrative, then, our stories are likely to express **ideological effects and hegemonic assumptions.**[ [10](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib10)] We are as likely to be **shackled by** the stories we tell (or that are culturally available for our telling) as we are by the form of oppression they might **seek to reveal.** In short, the structure, the content, and the performance of stories as they are defined and regulated within social settings often articulate and **reproduce existing ideologies and hegemonic relations of power and inequality**. It is important to emphasize that narratives do more than simply reflect or express existing ideologies. Through their telling, our **stories come to constitute the hegemony that in turn shapes social lives and conduct "**The hegemonic is not simply a static body of ideas to which members of a culture are obliged to conform" (Silberstein 1988:127). Rather, Silberstein writes, hegemony has "a protean nature in which dominant relations are preserved while their manifestations remain highly flexible. **The hegemonic must continually evolve** so as to recuperate alternative hegemonies." In other words, the hegemonic gets **produced and evolves** within individual, seemingly unique, discrete personal narratives. Indeed, the **resilience** of ideologies and hegemony **may derive from their articulation within personal stories.** Finding expression and **being refashioned within the stories of countless individuals may lead to a polyvocality that inoculates and protects the master narrative from critique.**

The hegemonic strength of a master narrative derives, Brinkley Messick (1988:657) writes, from "its textual, and lived heteroglossia … [, s]ubverting and dissimulating itself at every … turn"; thus ideologies that are encoded in particular stories are "effectively protected from sustained critique" by the fact that they are constituted through variety and **contradiction**. Research in a variety of social settings has demonstrated the *hegemonic* potential of narrative by illustrating how narratives can contribute to the reproduction of existing structures of meaning and power. First, narratives can function specifically as mechanisms of social control (Mumby 1993). At various levels of social organization — ranging from families to nation-states — storytelling instructs us about what is expected and warns us of the consequences of nonconformity. Oft-told family *tales* about lost fortunes or spoiled reputations enforce traditional definitions and values of family life (Langellier & Peterson 1993). Similarly, bureaucratic organizations exact compliance from members through the articulation of managerial prerogatives and expectations and the consequences of violation or challenge (Witten 1993). Through our narratives of courtship, lost accounts, and failed careers, cultures are constructed; we "do" family, we "do" organization, through the *stories* we tell (Langellier & Peterson 1993). Second, the hegemonic potential of narrative is further enhanced by narratives' ability to **colonize consciousness**. Well-plotted *s*tories cohere by relating various (selectively appropriated) events and details into a temporally organized whole (see part I above). The coherent whole, that is, the configuration of events and characters arranged in believable plots, **preempts alternative stories.** The events seem to speak for themselves; the tale appears to tell itself. Ehrenhaus (1993) provides a poignant example of a cultural meta-narrative that operates to stifle alternatives. He describes the currently dominant cultural narrative regarding the United States's involvement in the Vietnam War as one that relies on themes of dysfunction and rehabilitation. The story, as Ehrenhaus summarizes it, is structured as a social drama which characterizes both the nation and individual Vietnam veterans as having experienced a breakdown in normal functioning only recently resolved through a process of healing. This narrative is persuasive because it reiterates and elaborates already existing and dominant metaphors and interpretive frameworks in American culture concerning what Philip Rieff (1968) called the "triumph of the therapeutic" (see also Crews 1994). Significantly, the therapeutic motif underwriting this narrative depicts veterans as emotionally and psychologically fragile and, thus, disqualifies them as creditable witnesses. The connection between what they saw and experienced while in Vietnam and what the nation did in Vietnam is severed. In other words, what could have developed as a powerful critique of warfare as national policy is contained through the image of illness and rehabilitation, an image in which "'healing' is privileged over 'purpose' [and] the rhetoric of recovery and reintegration subverts the emergence of rhetoric that seeks to examine the reasons that recovery is even necessary" (Ehrenhaus 1993:83). Constituent and distinctive features of narratives make them particularly potent forms of **social control** and **ideological penetration and homogenization**. In part, their potency derives from the fact that narratives put "forth powerful and persuasive truth claims — claims about appropriate behavior and values — **that are shielded from testing or debate"** (Witten 1993:105). Performative features of narrative such as repetition, vivid concrete details, particularity of characters, and coherence of plot **silence epistemological challenges** and often generate **emotional identification** and commitment. Because narratives make **implicit rather than explicit** claims regarding causality and truth as they are dramatized in particular events regarding specific characters, **stories elude challenges, testing, or debate**. Van Dijk (1993) has reported, for instance, that stories containing negative images and stereotypes of nonwhite persons are less subject to the charge of racism when they recount personal experiences and particular events. Whereas a general claim that a certain group is inferior or dangerous might be contested on empirical grounds, an individual *story* about being mugged, a *story* which includes an incidental reference to the nonwhite race of the assailant, communicates a similar message but under the protected guise of simply stating the "facts." The causal significance or relevance of the assailant's race is, in such a tale, strongly implied but not subject to challenge or falsifiability. Thus representations, true and/or false, made implicitly without either validation or contest, are routinely exchanged in social interactions and thereby occupy social space. Third, narratives contribute to hegemony to the extent that they **conceal the social organization of their production and plausibility**. Narratives embody general understandings of the world that by their deployment and repetition come to constitute and sustain the life-world. Yet because narratives depict specific persons existing in particular social, physical, and historical locations, those general understandings often remain unacknowledged. By failing to make these manifest, narratives draw on unexamined assumptions and causal claims without displaying these assumptions and claims or laying them open to challenge or testing. Thus, as narratives depict understandings of particular persons and events, they reproduce, without exposing, the connections of the specific story and persons to the structure of relations and institutions that made the story plausible. To the extent that the hegemonic is "that order of signs and practices, relations and distinctions, images and epistemologies … that come to be taken-for-granted as the natural and received shape of the world and everything that inhabits it" (Comaroff & Comaroff 1991), the unarticulated and unexamined plausibility is the story's contribution to hegemony. The following two examples drawn from recent sociolegal research illustrate the ways in which legally organized narrativity helps produce the taken-for-granted and naturalized world by effacing the **connections between the particular and the general.** Sara Cobb (1992) examines the processes through which women's stories of violence are "domesticated" (tamed and normalized) within mediation sessions. Cobb reports that the domestication of women's stories of violence are a consequence of the organization of the setting in which they are told: within mediation, the storyteller and her audience are situated within a normative organization that recognizes the values of narrative participation over any substantive moral or epistemological code or standard. Being denied access to any external standards, the *stories* the women tell cannot therefore be adjudged true or compelling. The stories are interpreted as one version of a situation in which "multiple perspectives are possible." Cobb demonstrates how this particular context of elicitation specifically buries and silences stories of violence, effectively reproducing women's relative powerlessness within their families. With women deprived of the possibility of corroboration by the norms of the mediation session, their stories of violence are minimized and "disappeared." As a consequence, the individual woman can get little relief from the situation that brought her to mediation: she is denied an individual legal remedy (by being sent from court to mediation) and at the same time denied access to and connections with any collective understanding of or response to the sorts of violence acknowledged by the law (through the organization of the mediation process). Through this process, "violence, as a disruption of the moral order in a community, is made familiar (of the family) and natural — the extraordinary is tamed, drawn into the place where we eat, sleep and [is] made ordinary" (ibid., p. 19). Whereas mediation protects narratives from an interrogation of their truth claims, other, formal legal processes are deliberately organized to adjudicate truth claims. Yet even in these settings, certain types of truth claims are disqualified and thus shielded from examination and scrutiny. The strong preference of courts for individual narratives operates to impede the expression (and validation) of truth claims that are not easily represented through a particular *story*. Consider, for example, the Supreme Court's decision in the McClesky case (1986). The defendant, a black man who had been convicted of the murder of a police officer, was sentenced to death. His Supreme Court appeal of the death sentence was based on his claim that the law had been applied in a racially discriminatory way, thus denying him equal protection under the law. As part of McClesky's appeal, David Baldus, a social scientist, submitted an amicus brief in which he reported the results of his analysis of 2,000 homicide cases in that state (Baldus 1990). The statistical data revealed that black defendants convicted of killing white citizens were significantly more likely to receive the death sentence than white defendants convicted of killing a black victim. Despite this evidence of racial discrimination, the Court did not overturn McClesky's death sentence. The majority decision, in an opinion written by Justice Powell, stated that the kind of statistical evidence submitted by Baldus was simply not sufficient to establish that any racial discrimination occurred in this particular case. The court declared, instead, that to demonstrate racial discrimination, it would be necessary to establish that the jury, or the prosecutor, acted with discriminatory purpose in sentencing McClesky.[ [11](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib11)] Here, then, an unambiguous pattern of racial inequity was sustained through the very invocation of and demand for subjectivity (the jury's or prosecutor's state of mind) and particularity (the refusal to interpret this case as part of a larger category of cases) that are often embodied in narratives. In this instance, relative powerlessness and injustice (if one is to believe Baldus's data) were preserved, rather than challenged, by the demand for a particular narrative about specific concrete individuals whose interactions were bounded in time and space. In other words, the Court held that the legally cognizable explanation of the defendant's conviction could not be a product of inferential or deductive comprehension (Mink 1970; Bruner 1986). Despite its best efforts, the defense was denied discursive access to the generalizing, and authoritative, language of social logico-deductive science and with it the type of "truths" it is capable of representing. The court insists on a narrative that effaces the relationship between the particular and the general, between this case and other capital trials in Georgia. Further, the McClesky decision illustrates not only how the demand for narrative particularity may reinscribe relative powerlessness by obscuring the connection between the individual case and larger patterns of institutional behavior; it also reveals how conventionalized legal procedures impede the demonstration of that connection.[ [12](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib12)] The court simultaneously demanded evidence of the jurors' states of mind and excluded such evidence. Because jury deliberations are protected from routine scrutiny and evaluation, the majority demanded a kind of proof that is institutionally unavailable. Thus, in the McClesky decision, by insisting on a narrative of explicit articulated discrimination, the court calls for a kind of narrative truth that court procedures institutionally impede. As these examples suggest, a reliance on or demand for narrativity is neither unusual nor subversive within legal settings. In fact, given the ideological commitment to individualized justice and case-by-case processing that characterizes our legal system, narrative, relying as it often does on the language of the particular and subjective, **may more often operate to sustain, rather than subvert, inequality and injustice**. The law's insistent demand for personal narratives achieves a kind of radical individuation that disempowers the teller by effacing the connections among persons and the social organization of their experiences. This argument is borne out if we consider that being relieved of the necessity, and costs, of telling a *story* can be seen as liberatory and collectively empowering. Insofar as particular and subjective narratives reinforce a view of the world made up of autonomous individuals interacting only in immediate and local ways, they may hobble collective claims and solutions to social inequities (Silbey 1984). In fact, the progressive achievements of workers' compensation, no-fault divorce, no-fault auto insurance, strict liability, and some consumer protection regimes derive directly from the provision of legal remedies without the requirement to produce an individually crafted narrative of right and liability.

#### **Advocacy which prioritizes personal experience makes public deliberation impossible – opponents don’t have room to speak because any challenge is reduced to a personal attack**

Subotnik 98 – Professor of Law, Touro College, Jacob D. Fuchsberg Law Center. 7 Cornell J. L. & Pub. Pol'y 681

Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that the minority scholar himself or herself hurts and hurts badly.

An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [\*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, "I hurt bad"? n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74

"Precarious." "Obliterating." These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition. n77

 [\*696] Last, as we have seen, it precludes the possibility of open and structured conversation with others. n78 [\*697] It is because ofthis conversation-stopping effect of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny.

If through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of cynicism in white audiences which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. It drives the American public to the rightand ensures that anything CRT offers is reflexively rejected.

In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are too important in their implications  [\*698]  for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of great importance that white thinkers and doers participate in open discourse to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

This turns the case—allowing them to universalize the experience of the oppressed grants them ownership over experience for the purpose of a ballot. This silences the oppressed they attempt to liberate.

Donofrio 2010 – doctoral fellow in the Department of Communication at the University of Maryland (Theresa Ann, “Ground Zero and Place-Making Authority: The Conservative Metaphors in 9/11 Families’ ‘‘Take Back the Memorial’’ Rhetoric,” Western Journal of Communication Vol. 74, No. 2, March–April 2010, pp. 150–169)

Regardless of the 9/11 family members’ success in emblazoning such a narrative of innocence onto the memorial at Ground Zero, their endeavors to attain placemaking authority raise larger questions about where the authority to transform space to place ultimately lies and illustrates the tensions between top-down and bottom-up approaches to defining place. Traditionally, we expect that space is transformed into place from the top down. The victors in warfare carve up disputed territories. Legislators gerrymander districts. Yet, place-making authority is not always located in positions of power. For example, environmental activists advance claims to placemaking authority in battling hegemonic discourses of industrialization over their conceptions of nature as a place (DeLuca 76–77).

In terms of other memorial efforts, John Bodnar cites the struggle over the Vietnam Veterans Memorial as a representative anecdote showcasing the tension between official and vernacular expressions of public memory. Official expressions of public memory account for the viewpoints that emanate from those in positions of power or authority while vernacular expressions represent ‘‘specialized interests’’ (14). As a result of this tension’s role in shaping the face of public memorials, Bodnar argues to speak of public memory is to speak ‘‘primarily about the structure of power in society’’ (15). The mnemonic battles over Ground Zero exemplify this power struggle between the official and the vernacular or the top-down and bottom-up approaches to defining place. Though TBM activists seek the power to define place from the disempowered position of loss, ultimately their memorial efforts will only be successful insofar as they are recognized by the powers that possess the literal— not the metaphoric—ownership rights to the site.

Still, what remains unique to TBM activists is the extent to which their authority is derived from subjectivities of suffering, meriting critical attention to the ways in which rhetorical tropes of suffering function ideologically. Those thought to be suffering—and particularly individuals who are in the throes of grief—are ceded privileged status as their claims become unassailable in many respects. When advocates operate from a subjectivity of suffering, the ethos of their argument is bound up in their personal experience of loss. As a result of such conflation, to challenge the argument of the sufferer is to border on declaring their feelings illegitimate. Few viable means of countering arguments advanced from subjectivities of suffering exist because of the leeway culturally afforded to the bereaved in making meaning of their loss coupled with the general poignancy of their discourse. By contrast, those who do attempt to offer challenges concerning how the bereaved make meaning of loss (in this instance, the commercial, political, and academic voices) are more easily refuted for their acts of effrontery in failing to acknowledge the authority of the sufferer to make meaning of tragedy.

But what TBM members are producing is not idiosyncratic meaning of 9/11, they are offering their interpretation of the event as the appropriate way of collectively understanding the attacks. Herein is where the authority ceded to the sufferer is rendered problematic. Of course, each individual should be afforded the latitude to make meaning of loss howsoever he or she pleases; yet to claim my experience with suffering trumps the voices of ‘‘non-sufferers’’ is to shut down discourse and foreclose alternative means of understanding traumatic events. 9/11 must be understood as more than the aggregate of nearly three thousand individual deaths. To read the event through such a lens is to lapse into the process of historical and political abstraction and the promotion of rhetorics of American innocence and blamelessness (Sturken, Tourists of History). To be sure, the voices of those suffering demand an ear, but to conclude they are the only voices—or even the chief voices—meriting consideration is to truncate our ways of understanding trauma.

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

Scott 92 (Joan, Harold F. Linder Professor at the School of Social Science in the Institute for Advanced Study in Princeton, “Multiculturalism and the Politics of Identity,” October Summer p. 16-19)

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

### Framework Cards

#### Difficulty outweighs – process is more important that product– multiple philosophical perspectives conclude value is not gained by external goals

Hurka 6 – philosopher who serves as the Jackman Distinguished Chair in Philosophical Studies at the University of Toronto (Thomas, 2006, "Games and the Good," Proceedings of the Aristotelian Society, Supplementary Volume 80, http://homes.chass.utoronto.ca/~thurka/docs/pass\_games.pdf)

But a good that is not fundamental can nonetheless be paradigmatic, because it gives the clearest possible expression of a certain type of value. If difficult activities are as such good, they 14 must aim at a goal: it is achieving that which is challenging. But their value does not derive from properties of that goal considered in itself, depending instead on features of the process of achieving it. Yet this can be obscured if the goal is independently good, since then the activity, if successful, will be instrumentally good, and this can seem the most important thing about it. If the farmer who works by hand successfully harvests a crop, his work contributes to the vital good of feeding his family, and this can distract us from the value it has in itself. But there is no such danger if the goal is intrinsically valueless, as it most clearly is in games. Since a game’s prelusory goal – getting a ball into a hole in the ground or standing atop a mountain – is intrinsically trivial, the value of playing the game can depend only on facts about the process of achieving that goal. And this point is further emphasized by the lusory attitude, which chooses that process just as a process, since it willingly accepts rules that make achieving the goal harder. Game-playing must have some external goal one aims at, but the specific features of this goal are irrelevant to the activity’s value, which is entirely one of process rather than product, journey rather than destination. This is why playing in games gives the clearest expression of a modern as against an Aristotelian view of value: because modern values are precisely ones of process or journey rather than of the end-state they lead to. The contrary Aristotelian view, which denigrates these values, was expressed most clearly in Aristotle’s division of all activities into the two categories of kinesis and energeia and his subsequent judgements about them.13 An Aristotelian kinesis – often translated as “movement” – is an activity aimed at a goal external to it, as driving to Toronto is aimed at being in Toronto. It is therefore brought to an end by the achievement of that goal, which means that a kinesis can be identified by a grammatical test: if the fact that one has X-ed implies that one is no 15 longer X-ing, as the fact that one has driven to Toronto implies that one is no longer driving there, then X-ing is a kinesis. But the main point is that a kinesis aims at an end-state separate from it. By contrast, an energeia – translated variously as “actuality,” “activity,” or “action” – is not directed at an external goal but has its end internal to it. Contemplation is an energeia, because it does not aim to produce anything beyond itself, as is the state of feeling pleased. And energeiai do not pass the above grammatical test and therefore, unlike kineseis, can be carried on indefinitely: that one has contemplated does not imply that one is not contemplating now or will not continue to do so. Contemplation, like driving to Toronto, is an activity, but it does not aim to produce anything apart from itself. Now, Aristotle held that energeiai are more valuable than kineseis, so the best human activities must be ones that can be carried on continuously, such as contemplation. This is because he assumed that the value of a kinesis must derive from that of its goal, so its value is subordinate and even just instrumental to that of the goal. As he said at the start of the Nicomachean Ethics, “Where there are ends apart from the actions, it is the nature of the products to be better than the activities.”14 But it is characteristic of what I am calling modern values to deny this assumption, and to hold that there are activities that necessarily aim at an external goal but whose value is internal to them in the sense that it depends entirely on features of the process of achieving that goal. Suits cites expressions of this modern view by Kierkegaard, Kant, Schiller, and Georg Simmel,15 but for an especially clear one consider Marx’s view that a central human good is transforming nature through productive labour. This activity necessarily has an external goal – one cannot produce without producing some thing – and in conditions of scarcity this goal will be something vital for humans’ survival or comfort. But Marx held that 16 when scarcity is overcome and humans enter the “realm of freedom” they will still have work as their “prime want,” so they will engage in the process of production for its own sake without any interest in its goal as such. Or consider Nietzsche’s account of human greatness. In an early work he said the one thing “needful” is to “give style to one’s character,” so its elements are unified by “a single taste,” and that it matters less whether this taste is good or bad than whether it is a single taste.16 Later he said the will to power involves not the “multitude and disgregation” of one’s impulses but their coordination under a single predominant impulse.17 In both discussions he deemed activities good if they involve organizing one’s aims around a single goal whatever that goal is. So for both Marx and Nietzsche a central human good was activity that on the one side is necessarily directed to a goal but on the other derives its value entirely from aspects of the process of achieving it. This is why the type of value they affirm is paradigmatically illustrated by playing in games; when one’s goal is trivial, the only value can be that of process. Marx and Nietzsche would never put it this way, but what each valued is in effect playing in games, in Marx’s case the game of material production when there is no longer any instrumental need for it, in Nietzsche’s the game of exercising power just for the sake of doing so.

#### This is a trump impact—it improves all aspects of life regardless of its specific goals

Shulman 9, president emeritus – Carnegie Foundation for the Advancement of Teaching, (Lee S, Education and a Civil Society: Teaching Evidence-Based Decision Making, p. ix-x)

These are the kinds of questions that call for the exercise of practical reason, a form of thought that draws concurrently from theory and practice, from values and experience, and from critical thinking and human empathy. None of these attributes is likely to be thought of no value and thus able to be ignored. Our schools, however, are unlikely to take on all of them as goals of the educational process. The goal of education is not to render practical arguments more theoretical; nor is it to diminish the role of values in practical reason. Indeed, all three sources—theoretical knowledge, practical knowhow and experience, and deeply held values and identity—have legitimate places in practical arguments. An educated person, argue philosophers Thomas Green (1971) and Gary Fenstermacher (1986), is someone who has transformed the premises of her or his practical arguments from being less objectively reasonable to being more objectively reasonable. That is, to the extent that they employ probabilistic reasoning or interpret data from various sources, those judgments and interpretations conform more accurately to well-understood principles and are less susceptible to biases and distortions. To the extent that values, cultural or religious norms, or matters of personal preference or taste are at work, they have been rendered more explicit, conscious, intentional, and reflective. In his essay for this volume, Jerome Kagan reflects the interactions among these positions by arguing: We are more likely to solve our current problem, however, if teachers accept the responsibility of guaranteeing that all adolescents, regardless of class or ethnicity, can read and comprehend the science section of newspapers, solve basic mathematical problems, detect the logical coherence in non-technical verbal arguments or narratives, and insist that all acts of maliciousness, deception, and unregulated self-aggrandizement are morally unacceptable. Whether choosing between a Prius and a Hummer, an Obama or a McCain, installing solar panels or planting taller trees, a well-educated person has learned to combine their values, experience, understandings, and evidence in a thoughtful and responsible manner. Thus do habits of mind, practice, and heart all play a significant role in the lives of citizens.

#### Competitive game model would reform the state to help resolve inequality – only maintained by rules clearly defined by the judge

Carter 8 – prof @ The Colorado College, research support from the Rockefeller Foundation and the staff of the Villa Serbelloni, Bellagio, Italy, the Institute of Governmental Studies at the University of California, Berkeley, and the Benezet Foundation at The Colorado College (Lief H, 2008, "LAW AND POLITICS AS PLAY," Chicago-Kent Law Review, 83(3), http://www.cklawreview.com/wp-content/uploads/vol83no3/Carter.pdf)

If the United States approached domestic politics the way sports league commissioners, team owners, and rules committees work to equalize competition, Americans would, for the same self-interested motives, seek to level the political and social playing fields. They would insure that less-advantaged children received the same quality of education and health care as do otherwise more-advantaged children. They would no more perpetuate the tax policies and social programs that profoundly skew wealth distribu-tion toward the rich than sports leagues would allow winning teams to face only weak opponents on their schedules.141 A society that aspired to noth-ing more than good competitive legal and political games among its people would not question the propriety of taxing large wealth transfers by those whose wealth greatly exceeds the average.142 In international trade, wealthy nations, for their own self-interest, would treat developing nations as the Marshall Plan sought to bring the economies of Europe, devastated after World War II, effectively into the competitive economic game.143 A community that sought no more than to promote good economic competi-tion among producing nations would not at the same time prevent develop-ing countries from competing to sell their agricultural products at lower costs in world markets by wastefully subsidizing the more costly produc-tion of the same commodities at home. Precision of rules and unquestioned authority of judges: Substantive legal rules can seem notoriously ambiguous when compared to the codified rules of organized sports, but this is misleading.144 By the principle that “you can’t play the game without agreeing on the rules,” Roberts’ Rules of Order and the sometimes arcane accumulation of rules of procedure in legislative chambers precisely structure legislative tactics and debate just as The Bluebook: A Uniform System of Citation structures formal written legal advocacy and the rules of evidence and procedure govern formal litigation. More significantly, political and social play, like organized sports, requires regulatory and judicial independence from the “democratic game” itself. Fareed Zakaria recently reviewed for a general audience the horror sto-ries—the election of Hitler, for example—produced by popular democracy and suggests that other dynamics, and particularly “the rule of law,” con-tribute more to progressive government than does popular democracy it-self.145 Just as umpires, referees, and rules committees act outside competitive play, so a good political game depends on popular trust in the impartiality of judicial and regulatory decision making. The Federal Re-serve Board, the independent regulatory commissions, and ideally the judi-ciary itself, play the critical role of political and economic rules committees effectively only if they do not operate democratically but rather off the playing field altogether. Indeed, given the indeterminacy of substantive principles of morality and justice, rules committees—a category that includes courts of law in common law legal systems—can only be said to act sensibly when they rule (using the good-game criteria noted above) so as to make the game a better game, and not by “seeking justice.” Good political games, hence, require something like the wrongly ma-ligned practice of “judicial activism,” where judges, like calls of umpires and referees, make the rules of the game clear in the moment of play. South Dakotan voters presumably sensed the importance of independent judicial authority when they rejected, by a ratio of nearly nine to one, the proposal on their 2006 ballots to allow a person to sue judges for rendering decisions that he or she didn’t like.146 When the United States Supreme Court issued its deeply flawed result in Bush v. Gore,147 the loser, Gore, and most Americans, accepted the result and moved on.148 The Bush administra-tion’s attempt to justify a “unitary executive” power to operate independent of legal checks from the other political branches is the equivalent of a bat-ter insisting that he, having the power to define the strike zone and dis-agreeing with the umpire’s called third strike on a 3–2 count, trots to first base. The administration’s unitary executive claim, and its patterned disre-gard of legality more generally, ignores an unbroken line of precedents balancing Article I’s legislative powers with those of the executive in Arti-cle II going back to 1804.149

#### 1. The resolution is supposed to be controversial so as to spark intellectual conflict – this is an essential part of learning

Johnson & Johnson 9 – professor in the Department of Educational Psychology, University of Minnesota and professor in the Department of Curriculum and Instruction, University of Minnesota (David W. and Roger T., Jan/Feb 2009, "Energizing Learning: The Instructional Power of Conflict," Educational Researcher, 38(37), Ebsco)

Whether teachers desire it or not, conflicts among students inevitably will occur in any classroom. The purpose of this article is to present evidence that intellectual conflict is not only highly desirable but also an essential instructional tool that energizes student efforts to learn. In doing so, it is necessary to summarize the conflicting views about conflict, define constructive controversy, describe how it is used in academic situations, summarize its underlying theory, and review the research demonstrating its effectiveness. Is Conflict Constructive or Destructive? Conflict Is Constructive Conflict is to student learning what the internal combustion engine is to the automobile. The internal combustion engine ignites the fuel and the air with a spark to create the energy for movement and acceleration. Just as the fuel and the air are inert without the spark, so, ideas in the classroom are inert without the spark of intellectual conflict. Intellectual conflict is the spark that energizes students to seek out new information and study harder and longer (Johnson, Johnson, & Johnson, 1976; Johnson & Johnson, 2007; please note that all references to “Johnson & Johnson” refer to D. W. Johnson and R. Johnson unless otherwise indicated.). By structuring intellectual conflict in a lesson, instructors can grab and hold students’ attention and energize students to learn at a level beyond what they may have intended. More specifically, intellectual conflict has the potential to accomplish the following: 1. Focus student attention on the material to be learned and on the instructional tasks. 2. Energize students to complete instructional tasks, seek out new information, and study harder and longer. 3. Motivate students to learn and to continue learning about the subject after the course has ended. 4. Produce higher levels of cognitive reasoning in completing the instructional tasks. 5. Increase accuracy and frequency of perspective taking. 6. Produce higher levels of achievement and retention of the material being studied. 7. Produce higher levels of creativity and divergent thinking. 8. Build more positive relationships among students. 9. Increase students’ self-esteem. (Johnson & Johnson, 2005b, 2007)

#### Poetry is fluid and has no criteria for evaluation

Bleiker 2k (Roland, Senior Lecturer – U Queensland, Popular Dissent, Human Agency, and Global Politics, p. 271)

But how can something as inaudible as transversal poetic dissent possibly be evaluated? How can a form of resistance that engages linguistic and discursive practices be judged or merely be understood, by the very nexus of power and knowledge it seeks to distance itself from? These difficult questions beg for complex answers. I do not claim to have solved them here, nor do I believe that they can actually be solved, at least not in an absolute and definitive way. The impact of discursive dissent on transversal social and political dynamics is mediated through tactical and temporal processes. A poem, for instance, does not directly cause particular events, it does not visualize an opponent in space and time. A linguistic expression of dissent works by insinuating itself into its target—the population at large—without taking it over, but also without being separated from it. Even the agent becomes gradually blurred. The effect of a poem cannot be reduced to its author or even to the poem itself. Those who have read it my have passed altered knowledge on to other people, and thus influenced the transversal constitution of societal values.

#### Forces judge intervention --- evaluating the content of music is fuzzy and subjective

Marxy 4 (“The Mechanical Coldness of Music Rankings and Evaluation”, Neomarxisme, 11-14, http://www.pliink.com/mt/marxy/archives/2004/11/the-mechanical.html)

Taking this into account, the Japanese would believe there is something fuzzy and chaotic about subjective review systems. I tend to believe that writers fear to engage in subjectivity because they may offend a company that advertises, but Nakane's example seems to suggest that the review system itself has become victim to the mechanization of Japan's strive towards modernity. Mechanization requires rational order, and order requires breaking down all unquantifiable parts of culture and recontextualizing them in a way they can be measured scientifically. This mathematical approach to industry, and ultimately culture, is why I refer to Japan as a "content-less" society. Starting in the 50s, the Japanese imported popular music directly from America, and since they had no pre-existing examples of these new melodic forms and rhythms, they had to copy songs as best as they could to recreate their own versions. Imitation is a dirty word in English, but if anybody anywhere were handed some new weird form of art and told to make something in that style with no indications of context, they too would most likely be forced to imitate the originals until getting comfortable with the conventions. In this process of mechanical imitation, the song must be dismantled into smaller, quantifiable chunks: chord progression, tempo, instrumentation, rhythm, and melodic form. Content is the fuzzy, subjective part of art work. What is a song about? This is different for each person. What does the song feel like? Same answer. What kind of melodic range does the song have? This can be mapped out and directly imitated. Thus, the melodic and lyrical content - which in the West are considered a song's soul - can be mechanically analyzed and recreated once fully understood in quantitative terms. Content must be changed into form in order to make content. The question is, can you go from analog waves to digital coding to back again? No, the original information approximated in the encoding process is gone forever.

#### . Game education has no aims but provides an end in itself

Haghoj 8 – PhD, affiliated with Danish Research Centre on Education and Advanced Media Materials, asst prof @ the Institute of Education at the University of Bristol (Thorkild, 2008, "PLAYFUL KNOWLEDGE: An Explorative Study of Educational Gaming," PhD dissertation @ Institute of Literature, Media and Cultural Studies, University of Southern Denmark, http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf)

One of Gee and Shaffer’s main arguments for teaching with games is that this form of education represents a valuable alternative to the political and empirical reality of an American educational context. Thus, Gee and Shaffer’s work is strongly driven by a critique of educational policies that demand that the organisation and assessment of student learning rely on standardised testing. In a joint article, Gee and Shaffer argue that political discussions on educational goals suffer from a dichotomy between the discourse of “liberals” and “conservatives” (Gee & Shaffer, 2005). Thus, liberals advocate “pedagogies that immerse children in rich activities and focus on the learners’ own goals and backgrounds” (Gee & Shaffer, 2005: 11). Even though these pedagogies are “empowering”, they are also difficult to master for children who lack resources and are unable to “pick up the rules of the game at home and use liberal schooling as fruitful and empowering practice ground”. In contrast to the liberals, conservatives tend to advocate “back to the basics” and “standardized testing”, which fails to build “expertise and innovation” (Gee & Shaffer, 2005: 11). Gee and Shaffer then argue that educational games can be used to overcome both the liberalists’ “progressive reform” and the conservatives’ “back to the basics”. Epistemic frameworks provide meaningful goals and structures that can be used to develop “post-progressive pedagogies of practice”. In this way, they assume that students are able to become “innovators” and meet the demands of the post-industrial knowledge society: Epistemic games of all kinds make it possible for students of all ages to learn by working as innovators. In playing epistemic games, students learn basic skills, to be sure. They learn the “facts” and “content” that we currently reward. But in epistemic games students learn facts and content in the context of innovative ways of thinking and working. They learn in a way that sticks, because they learn in the process of doing things that matter (Gee & Shaffer, 2005: 24). As this quote shows, Gee and Shaffer’s view of educational games is remarkably close to Dewey’s assumption that play and games can be used to create meaningful and valuable learning 39 environments. Furthermore, their attempt to overcome the dichotomy between “liberalists” and ”conservatives” echoes Dewey’s attempts to reconcile the debate between progressive education, which is focused on “development from within”, and traditional forms of education, which is guided by “formation from without” (Dewey, 1938b: 5). However, Dewey’s pragmatism differs markedly from Gee and Shaffer in relation to the aims of education. For Gee and Shaffer, teaching with games enables students to become “innovators”, which may help solve the American economic crisis (Gee & Shaffer, 2005). But for Dewey, the aims of education cannot be narrowed down to solving a specific political problem: “education as such has no aims. Only persons, parents, and teachers, etc. have aims, not an abstract idea like education” (Dewey, 1916: 114). Instead, the overall aim of education is defined as “growth”: Since growth is the characteristic of life, education is all one with growing; it has no end beyond itself. The criterion of the value of school education is the extent in which it creates a desire for continued growth and supplies means for making the desire effective in fact (Dewey, 1916: 58). Following Dewey’s pragmatist philosophy, it is meaningless to stake out universal political goals for education and educational gaming as these phenomena are highly variable in relation to particular teachers, games, students and educational contexts. Similarly, this study does not attempt to answer the overall question of why we should teach with games as it requires not one but a multitude of different answers. Instead, the aim is a critical investigation of the mutual relationship between the “ends” and “means” of educational gaming; between what is desirable and what is achievable by focusing empirically on a particular game in a particular school context (Biesta & Burbules, 2003: 76-81).

#### Prefer specificity—simulation about war powers legal discussions is uniquely empowering – can prevent abuse

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

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

#### The resolution exists to create balanced difficulty, creating a topic that is supposed to be moral and controversial – games requires acceptance of rules whose purpose is to forbid the easiest means to a goal – this makes the game meaningful

Hurka 6 – philosopher who serves as the Jackman Distinguished Chair in Philosophical Studies at the University of Toronto (Thomas, 2006, "Games and the Good," Proceedings of the Aristotelian Society, Supplementary Volume 80, http://homes.chass.utoronto.ca/~thurka/docs/pass\_games.pdf)

I take this admiration to rest on the judgement that excellence in games is good in itself, apart from any pleasure it may give the player or other people but just for the properties that make it excellent. The admiration, in other words, rests on the perfectionist judgement that skill in games is worth pursuing for its own sake and can add value to one’s life. This skill is not the only thing we value in this way; we give similar honours to achievements in the arts, science, and business. But one thing we admire, and to a significant degree, is excellence in athletic and nonathletic games. Unless we dismiss this view, one task for philosophy is to explain why such excellence is good. But few philosophers have attempted this, for a well-known reason. A unified explanation of why excellence in games is good requires a unified account of what games are, and many doubt that this is possible. After all, Wittgenstein famously gave the concept of a game as his primary example of one for which necessary and sufficient conditions cannot be given but whose instances are linked only by looser “family resemblances.”2 If Wittgenstein was right about this, 2 there can be no single explanation of why skill in games is good, just a series of distinct explanations of the value of skill in hockey, skill in chess, and so on. But Wittgenstein was not right, as is shown in a little-known book that is nonetheless a classic of twentieth-century philosophy, Bernard Suits’s The Grasshopper: Games, Life and Utopia. Suits gives a perfectly persuasive analysis of playing a game as, to quote his summary statement, “the voluntary attempt to overcome unnecessary obstacles.”3 And in this paper I will use his analysis to explain the value of playing games. More specifically, I will argue that the different elements of Suits’s analysis give game-playing two distinct but related grounds of value, so it instantiates two related intrinsic goods. I will also argue that game-playing is an important intrinsic good, which gives the clearest possible expression of what can be called a modern as against a classical, or more specifically Aristotelian, view of value. But first Suits’s analysis. It says that a game has three main elements, which he calls the prelusory goal, the constitutive rules, and the lusory attitude. To begin with the first, in playing a game one always aims at a goal that can be described independently of the game. In golf, this is that a ball enter a hole in the ground; in mountain-climbing, that one stand on top of a mountain; in Olympic sprinting, that one cross a line on the track before one’s competitors. Suits calls this goal “prelusory” because it can be understood and achieved apart from the game, and he argues that every game has such a goal. Of course, in playing a game one also aims at a goal internal to it, such as winning the race, climbing the mountain, or breaking par on the golf course. But on Suits’s view this “lusory” goal is derivative, since achieving it involves achieving the prior prelusory goal in a specified way. This way is identified by the second element, the game’s constitutive rules. According to 3 Suits, the function of these rules is to forbid the most efficient means to the prelusory goal. Thus, in golf one may not carry the ball down the fairway and drop it in the hole by hand; one must advance it using clubs, play it where it lies, and so on. In mountain-climbing one may not ride a gondola to the top of the mountain or charter a helicopter; in 200-metre sprinting, one may not cut across the infield. Once these rules are in place, success in the game typically requires achieving the prelusory goal as efficiently as they allow, such as getting the ball into the hole in the fewest possible strokes or choosing the best way up the mountain. But this is efficiency within the rules, whose larger function is to forbid the easiest means to the game’s initial goal. These first two elements involve pursuing a goal by less than the most efficient means, but they are not sufficient for playing a game. This is because someone can be forced to use these means by circumstances he regrets and wishes were different. If this is the case – if, for example, a farmer harvests his field by hand because he cannot afford the mechanical harvester he would much rather use – he is not playing a game. Hence the need for the third element in Suits’s analysis, the lusory attitude, which involves a person’s willingly accepting the constitutive rules, or accepting them because they make the game possible. Thus, a golfer accepts that he may not carry the ball by hand or improve his lie because he wants to play golf, and obeying those rules is necessary for him to do so; the mountaineer accepts that he may not take a helicopter to the summit because he wants to climb. The restrictions the rules impose are adhered to not reluctantly but willingly, because they are essential to the game. Adding this third element gives Suits’s full definition: “To play a game is to attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by the rules ..., where the rules prohibit the use of more efficient in favour of less efficient means [constitutive rules], and where the rules are 4 accepted just because they make possible such activity [lusory attitude].” Or, in the summary statement quoted above, “playing a game is the voluntary attempt to overcome unnecessary obstacles.”4 This analysis will doubtless meet with objections, in the form of attempted counterexamples. But Suits considers a whole series of these in his book, showing repeatedly that his analysis handles them correctly, and not by some ad hoc addition but once its elements are properly understood. Nor would it matter terribly if there were a few counterexamples. Some minor lack of fit between his analysis and the English use of “game” would not be important if the analysis picks out a phenomenon that is unified, close to what is meant by “game,” and philosophically interesting. But the analysis is interesting if, as I will now argue, it allows a persuasive explanation of the value of excellence in games. Suits himself addresses this issue of value. In fact, a central aim of his book is to give a defence of the grasshopper in Aesop’s fable, who played all summer, against the ant, who worked. But in doing so he argues for the strong thesis that playing games is not just an intrinsic good but the supreme such good, since in the ideal conditions of utopia, where all instrumental goods are provided, it would be everyone’s primary pursuit. The grasshopper’s game-playing, therefore, while it had the unfortunate effect of leaving him without food for the winter, involved him in the intrinsically finest actvity. Now, I do not accept Suits’s strong thesis that gameplaying is the supreme good – I think many other states and activities have comparable value – and I do not find his arguments for it persuasive. But I will connect the weaker thesis that playing games is one intrinsic good to the details of his analysis more explicitly than he ever does.

## Neg v. Emory – 1NC

### 1 – T

#### Restrictions are prohibitions on action --- the aff is a reporting requirement

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

#### And plan requires an account of presidential decisions – that’s the internal link to advantage 1 – justifies any extra steps to the plan and kills neg ground due to intricacies – this isn’t a restriction and extra T is an independent voter

### 2 – Immigration Reform Ptx

#### Immigration reform likely to pass – Obama pushing, GOP support increasing, activists pressing the issue, strong bipartisan support means enactment

Lopez 1/1/14 (Oscar, Latin Times, "New Year 2014: 4 Reasons Immigration Reform Will Pass In 2014," http://www.latintimes.com/new-year-2014-4-reasons-immigration-reform-will-pass-2014-141778)

Immigration reform is set to be the key issue of 2014. Following Mitt Romney's dismal performance among Latino voters in the 2012 election, both sides of the Government woke up to the necessity for comprehensive reform on immigration. Indeed, in his State of the Union address in February, President Obama declared that “the time has come to pass comprehensive immigration reform.” Yet with the House divided over Obamacare and the budget crisis, the Government Shutdown let immigration reform die. 2014 will change that: and here are 4 Reasons Why.¶ 1. Republican Support: A fundamental lack of support from the GOP has always been one of the major obstacles for passing comprehensive reform legislation, and indeed this seemed to be the case this year after the Bill passed by the Senate was struck down by Congress. However, more and more GOP members are realizing the significance of the Latino vote and understanding that passing comprehensive immigration reform is the most significant way of securing support from Latino voters. ¶ A July poll from Latino Decisions found that immigration reform was the most important issue facing the Latino community for 60 percent of those surveyed. The poll also found that 70 percent of those questioned were dissatisfied with the job Republicans were doing on the issue. The survey also found the 39 percent would be more likely to support a Republican congressional candidate if immigration reform was passed with Republican leadership. ¶ Republican candidates have become aware of the significance of immigration reform for the party. Even in traditionally conservative Republican strongholds like Texas, candidates are turning towards immigration reform. According to Republican strategist and CNN en Español commentator Juan Hernandez, "it also wouldn’t surprise me if after the primary, the candidates move to the center and support reform. For Republicans to stay in leadership in Texas, we must properly address immigration.”¶ The March 2014 primaries will be a key moment in determining how reform progresses: Republican Strategist John Feehery suggests, “The timing on this is very important. What was stupid to do becomes smart to do a little bit later in the year.” Once the primaries are over, GOP members will have the chance to implement reform legislation without fear of challenges from the right. ¶ 2. Legalization Over Citizenship: While the Senate’s 2013 immigration reform bill was struck down by Congress, GOP party members have indicated that they will support legislation which favors legalization of undocumented immigrants over a path to citizenship.¶ Meanwhile, a recent survey from Pew Research Hispanic Trends Project demonstrated that 55 percent of Hispanic adults believe that legalizing immigrants and removing the fear of deportation is more important than a pathway to citizenship (although citizenship is still important to 89 percent of Latinos surveyed.)¶ As CBS suggests, “Numbers like these could give leverage to lawmakers who are interested in making some reforms to the legal immigration system, but not necessarily offering any kind of citizenship.”¶ If House Republicans offered legalization legislation for the undocumented community, this could put pressure on the President to compromise. And while this kind of reform would not be as comprehensive as the Senate’s bill, a bipartisan agreement would be a significant achievement towards accomplishing reform.¶ 3. Activism Steps Up: 2013 saw one of the biggest surges in grassroots activism from immigration supporters, and political leaders started to listen. The hunger strike outside the White House was a particularly significant demonstration and drew visits of solidarity from a number of leaders from both sides of Congress, including the President and First Lady.¶ Immigration reform activists have promised "we will be back in 2014." Indeed, 2014 promises to be a year of even greater activism. Activist Eliseo Medina has pledged that immigrant advocacy groups would visit “as many congressional districts as possible” in 2014 to ensure further support.¶ Protests, rallies and marchers are likely to increase in 2014, putting greater pressure on Congress to pass legislation. Such visual, vocal protests will be key in ensuring comprehensive reform.¶ 4. Leadership: As immigration reform comes to the fore, party leaders will step up in 2014 to ensure change is achieved. While President Obama has made clear his support for comprehensive reform, House Speaker John Boehner previously stated that he had “no intention” of negotiating with the Senate on their comprehensive immigration bill. ¶ However, towards the end of 2013, it seemed that Representative Boehner was changing his tune. In November, President Obama revealed that “the good news is, just this past week Speaker Boehner said that he is “hopeful we can make progress” on immigration reform.” As if to prove the point, Boehner has recently hired top aide Rebecca Tallent to work on immigration reform.¶ With bipartisan leadership firmly focused on immigration reform and party members on both sides realizing the political importance of the issue, comprehensive legislation is one thing we can be sure of in 2014.

#### OCO’s are extremely controversial and require significant political capital

Costigan and Perry 12 (Sean S. – Senior adviser for the Emerging Security Challenges Working Group. In 2010 he was a visiting fellow at the University of Calcutta's Institute of Foreign Policy Studies, and Jake, “Cyberspaces and Global Affairs”, 2012, pg 12, Google Books)

Much less is known about the U.S. military's offensive cyber capabilities which remain highly classified. A recent report in the New York Times reveals that there has been a "huge increase in the sophistication of American cyberwarfare" tactics (Sanger and Markoff 2009). The most exotic innovations under consideration would enable a Pentagon programmer to surreptitiously enter a computer server in Russia or China, for example, and destroy a “botnet” — a potentially destructive program that commandeers infected machines into a vast network that can be clandestinely controlled — before it could be unleashed in the United States. Or American intelligence agencies could activate malicious code that is secretly embedded on computer chips when they are manufactured, enabling the United States to take command of an enemy’s computers by remote control over the Internet. That, of course, is exactly the kind of attack officials fear could be launched on American targets, often through Chinese-made chips or computer servers. Issues like government-sanctioned hacking of foreign networks and pre-emptive cyber operations were so thorny that the Bush administration concluded they lacked "the credibility or the political capital to deal with the subject" (Sanger and Markoff 2009).

#### Reform Solves inevitable economic collapse

Ozimek 2/7/13 (Adam, Contributor, “Does An Aging Population Hurt The Economy?” Forbes, 2013, http://www.forbes.com/sites/modeledbehavior/2013/02/07/does-an-aging-population-hurt-the-economy/)

The economic benefit of immigration is in part about how big of a problem our aging population is. Immigrants are in general younger, and our best way to fight against a growing ratio of retirees to workers. But this raises the question of how big of a problem is this ratio and our aging population in general. While many are concerned about this, Dean Baker argues it is not a problem. He agrees that the ratio has increased and will continue to increase in the future as the population ages, but he argues that we haven’t seen any problems yet so we won’t see any later: We have already seen a sharp decline in the ratio of workers to retirees, yet even people who follow the economy and economic policy closely, like Klein, were apparently not even aware of this fact. Since this decline is never cited as factor causing our current economic problems, why would we think the comparatively mild decline in this ratio projected for future decades will be a large burden? Dean is wrong that the ratio of workers to retirees is not cited as a factor in the current economic problems. The most prominent example comes from newly appointed Council of Economic Advisors member James Stock and his co-author Mark Watson. In their paper “Disentangling the Channels of the 2007-2009 Recession” they specifically cite demographic trends as a cause of our slow recovery. The variable Stock and Watson ultimately cite is the decline in labor force participation, and they argue it is driven by the aging of the workforce and the overall distribution of workers by age. Dean may argue that this technically isn’t the dependency ratio, but that would be quibbling: changes in these two measures capture the same basic economic phenomenon of the aging population and a lower percentage of the population working. Not only has the aging population contributed to the slow recovery, Stock and Watson argue there is good reason to believe it will mean slow recoveries in the future too: The main conclusion from this demographic work is that, barring a new increase in female labor force participation or a significant increase in the growth rate of the population, these demographic factors point towards a further decline in trend growth of employment and hours in the coming decades. Applying this demographic view to recessions and recoveries suggests that the future recessions with historically typical cyclical behavior will have steeper declines and slower recoveries in output and employment. Furthermore, this is just the impact of the aging population on business cycles, there is also the very serious problem of how it will affect our finances. Dean knows that by increasing the workforce immigration improves Social Security’s finances. In 2006 he wrote that if future immigration was at 2001-2002 levels instead of at around 900,000 per year it would reduce the Social Security trust fund’s long-term shortfall by 12%. A shortfall means we will reduce benefits or pay for it in higher taxes, and either are going to result in lower welfare for someone.

#### Global nuclear war

Harris & Burrows 9 (Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### 3 – XO CP

#### Text: The executive branch of the United States should issue and enforce and executive order to require the President of the United States to consult with Congress prior to the use of offensive cyber operations and require a prompt and full account of the use of offensive cyber operations by the United States. The United States federal government should comply with the mandates of the executive order.

#### Solves –

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

#### Executive commitment to transparency solves

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions. n94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political [\*904] preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence, n95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency -no one expects meetings of the National Security Council to appear on C-SPAN -but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

#### Obama’s war powers maintain his presidential power

Rozell 12

[Mark Rozell is Professor of Public Policy, George Mason University, and is the author of Executive Privilege: Presidential Power, Secrecy and Accountability, From Idealism to Power: The Presidency in the Age of Obama, 2012,, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>]

And yet, as Jack Goldsmith accurately details in his latest book, President Barack Obama not only has not altered the course of controversial Bush-era practices, he has continued and expanded upon many of them. On initiating war, as a candidate for the presidency in 2007, Obama said that “the president doesn’t have the power under the Constitution to unilaterally authorize a military attack,” yet that is exactly what he did in exercising the war power in Libya. He has also said that he will exercise the power to act on his own to initiate military action in Syria if it’s leader ever crosses the “red line” (i.e., use of chemical weapons). He has issued a number of signing statements that directly violate congressional intent. He has vastly expanded, far beyond Bush’s actions, the use of unconfirmed and unaccountable executive branch czars to coordinate policies and to make regulatory and spending decisions. The president has made expanded use of executive privilege in circumstances where there is no legal merit to making such a claim and he has abused the principle of the state secrets privilege. His use of the recess appointment power on many occasions has been nothing more than a blatant effort to make an end-run around the Senate confirmation process. He has continued, and expanded upon, the practice of militarily detaining persons without trial or pressing charges (on the condition that the detention is not “indefinite”). In a complete reversal of his past campaign rhetoric, the president on a number of occasions has declared his intention to act unilaterally on a variety of fronts, and to avoid having to go to Congress whenever he can do so. There are varied explanations for the president’s total reversals. The hard-core cynics of course simply resort to the “they all lie” explanation. Politicians of all stripes say things to get elected but don’t mean much of it. Recently I saw a political bumper sticker announcing “BUSH 2.0” with a picture of Obama. Many who enthusiastically supported Obama are profoundly disappointed with his full-on embrace of Bush-like unilateralism and this administration’s continuation of many of his predecessor’s policies. Goldsmith, a law professor who led the Department of Justice’s (DOJ) Office of Legal Counsel from October 2003 to June 2004, during George W. Bush’s first term, says that there were powerful forces at work in the U.S. governmental system that ensured that the president would continue many of the policies and practices of his predecessor. The president reads the daily terrorism threat reports, which has forced him to understand that things really do look differently from the inside. From this standpoint, Obama likely determined that many of Bush’s policies actually were correct and needed to be continued. “The personal responsibility of the president for national security, combined with the continuing reality of a frightening and difficult-to-detect threat, unsurprisingly led Obama, like Bush, to use the full arsenal of presidential tools,” writes Goldsmith. He further argues that Obama lacked leeway to change course in part because many of Bush’s policies “were irreversibly woven into the fabric of the national security architecture.” For example, former president Bush’s decision to use the Guantanamo detention facility created an issue for Obama that he otherwise never would have confronted. And the use of coercion on suspects made it too complicated to then employ civilian courts to try them. In perhaps the most telling example of the limits of effecting change, Obama could not end what Bush had started, even though the president issued an executive order (never carried out) to close the detention center. Here Goldsmith somewhat overstates his case. Obama was not necessarily consigned to following Bush’s policies and practices, although undoubtedly his options may have been constrained by past decisions. But consider the decision whether the government should have investigated and then taken action against illegal and unconstitutional acts by officials in the Bush Administration, particularly in the DOJ, NSA, and CIA. President Obama said it was time to look forward, not backward, thus sweeping all under the rug. Nothing “irreversibly woven” there, but rather the new president made a choice that he absolutely did not have to make. Finally, Goldsmith adds that Obama, like most of his predecessors, assumed the executive branch’s institutional perspective once he became president. If it is true about Washington that where you stand on executive powers depends on where you sit, then should it be any surprise that President Obama’s understanding differs fundamentally from Senator Obama’s? Honestly, I find that quite sad. Do the Constitution and principles of separation of powers and checks & balances mean so little that we excuse such a fundamental shift in thinking as entirely justified by switching offices? Goldsmith’s analysis becomes especially controversial when he turns to his argument that, contrary to the critiques of presidential power run amok, the contemporary chief executive is more hampered in his ability to act in the national interest than ever before. In 2002, Vice President Richard Cheney expressed the view that in his more than three decades of service in both the executive and legislative branches, he had witnessed a withering of presidential powers and prerogatives at the hands of an overly intrusive and aggressive Congress. At a time when most observers had declared a continuing shift toward presidential unilateralism and legislative fecklessness, Cheney said that something quite opposite had been taking place. Goldsmith is far more in the Cheney camp on this issue than of the critics of modern exercises of presidential powers. Goldsmith goes beyond the usual emphasis on formal institutional constraints on presidential powers to claim that a variety of additional forces also are weighing down and hampering the ability of the chief executive to act. As he explains, “the other two branches of government, aided by the press and civil society, pushed back against the Chief Executive like never before in our nation’s history”. Defenders of former president Bush decry what they now perceive as a double standard: critics who lambasted his over expansive exercises of powers don’t seem so critical of President Obama doing the same. Goldsmith makes the persuasive case that in part the answer is that Bush was rarely mindful of the need to explain his actions as necessities rather than allow critics to fuel suspicions that he acted opportunistically in crisis situations to aggrandize power, whereas Obama has given similar actions a “prettier wrapping”. Further, Obama, to be fair, on several fronts early in his first term “developed a reputation for restraint and commitment to the rule of law”, thus giving him some political leeway later on. A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms. Just as he describes how a seemingly once idealistic candidate for president as Barack Obama could see things differently from inside government, so too was Goldsmith at one time on the inside, and thus perhaps it is no surprise that he would perceive more strongly than other academic observers the forces that he believes are constantly hamstringing the executive. But he is no apologist for unfettered executive power and he takes to task those in the Bush years who boldly extolled theories of the unitary executive and thereby gave credibility to critics of the former president who said that his objective was not merely to protect the country from attack, but to empower himself and the executive branch. Goldsmith praises institutional and outside-of-government constraints on the executive as necessary and beneficial to the Republic. In the end, he sees the balance shifting in a different direction than many leading scholars of separation of powers. And unlike a good many presidency scholars and observers, he is not a cheerleader for a vastly powerful chief executive. Goldsmith’s work too is one of careful and fair-minded research and analysis. He gives substantial due to those who present a counter-view to his own, and who devote their skills and resources to battling what they perceive as abuses of executive power. Whereas they see dangers to an unfettered executive, Goldsmith wants us to feel safe that there are procedural safeguards against presidential overreaching, although he also wants us to be uncomfortable with what he believes now are intrusive constraints on the chief executive’s ability to protect the country. Goldsmith may be correct that there are more actors than ever involved in trying to trip up the president’s plans, but that does not mean that our chief executives are losing power and control due to these forces. Whether it is war and anti-terrorism powers, czars, recess appointments, state secrets privilege, executive privilege, signing statements, or any of a number of other vehicles of presidential power, our chief executives are using more and more means of overriding institutional and external checks on their powers. And by any measure, they are succeeding much more than the countervailing forces are limiting them.

#### Congressional statutes restricting executive war powers destroy broader presidential powers

Freeman 7 -- JD @ Yale Law School (Daniel J., 11/1/2007, "The Canons of War," Yale Law Journal 117(280), EBSCO)

Outside the confines of partisan absolutism, determining the scope of executive war power is a delicate balancing act. Contrasting constitutional prerogatives must be evaluated while integrating **framework statutes**, executive orders, and quasi-constitutional custom. The Supreme Court’s preferred abacus is the elegant three-part framework described by Justice Jackson in his concurrence to Youngstown Sheet & Tube Co. v. Sawyer.9 When the President and Congress act in concert, the action harnesses the power of both branches and is unlikely to violate the principle of separation of powers. When Congress has failed either to authorize or to deny authority, the action lurks in a “zone of twilight” of questionable power. **When the President and Congress act in opposition,** the President’s power is “at its lowest ebb,” and the action raises conspicuous concerns over the separation of powers.10 Therein lies the rub. Justice Jackson wrote soon after the tremendous growth of the executive during the New Deal and World War II, but the scope of legislation expanded dramatically in subsequent decades. Congress waged a counteroffensive in the campaign over interbranch supremacy by legislating extensively in the fields of foreign relations and war powers. Particularly in the post-Watergate era, Congress filled nearly every shadowy corner of the zone of twilight with its own imprimatur.11 That is not to say that Congress placed a relentless series of checks on the executive. Rather, Congress strove to establish ground rules, providing a limiting framework such as the War Powers Resolution12 for each effusive authorization like the Patriot Act.13 This leaves Jackson’s second category essentially a dead letter.14 **The most sensitive questions** concerning the **effective distribution of governmental powers** and the **range of permissible executive action are** thereforeproblems of statutory interpretation. The question becomes more complicated still when successive Congresses act in apparent opposition. While recent executives have consistently pushed to expand their authority,15 shifting patterns of political allegiance between Congress and the President yield a hodgepodge of mandates and restraints.16 Whether an action falls into Jackson’s first or third category requires one to parse the complete legislative scheme. This question is most pointed in connection with the execution of authorized war powers. Presidential power in this area is simultaneously subject to enormously broad delegations and exacting statutory limitations, torn between clashing constitutional values regarding the proper balance between branches. On one side lie **authorizations for the use of military force** (AUMFs), statutes empowering the President to “**introduce United States Armed Forces into hostilities** or into situations wherein involvement in hostilities is clearly indicated.”17 On the other side lie framework statutes, enactments **defining the** mechanisms and **boundaries of the execution of those war powers**. Nevertheless, when faced with a conflict between an authorization for the use of military force and a preexisting framework, the Supreme Court must determine the net authorization, synthesizing those statutes while effectuating the underlying constitutional, structural, and historical concerns.

#### Multiple scenario for nuclear war

Yoo 06

[John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Energy in the Executive: Re-examining Presidential Power in the Midst of the War on Terrorism, 8/24/06, <http://www.heritage.org/research/reports/2006/04/energy-in-the-executive-reexamining-presidential-power-in-the-midst-of-the-war-on-terrorism>]

Aside from bitter controversy over Vietnam, there appeared to be significant bipartisan consensus on the overall strategy of containment, as well as the overarching goal of defeating the Soviet Union. We did not win the four-decade Cold War by declarations of war. Rather, we prevailed through the steady presidential application of the strategy of containment, supported by congressional funding of the necessary military forces. On the other hand, congressional action has led to undesirable outcomes. Congress led us into two "bad" wars, the 1798 quasi-war with France and the War of 1812. Excessive congressional control can also prevent the U.S. from entering conflicts that are in the national interest. Most would agree that congressional isolationism before World War II harmed U.S. interests and that the United States and the world would have been far better off if President Franklin Roosevelt could have brought us into the conflict much earlier. Congressional participation does not automatically, or even consistently, produce desirable results in war decision-making. Critics of presidential war powers exaggerate the benefits of declarations or authorizations of war. What also often goes unexamined are the potential costs of congressional participation: delay, inflexibility, and lack of secrecy. Legislative deliberation may breed consensus in the best of cases, but it also may inhibit speed and decisiveness. In the post-Cold War era, the United States is confronting several major new threats to national security: **the proliferation of WMD**, **the emergence of rogue nations**, **and the rise of international terrorism**. Each of these threats may require pre-emptive action best undertaken by the President and approved by Congress only afterwards. Take the threat posed by the al-Qaeda terrorist organization. Terrorist attacks are more difficult to detect and prevent than those posed by conventional armed forces. Terrorists blend into civilian populations and use the channels of open societies to transport personnel, material, and money. Despite the fact that terrorists generally have no territory or regular armed forces from which to detect signs of an impending attack, weapons of mass destruction allow them to inflict devastation that once could have been achievable only by a nation-state. To defend itself from this threat, the United States may have to use force earlier and more often than was the norm during the time when nation-states generated the primary threats to American national security. In order to forestall a WMD attack, or to take advantage of a window of opportunity to strike at a terrorist cell, **the executive branch needs flexibility to act quickly,** possibly in situations where congressional consent cannot be obtained in time to act on the intelligence. By acting earlier, perhaps before WMD components have been fully assembled or before an al-Qaeda operative has left for the United States, **the executive branch might also be able to engage in a more limited, more precisely targeted, use of force**. Similarly, the least dangerous way to prevent rogue nations from acquiring weapons of mass destruction may depend on secret intelligence gathering and covert action rather than open military intervention. Delay for a congressional debate could render useless any time-critical intelligence or windows of opportunity.

### 4 – K

#### The aff doesn’t provide real reform – continued crisis discourse allows a re-expansion of executive authority

Scheuerman 12 – Professor of Political Science and West European Studies at Indiana University (William E., Summer 2012, "Emergencies, Executive Power, and the Uncertain Future of US Presidential Democracy," Law & Social Inquiry 37(3), EBSCO)

IV. REFORMISM'S LIMITS Bruce Ackerman, one of our country's most observant analysts of its clunky constitutional machinery, is similarly impatient with the "comforting notion that our heroic ancestors" created an ideal constitutional and political system (2010, 10). He even agrees that the US model increasingly seems to overlap with Schmitt's dreary vision of executive-centered plebiscitarianism motored by endless crises and emergencies (2010, 82). In sharp contrast to Posner and Vermeule, however, he not only worries deeply about this trend, but he also discards the unrealistic possibility that it might be successfully countered without recourse to legal and constitutional devices. Although Madison's original tripartite separation of powers is ill-adjusted to the realities of the modern administrative state, we need to reinvigorate both liberal legalism and checks and balances. Unless we can succeed in doing so, US citizens are likely to experience a "quantum leap in the presidency's destructive capacities" in the new century (2010, 119). Despite its alarmist tenor, for which he has been—in my view—unfairly criticized,'' Ackerman's position is grounded in a blunt acknowledgment of the comparative disadvantages of the US constitutional system. More clearly than any of the other authors discussed in this article, he breaks cleanly with the intellectual and constitutional provincialism that continues to plague so much legal and political science research on the United States. In part because as "late developers" they learned from institutional mistakes in the United States and elsewhere, more recently designed liberal democracies often do a better job than our Model T version at guaranteeing both policy effectiveness and the rule of law (2010, 120-22). Following the path-breaking work of his colleague Juan Linz, Ackerman offers a critical assessment of our presidential version of liberal democracy, where an independently elected executive regularly finds itself facing off against a potentially obstructionist Congress, which very well may seek to bury "one major presidential initiative after another" (2010, 5; see also Linz 1994). In the context of either real or imagined crises, executives facing strict temporal restraints (i.e., an upcoming election), while claiming to be the people's best protector against so-called special interests, will typically face widespread calls for swift (as well as legally dubious) action. "Crisis talk," in part endogenously generated by a flawed political system prone to gridlock rather than effective policy making, "prepares the ground for a grudging acceptance of presidential unilateralism" (2010, 6). Executives everywhere have much to gain from crisis scenarios. Yet incentives for declaring and perpetuating emergencies may be especially pronounced in our presidential system. The combination of temporal rigidity (i.e., fixed elections and terms of office) and "dual democratic legitimacy" (with both Congress and the president claiming to speak for "we the people") poses severe challenges to law-based government (Linz 1994). Criticizing US scholarship for remaining imprisoned in the anachronistic binary contrast of "US presidentialism vs. Westminster parliamentarism," Ackerman recommends that we pay closer attention to recent innovations achieved by what he describes as "constrained parliamentarism," basically a modified parliamentary system that circumvents the worst design mistakes of both Westminster parliamentarism and US presidentialism. As he has argued previously in a lengthy Harvard Law Review article, constrained parliamentarism—as found, for example, in recent democracies like Germany and Spain—locates law making in a Westminster-style popular assembly. But in contrast to the UK model, "legislative output is constrained by a higher lawmaking process" (2000, 666). The German Eederal Republic, for example, rests on a written constitution (e.g., the Basic Law) and has a powerful constitutional court. In Ackerman's view, constrained parliamentarism lacks many of the institutional components driving the growth of executive-dominated emergency govemment. Not surprisingly, he posits, it suffers to a reduced degree from many of the institutional pathologies plaguing US-style presidentialism. Ackerman argues that, in contrast, US-style presidential models have regularly collapsed elsewhere (e.g., in Latin and South American countries, where US-style presidentialism has been widely imitated [Linz and Valenzuela 1994]), devolving on occasion into unabated authoritarianism (2000, 646). Ackerman now seems genuinely concerned that a similar fate might soon befall its original version. Even if his most recent book repeats some earlier worries, he has now identified additional perils that he thinks deserve immediate attention. Not surprisingly, perhaps, his anxiety level has noticeably increased. Even Schmitt's unattractive vision of presidential authoritarianism appears "a little old-fashioned," given some ominous recent trends (2010, 82). To an extent unfathomable in Schmitt's day, the executive can exploit quasi-scientific polling data in order to gauge the public pulse. Presidents now employ a small but growing army of media gurus and consultants who allow them to craft their messages in astonishingly well-skilled—and potentially manipulative—ways. Especially during crisis moments, an overheated political environment can quickly play into the hands of a "White House propaganda machine generating a stream of sound bites" (2010, 33). Pundits and opinion makers already tend to blur the crucial divide between polling "numbers" and actual votes, with polls in both elite and popular consciousness tending not only to supplement but increasingly displace election results.'^ The decline of the print media and serious joumalism—about which Ackerman is understandably distressed—means that even the most fantastic views are taken seriously. Thus far, the Internet has failed to pick up the slack; it tends to polarize public opinion. Meanwhile, our primary system favors candidates who successfully appeal to an energized partisan base, meaning that those best able to exploit public opinion polling and the mass media, but out of sync with the median voter, generally gain the party nomination. Linz earlier pointed out that presidentialism favors political outsiders; Ackerman worries that in our emerging presidential model, the outsiders will tend to be extremists. Polling and media-savvy, charismatic, and relatively extreme figures will colonize the White House. In addition, the president's control over the massive administrative apparatus provides the executive with a daunting array of institutional weapons, while the Office of Legal Counsel (OLC) and Office of Counsel to the President offer hyperpoliticized sites from which distinctly executive-centered legal and constitutional views now are rapidly disseminated. Ackerman raises some tough questions for those who deem the OLC and related executive organs fundamentally sound institutions that somehow went haywire under David Addington and John Yoo. In his view, their excesses represent a logical result of basic structural trends currently transforming both the executive and political system as whole. OLC's partisan and sometimes quasi-authoritarian legal pronouncements are now being eagerly studied by law students and cited by federal courts (2010, 93). Notwithstanding an admirable tradition of executive deference to the Supreme Court, presidents are better positioned than ever to claim higher political legitimacy and neutralize political rivals. Backed by eager partisan followers, adept at the media game, and well armed with clever legal arguments constructed by some of the best lawyers in the country, prospective presidents may conceivably stop deferring to the Court (2010, 89). Ackerman's most unsettling amendment to his previous views is probably his discussion of the increasingly politicized character of the military—an administrative realm, by the way, ignored by other writers here, despite its huge role in modern US politics. Here again, the basic enigma is that the traditional eighteenth-century tripartite separation of powers meshes poorly with twenty-first-century trends: powerful military leaders can now regularly play different branches of govemment against one another in ways that undermine meaningful civilian oversight. Top officers possess far-reaching opportunities "to become an independent political force—allowing them to tip the balance of political support in one direction, then another," as the competing branches struggle for power (2010, 49). For Ackerman, the emergence of nationally prominent and media-savvy figures such as Colin Powell and David Petraeus, who at crucial junctures have communicated controversial policy positions to a broader public,'^ suggests that this long-standing structural flaw has recently gotten worse. The Goldwater-Nichols Act of 1996, for example, transformed the chair of the Joint Chiefs of Staff from a mediator for the competing services into the military's principal—and hugely influential—spokesperson within the National Security Council (2010, 50). Not only does the military constitute a hugely significant segment of the administrative machinery, but it is now embodied—both in govemment and the public eye—in a single leader whose views carry tremendous weight. The fact that opinion surveys show that the officer corps is increasingly conservative in its partisan orientation, Ackerman notes, only adds to the dangers. Americans need not fear an imminent military putsch, along the lines that destroyed other presidential regimes elsewhere. Nonetheless, we would do well not to be "lulled into a false sense of security" (2010, 87). Having painted a foreboding portrait of institutional trends, Ackerman points to paths we might take to ward off the worst. In light of the obvious seriousness of the illness he has diagnosed, however, his antidotes tend to disappoint: he proposes that we treat cancer with some useful but limited home remedies. Like Shane, Ackerman wants to improve popular deliberation by reforming the mass media and institutionalizing "Deliberation Day" (2010, 125-40). Yet how such otherwise potentially appealing initiatives might counteract the symbiotic relationship between presidentialism and crisis government remains ambiguous. A modernized electoral college, for example, might simply engender executives better positioned to claim to stand in for "we the people" than their historical predecessors. Given Ackerman's own worries about plebiscitarianism, this reform might compound rather than alleviate our problems. More innovatively, Ackerman endorses the idea of a quasi-judicial check within the executive branch, a "Supreme Executive Tribunal" given the task of expeditiously determining the legality of proposed executive action, whose members would be appointed to staggered terms and subject to Senate confirmation. Forced to gain a seal of approval from jurists relatively insulated from sitting presidents, the executive tribunal would act more quickly than an ordinary court and thereby help put a "brake on the presidential dynamic before it can gather steam" (2010,143). Before the president could take the first political move and potentially alter the playing field, he or she might first have to clear the move with a body of legal experts, a requirement that presumably over time would work to undergird the executive branch's commitment to legality. The proposed tribunal could allow the president and Congress to resolve many of their standoffs more expeditiously than is typical today (2010, 146). Congressional representatives, for example, might rely on the tribunal to challenge executive signing statements. Existing exemptions for a significant number of major executive-level actors (e.g., the president's National Security Advisor) from Senate confirmation also need to be abandoned, while the military should promulgate a new Canon of Military Ethics, aimed at clarifying what civilian control means in contemporary real-life settings, in order to counteract its ongoing politicization. Goldwater-Nichols could be revised so as better to guarantee the subordination of military leaders to the Secretary of Defense (2010, 153-65). Ackerman also repeats his previous calls for creating an explicit legal framework for executive emergency action: Congress could temporarily grant the president broad discretionary emergency powers while maintaining effective authority to revoke them if the executive proved unable to gain ever more substantial support from the legislature (2010, 165-70; see also Ackerman 2006). Each of these suggestions demands more careful scrutiny than possible here. Nonetheless, even if many of them seem potentially useful, room for skepticism remains. Why, for example, would the proposed executive tribunal not become yet another site for potentially explosive standoffs between presidents and Congress? Might not highlevel political conflicts end up simply taking the forms of destructive (and misleadingly legalistic) duels? To the extent that one of the tribunal's goals is to decelerate executive decision making, its creation would perhaps leave our already sluggish and slow-moving political system even less able than at the present to deal with fast-paced challenges. Faced with time constraints and the need to gain popular support, executives might then feel even more pressed than at present to circumvent legality. As Ackerman knows, even as it presently operates, the Senate confirmation process is a mess. His proposal to extend its scope might simply end up reproducing at least some familiar problems. Last but not least, given the perils he so alarmingly describes, his proposed military reforms seem unsatisfying. Why not instead simply cut our bloated military apparatus and abandon US imperial pretensions? The obvious Achilles heel is that none of the proposals really deals head-on with what Ackerman himself conceives as the fundamental root of executive-centered government: an independently elected president strictly separated from legislative bodies with which he periodically clashes in potentially destructive ways. Despite Ackerman's ambition, his proposals do not provide structural reform: he concludes that US-based reformers should "take the independently elected presidency as a fixture" (2010, 124). Thus, presidential government is here to stay; reformers can also forget about significantly altering our flawed system of presidential primaries, activist government, and powerful military that intervenes frequently abroad (2010, 124). Given contemporary political developments, one can certainly appreciate why Ackerman is skeptical that the US system might finally be ripe for a productive institutional overhaul. Nonetheless, this just makes an already rather bleak book look even bleaker. His book's title. The Decline and Fall of the Arnerican Republic, is out of step with the somewhat upbeat reformist proposals detailed in its final chapters. Regretfully, the title better captures his core message. Only Ackerman's ultimately disturbing book both adeptly rejects the tendency among recent students of executive power to revert to constitutional nostalgia while forthrightly identifying the very real dangers posed by recent institutional trends. In an age of permanent or at least seemingly endless emergencies, where the very attempt to cleanly distinguish dire crises from "normal" political and social challenges becomes exceedingly difficult, the executive threatens to become an even more predominant— and potentially lawless—institutional player Unfortunately, US-style presidential democracy may be particularly vulnerable to this trend. Ackerman proves more successful than the other authors discussed here because he is best attuned to a rich body of comparative constitutional and political science scholarship that has raised legitimate doubts about the alleged virtues of US-style liberal democracy. Not surprisingly, some of his own reform ideas—for example, his proposed system of emergency law making—draw heavily on foreign examples, including Canada and new democracies such as South Africa. He convincingly argues that we might at least ameliorate the widespread tendency among presidents to manipulate crises for narrow partisan reasons, for example, by relying on the clever idea of a supermajoritarian escalator, which would require every legislative renewal of executive emergency authority to rest on ever more numerous supermajorities (2006). Ackerman is right to suggest that the United States needs to look abroad in order to improve our rather deficient system of emergency rule (Scheuerman 2006, 2008). Our system is broken; it is time to see what can be learned from others. Ackerman's latest book's overly cautious reformism thus seems especially peculiar in light of his own powerful and indeed enthusiastic defense of constrained parliamentarism, which he quite plausibly describes as potentially offering a superior approach to emergency government. The key point is not that we can be absolutely sure that the "grass is greener" in new democracies such as postwar Germany or post-Franco Spain; existing empirical evidence offers, frankly, a mixed picture. Contemporary Germany, for example, has certainly experienced its own fair share of emergency executive excesses (Frankenberg 2010). Scholars have criticized not only the empirical thesis that presidentialism and a strict separation of powers can help explain the substantial growth of executive discretion (Carolan 2009; Gross and Ni Aolain 2006), but also more farreaching assertions about their alleged structural disadvantages (Cheibub 2006). Still others argue that parliamentary regimes even of the "old type" (i.e., the UK Westminster model) have done relatively well in maintaining the rule of law during serious crises (Ewing and Gearty 2000; Bellamy 2007, 249-53). Unfortunately, we still lack wellconceived empirical studies comparing constrained parliamentarism with US-style presidentialism. Too much existing scholarship focuses on single countries, or relies on "foreign" cases but only in a highly selective and anecdotal fashion. Until we have more properly designed comparative studies, however, it seems inaccurate to assume a priori that core institutional features of US presidential democracy are well equipped to tackle the many challenges at hand. As I have tried to argue here, a great deal of initial evidence suggests that this simply is not the case. Admittedly, every variety of liberal democracy confronts structural tendencies favoring the augmentation of executive power: many of the social and economic roots (e.g., social acceleration) of executive-centered crisis govemment represent more-or-less universal phenomena, likely to rattle even well-designed constitutional systems. One can also easily imagine that in decades to come, extreme "natural" catastrophes— increasingly misnamed, because of their links to human-based climate change— justifying declarations of martial law or states of emergency will proliferate, providing novel possibilities for executives to expand their authority.^° So it would be naive to expect any easy constitutional or political-institutional fix. However, this sobering reality should not lead us to abandon creative institutional thinking. On the contrary, it arguably requires of us that we try to come up with new institutional models, distinct both from existing US-style presidentialism and parliamentarism, constrained or otherwise.

#### Enframing of security makes macro-political violence inevitable

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This essay develops a theory about the causes of war -- and thus aims to generate lines of action and critique for peace -- that cuts beneath analyses based either on a given sequence of events, threats, insecurities and political manipulation, or the play of institutional, economic or political interests (the 'military-industrial complex'). Such factors are important to be sure, and should not be discounted, but they flow over a deeper **bedrock of modern reason** that has not only come to form a powerful structure of common sense but **the apparently solid ground of the real itself**. In this light, the two 'existential' and 'rationalist' discourses of war-making and justification mobilised in the Lebanon war are more than merely arguments, rhetorics or even discourses. Certainly they mobilise forms of knowledge and power together; providing political leaderships, media, citizens, bureaucracies and military forces with organising systems of belief, action, analysis and rationale. But they run deeper than that. They are truth-systems of the most powerful and fundamental kind that we have in modernity: **ontologies, statements about truth and being which claim a rarefied privilege to state what is and how it must be maintained** as it is.I am thinking of ontology in both its senses: ontology as both a statement about the nature and ideality of being (in this case political being, that of the nation-state), and as a statement of epistemological truth and certainty, of methods and processes of arriving at certainty (in this case, the development and application of strategic knowledge for the use of armed force, and the creation and maintenance of geopolitical order, security and national survival). These derive from the classical idea of ontology as a speculative or positivistic inquiry into the fundamental nature of truth, of being, or of some phenomenon; the desire for a solid metaphysical account of things inaugurated by Aristotle, an account of 'being qua being and its essential attributes'.17 In contrast, drawing on Foucauldian theorising about truth and power, I see ontology as a particularly powerful claim to truth itself: a claim to the status of an underlying systemic foundation for truth, identity, existence and action; one that is not essential or timeless, but is thoroughly historical and contingent, that is deployed and mobilised in a fraught and conflictual socio-political context of some kind. In short, ontology is the 'politics of truth'18 in its most sweeping and powerful form. I see such a drive for ontological certainty and completion as particularly problematic for a number of reasons. Firstly, when it takes the form of the existential and rationalist ontologies of war, it amounts to a hard and exclusivist claim: **a drive for ideational hegemony and closure that limits debate and questioning**, **that confines it within the boundaries of a particular, closed system of logic, one that is grounded in the truth of being**, in the truth of truth as such. The second is its intimate relation with violence: the dual ontologies represent a simultaneously social and conceptual structure that generates violence. Here **we are witness to an epistemology of violence (strategy) joined to an ontology of violence (the national security state)**. When we consider their relation to war, the two ontologies are especially dangerous because each alone (and doubly in combination) tends both to **quicken the resort to war and to lead to its escalation** either in scale and duration, or in unintended effects. In such a context **violence is not so much a tool that can be picked up and used on occasion**, at limited cost and with limited impact -- **it permeates being.** This essay describes firstly the ontology of the national security state (by way of the political philosophy of Thomas Hobbes, Carl Schmitt and G. W. F. Hegel) and secondly the rationalist ontology of strategy (by way of the geopolitical thought of Henry Kissinger), showing how they crystallise into a mutually reinforcing system of support and justification, especially in the thought of Clausewitz. This creates both a profound ethical and pragmatic problem. The ethical problem arises because of their militaristic force -- they embody and reinforce a norm of war -- and because they enact what Martin Heidegger calls an 'enframing' image of technology and being in which **humans are merely utilitarian instruments** for use, control and destruction, and force -- in the words of one famous Cold War strategist -- can be thought of as a 'power to hurt'.19 The pragmatic problem arises because force so often produces neither the linear system of effects imagined in strategic theory nor anything we could meaningfully call security, but rather **turns in upon itself in a nihilistic spiral of pain and destruction**. In the era of a 'war on terror' dominantly conceived in Schmittian and Clausewitzian terms,20 the arguments of Hannah Arendt (that violence collapses ends into means) and Emmanuel Levinas (that 'every war employs arms that turn against those that wield them') take on added significance. Neither, however, explored what occurs when war and being are made to coincide, other than Levinas' intriguing comment that in war persons 'play roles in which they no longer recognises themselves, making them betray not only commitments but their own substance'. 21 What I am trying to describe in this essay is a complex relation between, and interweaving of, epistemology and ontology. But it is not my view that these are distinct modes of knowledge or levels of truth, because in the social field named by security, statecraft and violence they are made to blur together, continually referring back on each other, like charges darting between electrodes. Rather they are related systems of knowledge with particular systemic roles and intensities of claim about truth, political being and political necessity. Positivistic or scientific claims to epistemological truth supply an air of predictability and reliability to policy and political action, which in turn support larger ontological claims to national being and purpose, drawing them into a common horizon of certainty that is one of the central features of past-Cartesian modernity. Here it may be useful to see ontology as a more totalising and metaphysical set of claims about truth, and epistemology as more pragmatic and instrumental; but while a distinction between epistemology (knowledge as technique) and ontology (knowledge as being) has analytical value, it tends to break down in action. The epistemology of violence I describe here (strategic science and foreign policy doctrine) claims positivistic clarity about techniques of military and geopolitical action which use force and coercion to achieve a desired end, an end that is supplied by the ontological claim to national existence, security, or order. However in practice, technique quickly passes into ontology. This it does in two ways. First, **instrumental violence is married to an ontology of insecure national existence which itself admits no questioning**. The nation and its identity are known and essential, prior to any conflict, and the resort to violence becomes an equally essential predicate of its perpetuation. In this way knowledge-as-strategy claims, in a positivistic fashion, to achieve a calculability of effects (power) for an ultimate purpose (securing being) that it must always assume. Second, strategy as a technique not merely becomes an instrument of state power but ontologises itself in a technological image of 'man' as a maker and user of things, including **other humans, which have no essence or integrity outside their value as objects**. In Heidegger's terms, **technology becomes being; epistemology immediately becomes technique, immediately being**. This combination could be seen in the aftermath of the 2006 Lebanon war, whose obvious strategic failure for Israelis generated fierce attacks on the army and political leadership and forced the resignation of the IDF chief of staff. Yet in its wake neither ontology was rethought. Consider how a reserve soldier, while on brigade-sized manoeuvres in the Golan Heights in early 2007, was quoted as saying: 'we are ready for the next war'. Uri Avnery quoted Israeli commentators explaining the rationale for such a war as being to 'eradicate the shame and restore to the army the "deterrent power" that was lost on the battlefields of that unfortunate war'. In 'Israeli public discourse', he remarked, 'the next war is seen as a natural phenomenon, like tomorrow's sunrise.' 22 The danger obviously raised here is that these dual ontologies of war link being, means, events and decisions into a single, unbroken chain whose very process of construction cannot be examined. As is clear in the work of Carl Schmitt, being implies action, the action that is war. This chain is also obviously at work in the U.S. neoconservative doctrine that argues, as Bush did in his 2002 West Point speech, that 'the only path to safety is the path of action', which begs the question of whether strategic practice and theory can be detached from strong ontologies of the insecure nation-state.23 This is the direction taken by much realist analysis critical of Israel and the Bush administration's 'war on terror'.24 Reframing such concerns in Foucauldian terms, we could argue that obsessive ontological commitments have led to especially disturbing 'problematizations' of truth.25 However such rationalist critiques rely on a one-sided interpretation of Clausewitz that seeks to disentangle strategic from existential reason, and to open up choice in that way. However without interrogating more deeply how they form a conceptual harmony in Clausewitz's thought -- and thus in our dominant understandings of politics and war -- tragically violent 'choices' will continue to be made. The essay concludes by pondering a normative problem that arises out of its analysis: if the divisive ontology of the national security state and the violent and instrumental vision of 'enframing' have, as Heidegger suggests, come to define being and drive 'out every other possibility of revealing being', how can they be escaped?26 How can other choices and alternatives be found and enacted? How is there any scope for agency and resistance in the face of them? Their social and discursive power -- one that aims to take up the entire space of the political -- needs to be respected and understood. However, we are far from powerless in the face of them. **The need is to critique dominant images of political being and dominant ways of securing that being at the same time**, and to act and choose such that we bring into the world a more sustainable, peaceful and non-violent global rule of the political. Friend and Enemy: Violent Ontologies of the Nation-State In his Politics Among Nations Hans Morgenthau stated that 'the national interest of a peace-loving nation can only be defined in terms of national security, which is the irreducible minimum that diplomacy must defend with adequate power and without compromise'. While Morgenthau defined security relatively narrowly -- as the 'integrity of the national territory and its institutions' -- in a context where security was in practice defined expansively, as synonymous with a state's broadest geopolitical and economic 'interests', what was revealing about his formulation was not merely the ontological centrality it had, but the sense of urgency and priority he accorded to it: it must be defended 'without compromise'.27 Morgenthau was a thoughtful and complex thinker, and understood well the complexities and dangers of using armed force. However his formulation reflected an influential view about the significance of the political good termed 'security'. When this is combined with the way in which security was conceived in modern political thought as an existential condition -- a sine qua non of life and sovereign political existence -- and then married to war and instrumental action, it provides a basic underpinning for either the limitless resort to strategic violence without effective constraint, or the perseverance of limited war (with its inherent tendencies to escalation) as a permanent feature of politics. While he was no militarist, Morgenthau did say elsewhere (in, of all places, a far-reaching critique of nuclear strategy) that the 'quantitative and qualitative competition for conventional weapons is a rational instrument of international politics'.28 The conceptual template for such an image of national security state can be found in the work of Thomas Hobbes, with his influential conception of the political community as a tight unity of sovereign and people in which their bodies meld with his own to form a 'Leviathan', and which must be defended from enemies within and without. His image of effective security and sovereignty was one that was intolerant of internal difference and dissent, legitimating a strong state with coercive and exceptional powers to preserve order and sameness. This was a vision not merely of political order but of existential identity, set off against a range of existential others who were sources of threat, backwardness, instability or incongruity.29 It also, in a way set out with frightening clarity by the theorist Carl Schmitt and the philosopher Georg Hegel, exchanged internal unity, identity and harmony for permanent alienation from other such communities (states). Hegel presaged Schmitt's thought with his argument that individuality and the state are single moments of 'mind in its freedom' which 'has an infinitely negative relation to itself, and hence its essential character from its own point of view is its singleness': Individuality is awareness of one's existence as a unit in sharp distinction from others. It manifests itself here in the state as a relation to other states, each of which is autonomous vis-a-vis the others...this negative relation of the state to itself is embodied in the world as the relation of one state to another and as if the negative were something external.30 Schmitt is important both for understanding the way in which such alienation is seen as a definitive way of imagining and limiting political communities, and for understanding how such a rigid delineation is linked to the inevitability and perpetuation of war. Schmitt argued that the existence of a state 'presupposes the political', which must be understood through 'the specific political distinction...between friend and enemy'. The enemy is 'the other, the stranger; and it sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in an extreme case conflicts with him are possible'.31 The figure of the enemy is constitutive of the state as 'the specific entity of a people'.32 Without it society is not political and a people cannot be said to exist: Only the actual participants can correctly recognise, understand and judge the concrete situation and settle the extreme case of conflict...to judge whether the adversary intends to negate his opponent's way of life and therefore must be repulsed or fought in order to preserve one's own form of existence.33 Schmitt links this stark ontology to war when he states that the political is only authentic 'when a fighting collectivity of people confronts a similar collectivity. The enemy is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to the whole nation, becomes public by virtue of such a relationship...in its entirety the state as an organised political entity decides for itself the friend-enemy distinction'.34 War, in short, is an existential condition: the entire life of a human being is a struggle and every human being is symbolically a combatant. The friend, enemy and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing. War follows from enmity. War is the existential negation of the enemy.35 Schmitt claims that his theory is not biased towards war as a choice ('It is by no means as though the political signifies nothing but devastating war and every political deed a military action...it neither favours war nor militarism, neither imperialism nor pacifism') but it is hard to accept his caveat at face value.36 When such a theory takes the form of a social discourse (which it does in a general form) such an ontology can only support, as a kind of originary ground, the basic Clausewitzian assumption that war can be a rational way of resolving political conflicts -- because the import of Schmitt's argument is that such 'political' conflicts are ultimately expressed through the possibility of war. As he says: 'to the enemy concept belongs the ever-present possibility of combat'.37 Where Schmitt meets Clausewitz, as I explain further below, the existential and rationalistic ontologies of war join into a closed circle of mutual support and justification. This closed circle of existential and strategic reason generates a number of dangers. Firstly, the emergence of conflict can generate military action almost automatically simply because the world is conceived in **terms of the distinction between friend and enemy**; because **the very existence of the other constitutes an unacceptable threat**, rather than a chain of actions, judgements and decisions. (As the Israelis insisted of Hezbollah, they 'deny our right to exist'.) **This effaces agency, causality and responsibility from policy and political discourse: our actions can be conceived as independent of the conflict or quarantined from critical enquiry**, as necessities that achieve an instrumental purpose but do not contribute to a new and unpredictable causal chain. Similarly the Clausewitzian idea of force -- which, by transporting a Newtonian category from the natural into the social sciences, assumes the very effect it seeks -- further encourages the resort to military violence. **We ignore the complex history of a conflict, and thus the alternative paths to its resolution that such historical analysis might provide, by portraying conflict as fundamental and existential in nature; as possibly containable or exploitable, but always irresolvable**. Dominant portrayals of the war on terror, and the Israeli-Arab conflict, are arguably examples of such ontologies in action. Secondly, the militaristic force of such an ontology is visible, in Schmitt, in the absolute sense of vulnerability whereby a people can judge whether their 'adversary intends to negate his opponent's way of life'.38 Evoking the kind of thinking that would become controversial in the Bush doctrine, Hegel similarly argues that: ...a state may regard its infinity and honour as at stake in each of its concerns, however minute, and it is all the more inclined to susceptibility to injury the more its strong individuality is impelled as a result of long domestic peace to seek and create a sphere of activity abroad. ....the state is in essence mind and therefore cannot be prepared to stop at just taking notice of an injury after it has actually occurred. On the contrary, there arises in addition as a cause of strife the idea of such an injury...39 **Identity**, even more than physical security or autonomy, is put at stake in such thinking and can be defended and redeemed through warfare (or, when taken to a further extreme of an absolute demonisation and dehumanisation of the other, by mass killing, 'ethnic cleansing' or genocide). However anathema to a classical realist like Morgenthau, for whom prudence was a core political virtue, these have been influential ways of defining national security and defence during the twentieth century and persists into the twenty-first. They infused Cold War strategy in the United States (with the key policy document NSC68 stating that 'the Soviet-led assault on free institutions is worldwide now, and ... a defeat of free institutions anywhere is a defeat everywhere')40 and frames dominant Western responses to the threat posed by Al Qaeda and like groups (as Tony Blair admitted in 2006, 'We could have chosen security as the battleground. But we didn't. We chose values.')41 It has also become influential, in a particularly tragic and destructive way, in Israel, where memories of the Holocaust and (all too common) statements by Muslim and Arab leaders rejecting Israel's existence are mobilised by conservatives to justify military adventurism and a rejectionist policy towards the Palestinians. On the reverse side of such ontologies of national insecurity we find pride and hubris, the belief that martial preparedness and action are vital or healthy for the existence of a people. Clausewitz's thought is thoroughly imbued with this conviction. For example, his definition of war as an act of policy does not refer merely to the policy of cabinets, but expresses the objectives and will of peoples: When whole communities go to war -- whole peoples, and especially civilized peoples -- the reason always lies in some political situation and the occasion is always due to some political object. War, therefore, is an act of policy.42 Such a perspective prefigures Schmitt's definition of the 'political' (an earlier translation reads 'war, therefore, is a political act'), and thus creates an inherent tension between its tendency to fuel the escalation of conflict and Clausewitz's declared aim, in defining war as policy, to prevent war becoming 'a complete, untrammelled, absolute manifestation of violence'.43 Likewise his argument that war is a 'trinity' of people (the source of 'primordial violence, hatred and enmity'), the military (who manage the 'play of chance and probability') and government (which achieve war's 'subordination as an instrument of policy, which makes it subject to reason alone') merges the existential and rationalistic conceptions of war into a theoretical unity.44 The idea that national identities could be built and redeemed through war derived from the 'romantic counter-revolution' in philosophy which opposed the cosmopolitanism of Kant with an emphasis on the absolute state -- as expressed by Hegel's Philosophy of Right, Bismarkian Realpolitik and politicians like Wilhelm Von Humbolt. Humbolt, a Prussian minister of Education, wrote that war 'is one of the most wholesome manifestations that plays a role in the education of the human race', and urged the formation of a national army 'to inspire the citizen with the spirit of true war'. He stated that war 'alone gives the total structure the strength and the diversity without which facility would be weakness and unity would be void'.45 In the Phenomenology of Mind Hegel made similar arguments that to for individuals to find their essence 'Government has from time to time to shake them to the very centre by war'.46 The historian Azar Gat points to the similarity of Clausewitz's arguments that 'a people and a nation can hope for a strong position in the world only if national character and familiarity with war fortify each other by continual interaction' to Hegel's vision of the ethical good of war in his Philosophy of Right.47 Likewise Michael Shapiro sees Clausewitz and Hegel as alike in seeing war 'as an ontological investment in both individual and national completion...Clausewitz figures war as passionate ontological commitment rather than cool political reason...war is a major aspect of being.'48 Hegel's text argues that war is 'a work of freedom' in which 'the individual's substantive duty' merges with the 'independence and sovereignty of the state'.49 Through war, he argues, the ethical health of peoples is preserved in their indifference to the stabilization of finite institutions; just as the blowing of the winds preserves the sea from the foulness which would be the result of a prolonged calm, so the corruption in nations would be the product of a prolonged, let alone 'perpetual' peace.50 Hegel indeed argues that 'sacrifice on behalf of the individuality of the state is a substantial tie between the state and all its members and so is a universal duty...if the state as such, if its autonomy, is in jeopardy, all its citizens are duty bound to answer the summons to its defence'.51 Furthermore, this is not simply a duty, but a form of self-realisation in which the individual dissolves into the higher unity of the state: The intrinsic worth of courage as a disposition of mind is to be found in the genuine, absolute, final end, the sovereignty of the state. The work of courage is to actualise this end, and the means to this end is the sacrifice of personal actuality. This form of experience thus contains the harshness of extreme contradictions: a self-sacrifice which yet is the real existence of one's freedom; the maximum self-subsistence of individuality, yet only a cog playing its part in the mechanism of an external organisation; absolute obedience, renunciation of personal opinions and reasonings, in fact complete absence of mind, coupled with the most intense and comprehensive presence of mind and decision in the moment of acting; the most hostile and so most personal action against individuals, coupled with an attitude of complete indifference or even liking towards them as individuals.52 A more frank statement of the potentially lethal consequences of patriotism -- and its simultaneously physical and conceptual annihilation of the individual human being -- is rarely to be found, one that is repeated today in countless national discourses and the strategic world-view in general. (In contrast, one of Kant's fundamental objections to war was that it involved using men 'as mere machines or instruments'.53) Yet however bizarre and contradictory Hegel's argument, it constitutes a powerful social ontology: an apparently irrefutable discourse of being. It actualises the convergence of war and the social contract in the form of the national security state. Strategic Reason and Scientific Truth By itself, such an account of the nationalist ontology of war and security provides only a general insight into the perseverance of military violence as a core element of politics. It does not explain why so many policymakers think military violence works. As I argued earlier, such an ontology is married to a more rationalistic form of strategic thought that claims to link violent means to political ends predictably and controllably, and which, by doing so, combines military action and national purposes into a common -- and thoroughly modern -- horizon of certainty. Given Hegel's desire to decisively distil and control the dynamic potentials of modernity in thought, it is helpful to focus on the modernity of this ontology -- one that is modern in its adherence to modern scientific models of truth, reality and technological progress, and in its insistence on imposing images of scientific truth from the physical sciences (such as mathematics and physics) onto human behaviour, politics and society. For example, the military theorist and historian Martin van Creveld has argued that one of the reasons Clausewitz was so influential was that his 'ideas seemed to have chimed in with the rationalistic, scientific, and technological outlook associated with the industrial revolution'.54 Set into this epistemological matrix, modern politics and government engages in a sweeping project of mastery and control in which **all of the world's resources -- mineral, animal, physical, human -- are made part of a machinic process of which war and violence are viewed as normal features.** These are the deeper claims and implications of Clausewitzian strategic reason. One of the most revealing contemporary examples comes from the writings (and actions) of Henry Kissinger, a Harvard professor and later U.S. National Security Adviser and Secretary of State. He wrote during the Vietnam war that after 1945 U.S. foreign policy was based 'on the assumption that technology plus managerial skills gave us the ability to reshape the international system and to bring about domestic transformations in emerging countries'. This 'scientific revolution' had 'for all practical purposes, removed technical limits from the exercise of power in foreign policy'.55 Kissinger's conviction was based not merely in his pride in the vast military and bureaucratic apparatus of the United States, but in a particular epistemology (theory of knowledge). Kissinger asserted that the West is 'deeply committed to the notion that the real world is external to the observer, that knowledge consists of recording and classifying data -- the more accurately the better'. This, he claimed, has since the Renaissance set the West apart from an 'undeveloped' world that contains 'cultures that have escaped the early impact of Newtonian thinking' and remain wedded to the 'essentially pre-Newtonian view that the real world is almost entirely internal to the observer'.56 At the same time, Kissinger's hubris and hunger for control was beset by a corrosive anxiety: that, in an era of nuclear weapons proliferation and constant military modernisation, of geopolitical stalemate in Vietnam, and the emergence and militancy of new post-colonial states, order and mastery were harder to define and impose. He worried over the way 'military bipolarity' between the superpowers had 'encouraged political multipolarity', which 'does not guarantee stability. Rigidity is diminished, but so is manageability...equilibrium is difficult to achieve among states widely divergent in values, goals, expectations and previous experience' (emphasis added). He mourned that 'the greatest need of the contemporary international system is an agreed concept of order'.57 Here were the driving obsessions of the modern rational statesman based around a hunger for stasis and certainty that would entrench U.S. hegemony: For the two decades after 1945, our international activities were based on the assumption that technology plus managerial skills gave us the ability to reshape the international system and to bring about domestic transformations in "emerging countries". This direct "operational" concept of international order has proved too simple. Political multipolarity makes it impossible to impose an American design. Our deepest challenge will be to evoke the creativity of a pluralistic world, to base order on political multipolarity even though overwhelming military strength will remain with the two superpowers.58 Kissinger's statement revealed that such cravings for order and certainty continually confront chaos, resistance and uncertainty: clay that won't be worked, flesh that will not yield, enemies that refuse to surrender. This is one of the most powerful lessons of the Indochina wars, which were to continue in a phenomenally destructive fashion for six years after Kissinger wrote these words. Yet as his sinister, Orwellian exhortation to 'evoke the creativity of a pluralistic world' demonstrated, Kissinger's hubris was undiminished. **This is a vicious, historic irony: a desire to control nature, technology, society and human beings that is continually frustrated, but never abandoned or rethought**. By 1968 U.S. Secretary of Defense Robert McNamara, the rationalist policymaker par excellence, had already decided that U.S. power and technology could not prevail in Vietnam; Nixon and Kissinger's refusal to accept this conclusion, to abandon their Cartesian illusions, **was to condemn hundreds of thousands** **more to die** in Indochina and the people of Cambodia to two more decades of horror and misery.59 In 2003 there would be a powerful sense of déja vu as another Republican Administration crowned more than decade of failed and destructive policy on Iraq with a deeply controversial and divisive war to remove Saddam Hussein from power. In this struggle with the lessons of Vietnam, revolutionary resistance, and rapid geopolitical transformation, we are witness to an enduring political and cultural theme: of **a craving for order, control and certainty in the face of continual uncertainty**. Closely related to this anxiety was the way that Kissinger's thinking -- and that of McNamara and earlier imperialists like the British Governor of Egypt Cromer -- was embedded in instrumental images of technology and the machine: the machine as both a tool of power and an image of social and political order. In his essay 'The Government of Subject Races' Cromer envisaged effective imperial rule -- over numerous societies and billions of human beings -- as best achieved by a central authority working 'to ensure the harmonious working of the different parts of the machine'.60 Kissinger analogously invoked the virtues of 'equilibrium', 'manageability' and 'stability' yet, writing some six decades later, was anxious that technological progress no longer brought untroubled control: the Westernising 'spread of technology and its associated rationality...does not inevitably produce a similar concept of reality'.61 We sense the rational policymaker's frustrated desire: the world is supposed to work like a machine, ordered by a form of power and governmental reason which deploys machines and whose desires and processes are meant to run along ordered, rational lines like a machine. Kissinger's desire was little different from that of Cromer who, wrote Edward Said: ...envisions a seat of power in the West and radiating out from it towards the East a great embracing machine, sustaining the central authority yet commanded by it. What the machine's branches feed into it from the East -- human material, material wealth, knowledge, what have you -- is processed by the machine, then converted into more power...the immediate translation of mere Oriental matter into useful substance.62 This desire for order in the shadow of chaos and uncertainty -- the constant war with an intractable and volatile matter -- has **deep roots in modern thought**, and was a major impetus to the development of technological reason and its supporting theories of knowledge. As Kissinger's claims about the West's Newtonian desire for the 'accurate' gathering and classification of 'data' suggest, modern strategy, foreign policy and Realpolitik have been thrust deep into the apparently stable soil of natural science, in the hope of finding immovable and unchallengeable roots there. While this process has origins in ancient Judaic and Greek thought, it crystallised in philosophical terms most powerfully during and after the Renaissance. The key figures in this process were Francis Bacon, Galileo, Isaac Newton, and René Descartes, who all combined a hunger for political and ontological certainty, a positivist epistemology and a naïve faith in the goodness of invention. Bacon sought to create certainty and order, and with it a new human power over the world, through a new empirical methodology based on a harmonious combination of experiment, the senses and the understanding. With this method, he argued, we can 'derive hope from a purer alliance of the faculties (the experimental and rational) than has yet been attempted'.63 In a similar move, Descartes sought to conjure certainty from uncertainty through the application of a new method that moved progressively out from a few basic certainties (the existence of God, the certitude of individual consciousness and a divinely granted faculty of judgement) in a search for pure fixed truths. Mathematics formed the ideal image of this method, with its strict logical reasoning, its quantifiable results and its uncanny insights into the hidden structure of the cosmos.64 Earlier, Galileo had argued that scientists should privilege 'objective', quantifiable qualities over 'merely perceptible' ones; that 'only by means of an exclusively quantitative analysis could science attain certain knowledge of the world'.65 Such doctrines of mathematically verifiable truth were to have powerful echoes in the 20th Century, in the ascendancy of systems analysis, game theory, cybernetics and computing in defense policy and strategic decisions, and in the awesome scientific breakthroughs of nuclear physics, which unlocked the innermost secrets of matter and energy and applied the most advanced applications of mathematics and computing to create the atomic bomb. Yet this new scientific power was marked by a terrible irony: as even Morgenthau understood, the control over matter afforded by the science could never be translated into the control of the weapons themselves, into political utility and rational strategy.66 Bacon thought of the new scientific method not merely as way of achieving a purer access to truth and epistemological certainty, but as liberating a new power that would enable the creation of a new kind of Man. He opened the Novum Organum with the statement that 'knowledge and human power are synonymous', and later wrote of his 'determination...to lay a firmer foundation, and extend to a greater distance the boundaries of human power and dignity'.67 In a revealing and highly negative comparison between 'men's lives in the most polished countries of Europe and in any wild and barbarous region of the new Indies' -- one that echoes in advance Kissinger's distinction between post-and pre-Newtonian cultures -- Bacon set out what was at stake in the advancement of empirical science: anyone making this comparison, he remarked, 'will think it so great, that man may be said to be a god unto man'.68 We may be forgiven for blinking, but in Bacon's thought 'man' was indeed in the process of stealing a new fire from the heavens and seizing God's power over the world for itself. Not only would the new empirical science lead to 'an improvement of mankind's estate, and an increase in their power over nature', but would reverse the primordial humiliation of the Fall of Adam: For man, by the fall, lost at once his state of innocence, and his empire over creation, both of which can be partially recovered even in this life, the first by religion and faith, the second by the arts and sciences. For creation did not become entirely and utterly rebellious by the curse, but in consequence of the Divine decree, 'in the sweat of thy brow thou shalt eat bread'; she is now compelled by our labours (not assuredly by our disputes or magical ceremonies) at length to afford mankind in some degree his bread...69 There is a breathtaking, world-creating hubris in this statement -- one that, in many ways, came to characterise western modernity itself, and which is easily recognisable in a generation of modern technocrats like Kissinger. The Fall of Adam was the Judeo-Christian West's primal creation myth, one that marked humankind as flawed and humbled before God, condemned to hardship and ambivalence. Bacon forecast here a return to Eden, but one of man's own making. This truly was the death of God, of putting man into God's place, and no pious appeals to the continuity or guidance of faith could disguise the awesome epistemological violence which now subordinated creation to man. Bacon indeed argued that inventions are 'new creations and imitations of divine works'. As such, there is nothing but good in science: 'the introduction of great inventions is the most distinguished of human actions...inventions are a blessing and a benefit without injuring or afflicting any'.70 And what would be mankind's 'bread', the rewards of its new 'empire over creation'? If the new method and invention brought modern medicine, social welfare, sanitation, communications, education and comfort, it also enabled the **Armenian genocide, the Holocaust and two world wars; napalm, the B52, the hydrogen bomb, the Kalashnikov rifle and military strategy**. Indeed some of the 20th Century's most far-reaching inventions -- radar, television, rocketry, computing, communications, jet aircraft, the Internet -- would be the product of drives for national security and militarisation. Even the inventions Bacon thought so marvellous and transformative -- printing, gunpowder and the compass -- brought in their wake upheaval and tragedy: printing, dogma and bureaucracy; gunpowder, the rifle and the artillery battery; navigation, slavery and the genocide of indigenous peoples. In short, the legacy of the new empirical science would be ambivalence as much as certainty; degradation as much as enlightenment; the destruction of nature as much as its utilisation. Doubts and Fears: Technology as Ontology If Bacon could not reasonably be expected to foresee many of these developments, the idea that scientific and technological progress could be destructive did occur to him. However it was an anxiety he summarily dismissed: ...let none be alarmed at the objection of the arts and sciences becoming depraved to malevolent or luxurious purposes and the like, for the same can be said of every worldly good; talent, courage, strength, beauty, riches, light itself...Only let mankind regain their rights over nature, assigned to them by the gift of God, and obtain that power, whose exercise will be governed by right reason and true religion.71 By the mid-Twentieth Century, after the destruction of Hiroshima and Nagasaki, such fears could no longer be so easily wished away, as the physicist and scientific director of the Manhattan Project, J. Robert Oppenheimer recognised. He said in a 1947 lecture: We felt a particularly intimate responsibility for suggesting, for supporting and in the end in large measure achieving the realization of atomic weapons...In some sort of crude sense which no vulgarity, no humor, no over-statement can quite extinguish, the physicists have known sin, and this is a knowledge they cannot lose.72 Adam had fallen once more, but into a world which refused to acknowledge its renewed intimacy with contingency and evil. Man's empire over creation -- his discovery of the innermost secrets of matter and energy, of the fires that fuelled the stars -- had not 'enhanced human power and dignity' as Bacon claimed, but instead brought destruction and horror. Scientific powers that had been consciously applied in the defence of life and in the hope of its betterment **now threatened its total and absolute destruction**. This would not prevent a legion of scientists, soldiers and national security policymakers later attempting to apply Bacon's faith in invention and Descartes' faith in mathematics to make of the Bomb a rational weapon. Oppenheimer -- who resolutely opposed the development of the hydrogen bomb -- understood what the strategists could not: that the weapons resisted control, resisted utility, that 'with the release of atomic energy quite revolutionary changes had occurred in the techniques of warfare'.73 Yet Bacon's legacy, one deeply imprinted on the strategists, was his view that truth and utility are 'perfectly identical'.74 In 1947 Oppenheimer had clung to the hope that 'knowledge is good...it seems hard to live any other way than thinking it was better to know something than not to know it; and the more you know, the better'; by 1960 he felt that 'terror attaches to new knowledge. It has an unmooring quality; it finds men unprepared to deal with it.'75 Martin Heidegger questioned this mapping of natural science onto the social world in his essays on technology -- which, as 'machine', has been so crucial to modern strategic and geopolitical thought as an image of perfect function and order and a powerful tool of intervention. He commented that, given that modern technology 'employs exact physical science...the deceptive illusion arises that modern technology is applied physical science'.76 Yet as the essays and speeches of Oppenheimer attest, technology and its relation to science, society and war cannot be reduced to a noiseless series of translations of science for politics, knowledge for force, or force for good. Instead, Oppenheimer saw a process frustrated by roadblocks and ruptured by irony; in his view there was no smooth, unproblematic translation of scientific truth into social truth, and technology was not its vehicle. Rather his comments raise profound and painful ethical questions that resonate with terror and uncertainty. Yet this has not prevented technology becoming a potent object of desire, not merely as an instrument of power but as a promise and conduit of certainty itself. In the minds of too many rational soldiers, strategists and policymakers, technology brings with it the truth of its enabling science and spreads it over the world. It turns epistemological certainty into political certainty; it turns control over 'facts' into control over the earth. Heidegger's insights into this phenomena I find especially telling and disturbing -- because they underline the ontological force of the instrumental view of politics. In The Question Concerning Technology, Heidegger's striking argument was that in the modernising West technology is not merely a tool, a 'means to an end'. Rather **technology has become a governing image of the modern universe, one that has come to order, limit and define human existence as a 'calculable coherence of forces' and a 'standing reserve' of energy**. Heidegger wrote: 'the threat to man does not come in the first instance from the potentially lethal machines and apparatus of technology. The actual threat has already affected man in his essence.'77 This process Heidegger calls 'Enframing' and through it the scientific mind **demands that 'nature reports itself** in some way or other that is identifiable through calculation and remains orderable as a system of information'. Man is not a being who makes and uses machines as means, choosing and limiting their impact on the world for his ends; rather man has imagined the world as a machine and humanity everywhere becomes **trapped within its logic**. Man, he writes, 'comes to the very brink of a precipitous fall...where **he himself will have to be taken as standing-reserve**. Meanwhile Man, precisely as the one so threatened, exalts himself to the posture of lord of the earth.'78 Technological man not only becomes the name for a project of lordship and mastery over the earth, but incorporates humanity within this project as a calculable resource. **In strategy, warfare and geopolitics human bodies, actions and aspirations are caught, transformed and perverted by such calculating, enframing reason: human lives are reduced to tools, obstacles, useful or obstinate matter.** This tells us much about the enduring power of crude instrumental versions of strategic thought, which relate not merely to the actual use of force but to broader geopolitical strategies that see, as limited war theorists like Robert Osgood did, force as an 'instrument of policy short of war'. It was from within this strategic ontology that figures like the Nobel prize-winning economist Thomas Schelling theorised the strategic role of threats and coercive diplomacy, and spoke of strategy as 'the power to hurt'.79 In the 2006 Lebanon war we can see such thinking in the remark of a U.S. analyst, a former Ambassador to Israel and Syria, who speculated that by targeting civilians and infrastructure Israel aimed 'to create enough pain on the ground so there would be a local political reaction to Hezbollah's adventurism'.80 Similarly a retired Israeli army colonel told the Washington Post that 'Israel is attempting to create a rift between the Lebanese population and Hezbollah supporters by exacting a heavy price from the elite in Beirut. The message is: If you want your air conditioning to work and if you want to be able to fly to Paris for shopping, you must pull your head out of the sand and take action toward shutting down Hezbollah-land.'81 Conclusion: Violent Ontologies or Peaceful Choices? I was motivated to begin the larger project from which this essay derives by a number of concerns. I felt that the available critical, interpretive or performative languages of war -- realist and liberal international relations theories, just war theories, and various Clausewitzian derivations of strategy -- failed us, because they either perform or refuse to **place under suspicion the underlying political ontologies** that I have sought to unmask and question here. Many realists have quite nuanced and critical attitudes to the use of force, but ultimately affirm strategic thought and remain embedded within the existential framework of the nation-state. Both liberal internationalist and just war doctrines seek mainly to improve the accountability of decision-making in security affairs and to limit some of the worst moral enormities of war, but (apart from the more radical versions of cosmopolitanism) they fail to question the ontological claims of political community or strategic theory.82 In the case of a theorist like Jean Bethke Elshtain, just war doctrine is in fact allied to a softer, liberalised form of the Hegelian-Schmittian ontology. She dismisses Kant's Perpetual Peace as 'a fantasy of at-oneness...a world in which differences have all been rubbed off' and in which 'politics, which is the way human beings have devised for dealing with their differences, gets eliminated.'83 She remains a committed liberal democrat and espouses a moral community that stretches beyond the nation-state, which strongly contrasts with Schmitt's hostility to liberalism and his claustrophobic distinction between friend and enemy. However her image of politics -- which at its limits, she implies, requires the resort to war as the only existentially satisfying way of resolving deep-seated conflicts -- reflects much of Schmitt's idea of the political and Hegel's ontology of a fundamentally alienated world of nation-states, in which war is a performance of being. She categorically states that any effort to dismantle security dilemmas 'also requires the dismantling of human beings as we know them'.84 Whilst this would not be true of all just war advocates, I suspect that even as they are so concerned with the ought, moral theories of violence grant too much unquestioned power to the is. The problem here lies with the confidence in being -- of 'human beings as we know them' -- which ultimately fails to escape a Schmittian architecture and thus eternally exacerbates (indeed **reifies) antagonisms**. Yet we know from the work of Deleuze and especially William Connolly that **exchanging an ontology of being for one of becoming**, where the boundaries and nature of the self contain new possibilities through agonistic relation to others, provides a less destructive and violent way of acknowledging and dealing with conflict and difference.85 My argument here, whilst normatively sympathetic to Kant's moral demand for the eventual abolition of war, militates against excessive optimism.86 Even as I am arguing that war is not an enduring historical or anthropological feature, or a neutral and rational instrument of policy -- that it is rather the product of **hegemonic forms of knowledge** about political action and community -- my analysis does suggest some sobering conclusions about its power as an idea and formation. Neither the progressive flow of history nor the pacific tendencies of an international society of republican states will save us. The violent ontologies I have described here in fact dominate the conceptual and policy frameworks of modern republican states and have come, against everything Kant hoped for, to stand in for progress, modernity and reason. Indeed what Heidegger argues, I think with some credibility, is that the enframing world view has come to stand in for being itself. Enframing, argues Heidegger, 'does not simply endanger man in his relationship to himself and to everything that is...it **drives out every other possibility of revealing**...the rule of Enframing threatens man with the possibility that it could be denied to him to enter into a more original revealing and hence to experience the call of a more primal truth.'87 What I take from Heidegger's argument -- one that I have sought to extend by analysing the militaristic power of modern ontologies of political existence and security -- is a view that the challenge is posed not merely by a few varieties of weapon, government, technology or policy, but **by an overarching system of thinking and understanding that lays claim to our entire space of truth and existence**. Many of the most destructive features of contemporary modernity -- militarism, repression, coercive diplomacy, covert intervention, geopolitics, economic exploitation and ecological destruction -- derive not merely from particular choices by policymakers based on their particular interests, but from **calculative, 'empirical' discourses of scientific and political truth rooted in powerful enlightenment images of being. Confined within such an epistemological and cultural universe, policymakers' choices become necessities, their actions become inevitabilities, and humans suffer and die**. Viewed in this light, 'rationality' is the name we give the chain of reasoning which builds one structure of truth on another until a course of action, however violent or dangerous, becomes preordained through that reasoning's very operation and existence. It creates both discursive constraints -- available choices may simply not be seen as credible or legitimate -- and material constraints that derive from the mutually reinforcing cascade of discourses and events which then **preordain militarism and violence as necessary policy responses**, however ineffective, dysfunctional or chaotic. The force of my own and Heidegger's analysis does, admittedly, tend towards a deterministic fatalism. On my part this is quite deliberate; it is important to allow this possible conclusion to weigh on us. Large sections of modern societies -- especially parts of the media, political leaderships and national security institutions -- are utterly trapped within the Clausewitzian paradigm, within the instrumental utilitarianism of 'enframing' and the stark ontology of the friend and enemy. They are certainly tremendously aggressive and energetic in continually stating and reinstating its force. But is there a way out? Is there no possibility of agency and choice? Is this not the key normative problem I raised at the outset, of how the modern ontologies of war efface agency, causality and responsibility from decision making; the responsibility that comes with having choices and making decisions, with exercising power? (In this I am much closer to Connolly than Foucault, in Connolly's insistence that, even in the face of the anonymous power of discourse to produce and limit subjects, selves remain capable of agency and thus incur responsibilities.88) There seems no point in following Heidegger in seeking a more 'primal truth' of being -- that is to reinstate ontology and obscure its worldly manifestations and consequences from critique. However we can, while refusing Heidegger's unworldly89 nostalgia, appreciate that he was searching for a way out of the modern system of calculation; that he was searching for **a 'questioning', 'free relationship' to technology that would not be immediately recaptured by the strategic, calculating vision of enframing**. Yet his path out is somewhat chimerical -- his faith in 'art' and the older Greek attitudes of 'responsibility and indebtedness' offer us valuable clues to the kind of sensibility needed, but little more. When we consider the problem of policy, the force of this analysis suggests that choice and agency can be all too often limited; they can remain confined (sometimes quite wilfully) within the overarching strategic and security paradigms. Or, more hopefully, policy choices could aim to bring into being a more enduringly inclusive, cosmopolitan and peaceful logic of the political. But this **cannot be done without seizing alternatives from outside the space of enframing and utilitarian strategic thought**, by being aware of its presence and weight and activating a very different concept of existence, security and action.90 **This would seem to hinge upon 'questioning'** as such -- on the questions we put to the real and our efforts to create and act into it. Do security and strategic policies seek to exploit and direct humans as material, as energy, or do they seek to protect and enlarge human dignity and autonomy? Do they seek to impose by force an unjust status quo (as in Palestine), or to remove one injustice only to replace it with others (the U.S. in Iraq or Afghanistan), or do so at an unacceptable human, economic, and environmental price? Do we see our actions within an instrumental, amoral framework (of 'interests') and a linear chain of causes and effects (the idea of force), or do we see them as folding into a complex interplay of languages, norms, events and consequences which are less predictable and controllable?91 And most fundamentally: Are we seeking to coerce or persuade? Are less violent and more sustainable choices available? Will our actions perpetuate or help to end the global rule of insecurity and violence? Will our thought?

#### Reject the affirmative’s security discourse – this untimely intervention is the only chance for a counter-discourse

Calkivik 10 – PhD in Poli Sci @ Univ Minnesota (Emine Asli, 10/2010, "DISMANTLING SECURITY," PhD dissertation submitted to Univ Minnesota for Raymond Duvall, http://conservancy.umn.edu/bitstream/99479/1/Calkivik\_umn\_0130E\_11576.pdf)

It is this self-evidence of security even for critical approaches and the antinomy stemming from dissident voices reproducing the language of those they dissent from that constitutes the starting point for this chapter, where I elaborate on the meaning of dismantling security as untimely critique. As mentioned in the vignette in the opening section, the suggestion to dismantle security was itself deemed as an untimely pursuit in a world where lives of millions were rendered brutally insecure by poverty, violence, disease, and ongoing political conflicts. Colored by the tone of a call to conscience in the face of the ongoing crisis of security, it was not the time, interlocutors argued, for self-indulgent critique. I will argue that it is the element of being untimely, the effort, in the words of Walter Benjamin, “to brush history against the grain” that gives critical thinking its power.291 It might appear as a trivial discussion to bring up the relation between time and critique because conceptions of critical thinking in the discipline of International Relations already possess the notion that critical thought needs to be untimely. In the first section, I will tease out what this notion of untimeliness entails by visiting ongoing conversations within the discipline about critical thought and political time. Through this discussion, I hope to clarify what sets apart dismantling security as untimely critique from the notion of untimeliness at work in critical international relations theory. The latter conception of the untimely, I will suggest, paradoxically calls on critical thought to be “on time” in that it champions a particular understanding of what it means for critical scholarship to be relevant and responsible for its times. This notion of the untimely demands that critique be strategic and respond to political exigency, that it provide answers in this light instead of raising more questions about which questions could be raised or what presuppositions underlie the questions that are deemed to be waiting for answers. After elaborating in the first section such strategic conceptions of the untimeliness of critical theorizing, in the second section I will turn to a different sense of the untimely by drawing upon Wendy Brown’s discussion of the relation between critique, crisis, and political time through her reading of Benjamin’s “Theses on the Philosophy of History.”292 In contrast to a notion of untimeliness that demands strategic thinking and punctuality, Brown’s exegesis provides a conception of historical materialism where critique is figured as a force of disruption, a form of intervention that reconfigures the meaning of the times and “contest[s] the very senses of time invoked to declare critique ‘untimely’.”293 Her exposition overturns the view of critique as a self-indulgent practice as it highlights the immediately political nature of critique and reconfigures the meaning of what it means for critical thought to be relevant.294 It is in this sense of the untimely, I will suggest, that dismantling security as a critique hopes to recover. I should point out that in this discussion my intention is neither to construct a theory of critique nor to provide an exhaustive review and evaluation of the forms of critical theorizing in International Relations. Rather, my aim is to contribute to the existing efforts that engage with the question of what it means to be critical apart from drawing the epistemological and methodological boundaries so as to think about how one is critical.295 While I do not deny the importance of epistemological questions, I contend that taking time to think about the meaning of critique beyond these issues presents itself as an important task. This task takes on additional importance within the context of security studies where any realm of investigation quickly begets its critical counterpart. The rapid emergence and institutionalization of critical terrorism studies when studies on terrorism were proliferating under the auspices of the so-called Global War on Terror provides a striking example to this trend. 296 Such instances are important reminders that, to the extent that epistemology and methodology are reified as the sole concerns in defining and assessing critical thinking297 or “wrong headed refusals”298 to get on with positive projects and empirical research gets branded as debilitating for critical projects, what is erased from sight is the political nature of the questions asked and what is lost is the chance to reflect upon what it means for critical thinking to respond to its times. In his meditation on the meaning of responding and the sense of responsibility entailed by writing, Jean-Luc Nancy suggests that “all writing is ‘committed.’” 299 This notion of commitment diverges from the programmatic sense of committed writing. What underlies this conception is an understanding of writing as responding: writing is a response to the voice of an other.In Nancy’s words, “[w]hoever writes responds” 300 and “makes himself responsible to in the absolute sense.”301 Suggesting that there is always an ethical commitment prior to any particular political commitment, such a notion of writing contests the notion of creative autonomy premised on the idea of a free, self-legislating subject who responds. In other words, it discredits the idea of an original voice by suggesting that there is no voice that is not a response to a prior response. Hence, to respond is configured as responding to an expectation rather than as an answer to a question and responsibility is cast as an “anticipated response to questions, to demands, to still-unformulated, not exactly predictable expectations.”302 Echoing Nancy, David Campbell makes an important reminder as he suggests that as international relations scholars “we are always already engaged,” although the sites, mechanisms and quality of engagements might vary.303 The question, then, is not whether as scholars we are engaged or not, but what the nature of this engagement is. Such a re-framing of the question is intended to highlight the political nature of all interpretation and the importance of developing an “ethos of political criticism that is concerned with assumptions, limits, their historical production, social and political effects, and the possibility of going beyond them in thought and action.”304 Taking as its object assumptions and limits, their historical production and social and political effects places the relevancy of critical thought and responsibility of critical scholarship on new ground. It is this ethos of critique that dismantling security hopes to recover for a discipline where security operates as the foundational principle and where critical thinking keeps on contributing to security’s impressing itself as a self-evident condition. Critical Theory and Punctuality Within the context of International Relations, critical thought’s orientation toward its time comes out strongly in Kimberley Hutchings’s formulation.305 According to Hutchings, no matter what form it takes, what distinguishes critical international relations theory from other forms of theorizing is “its orientation towards change and the possibility of futures that do not reproduce the hegemonic power of the present.”306 What this implies about the nature of critical thought is that it needs to be not only diagnostic, but also self-reflexive. In the words of Hutchings, “all critical theories lay claim to some kind of account not only of the present of international politics and its relation to possible futures, but also of the role of critical theory in the present and future in international politics.” 307 Not only analyzing the present, but also introducing the question of the future into analysis places political time at the center of critical enterprise and makes the problem of change a core concern. It is this question of change that situates different forms of critical thinking on a shared ground since they all attempt to expose the way in which what is presented as given and natural is historically produced and hence open to change. With their orientation to change, their efforts to go against the dominant currents and challenge the hegemony of existing power relations by showing how contemporary practices and discourses contribute to the perpetuation of structures of power and domination, critical theorists in general and critical security studies specialists in particular take on an untimely endeavor. It is this understanding of the untimely aspect of critical thinking that is emphasized by Mark Neufeld, who regards the development of critical approaches to security as “one of the more hopeful intellectual developments in recent years.”308 Despite nurturing from different theoretical traditions and therefore harboring “fundamental differences between modernist and postmodernist commitments,” writes Neufeld, scholars who are involved in the critical project nevertheless “share a common concern with calling into question ‘prevailing social and power relationships and the institutions into which they are organized.’” 309 The desire for change—through being untimely and making the way to alternative futures that would no longer resemble the present—have led some scholars to emphasize the utopian element that must accompany all critical thinking. Quoting Oscar Wilde’s aphorism—a map of the world that does not include Utopia is not even worth glancing at, Ken Booth argues for the need to restore the role and reputation of utopianism in the theory and practice of international politics. 310 According to Booth, what goes under the banner of realism—“ethnocentric self-interest writ large”311 — falls far beyond the realities of a drastically changed world political landscape at the end of the Cold War. He describes the new reality as “an egg-box containing the shells of sovereignty; but alongside it a global community omelette [sic] is cooking.”312 Rather than insisting on the inescapability of war in the international system as political realists argue, Booth argues for the need and possibility to work toward the utopia of overcoming the condition of war by banking on the opportunities provided by a globalizing world. The point that critical thought needs to be untimely by going against its time is also emphasized by Dunne and Wheeler, who assert that, regardless of the form it takes, “critical theory purport[s] to ‘think against’ the prevailing current” and that “[c]ritical security studies is no exception” to this enterprise.313 According to the authors, the function of critical approaches to security is to problematize what is taken for granted in the disciplinary production of knowledge about security by “resist[ing], transcend[ing] and defeat[ing]…theories of security, which take for granted who is to be secured (the state), how security is to be achieved (by defending core ‘national’ values, forcibly if necessary) and from whom security is needed (the enemy).”314 While critical theory in this way is figured as untimely, I want to suggest that this notion of untimeliness gets construed paradoxically in a quite timely fashion. With a perceived disjuncture between writing the world from within a discipline and acting in it placed at the center of the debates, the performance of critical thought gets evaluated to the extent that it is punctual and in synch with the times. Does critical thought provide concrete guidance and prescribe what is to be done? Can it move beyond mere talk and make timely political interventions by providing solutions? Does it have answers to the strategic questions of progressive movements? Demanding that critical theorizing come clean in the court of these questions, such conceptions of the untimely demand that critique respond to its times in a responsible way, where being responsible is understood in stark contrast to a notion of responding and responsibility that I briefly discussed in the introductory pages of this chapter (through the works of Jean-Luc Nancy and David Campbell). Let me visit two recent conversations ensuing from the declarations of the contemporary crisis of critical theorizing in order to clarify what I mean by a timely understanding of untimely critique. The first conversation was published as a special issue in the Review of International Studies (RIS), one of the major journals of the field. Prominent figures took the 25th anniversary of the journal’s publication of two key texts—regarded as canonical for the launching and development of critical theorizing in International Relations—as an opportunity to reflect upon and assess the impact of critical theory in the discipline and interrogate what its future might be. 315 The texts in question, which are depicted as having shaken the premises of the static world of the discipline, are Robert Cox’s 1981 essay entitled on “Social Forces, States, and World Orders”316 and Richard Ashley’s article, “Political Realism and Human Interests.”317 In their introductory essay to the issue, Rengger and Thirkell-White suggest that the essays by Cox and Ashley—followed by Andrew Linklater’s Men and Citizens in the Theory of International Relations318 —represent “the breach in the dyke” of the three dominant discourses in International Relations (i.e., positivists, English School, and Marxism), unleashing “a torrent [that would] soon become a flood” as variety of theoretical approaches in contemporary social theory (i.e., feminism, Neo-Gramscianism, poststructuralism, and post-colonialism) would get introduced through the works of critical scholars.319 After elaborating the various responses given to and resistance raised against the critical project in the discipline, the authors provide an overview and an assessment of the current state of critical theorizing in International Relations. They argue that the central question for much of the ongoing debate within the critical camp in its present state—a question that it cannot help but come to terms with and provide a response to—concerns the relation between critical thought and political practice. As they state, the “fundamental philosophical question [that] can no longer be sidestepped” by critical International Relations theory is the question of the relation between “knowledge of the world and action in it.”320 One of the points alluded to in the essay is that forms of critical theorizing, which leave the future “to contingency, uncertainty and the multiplicity of political projects” and therefore provide “less guidance for concrete political action”321 or, again, those that problematize underlying assumptions of thought and “say little about the potential political agency that might be involved in any subsequent struggles”322 may render the critical enterprise impotent and perhaps even suspect. This point comes out clearly in Craig Murphy’s contribution to the collection of essays in the RIS’s special issue. 323 Echoing William Wallace’s argument that critical theorists tend to be “monks,”324 who have little to offer for political actors engaged in real world politics, Murphy argues that the promise of critical theory is “partially kept” because of the limited influence it has had outside the academy towards changing the world.Building a different world, he suggests, requires more than isolated academic talk; that it demands not merely “words,” but “deeds.”325 This, according to Murphy, requires providing “knowledge that contributes to change.”326 Such knowledge would emanate from connections with the marginalized and would incorporate observations of actors in their everyday practices. More importantly, it would create an inspiring vision for social movements, such as the one provided by the concept of human development, which, according to Murphy, was especially powerful “because it embodied a value-oriented way of seeing, a vision, rather than only isolated observations.”327 In sum, if critical theory is to retain its critical edge, Murphy’s discussion suggests, it has to be in synch with political time and respond to its immediate demands. The second debate that is revelatory of this conception of the timing of critical theory—i.e., that critical thinking be strategic and efficient in relation to political time—takes place in relation to the contemporary in/security environment shaped by the so-called Global War on Terror. The theme that bears its mark on these debates is the extent to which critical inquiries about the contemporary security landscape become complicit in the workings of power and what critique can offer to render the world more legible for progressive struggles.328 For instance, warning critical theorists against being co-opted by or aligned with belligerence and war-mongering, Richard Devetak asserts that critical international theory has an urgent “need to distinguish its position all the more clearly from liberal imperialism.”329 While scholars such as Devetak, Booth,330 and Fierke331 take the critical task to be an attempt to rescue liberal internationalism from turning into liberal imperialism, others announce the “crisis of critical theorizing” and suggest that critical writings on the nature of the contemporary security order lack the resources to grasp their actual limitations, where the latter is said to reside not in the realm of academic debate, but in the realm of political practice.332 It is amidst these debates on critique, crisis, and political time that Richard Beardsworth raises the question of the future of critical philosophy in the face of the challenges posed by contemporary world politics.333 Recounting these challenges, he provides the matrix for a proper form of critical inquiry that could come to terms with “[o]ur historical actuality.”334 He describes this actuality as the “thick context” of modernity (“an epoch, delimited by the capitalization of social relations,” which imposes its own philosophical problematic—“that is, the attempt, following the social consequences of capitalism, to articulate the relation between individuality and collective spirit”335 ), American unilateralism in the aftermath of the attacks on September 11, 2001, and the growing political disempowerment of people worldwide. Arguing that “contemporary return of religion and new forms of irrationalism emerge, in large part, out of the failure of the second response of modernity to provide a secular solution to the inequalities of the nation-state and colonization,”336 he formulates the awaiting political task for critical endeavors as constructing a world polity to resist the disintegration of the world under the force of capital.It is with this goal in mind that he suggests that “responsible scholarship needs to rescue reason in the face irrational war”337 and that intellectuals need to provide “the framework for a world ethical community of law, endowed with political mechanisms of implementation in the context of a regulated planetary economy.”338 He suggests that an aporetic form of thinking such as Jacques Derrida’s—a thinking that “ignores the affirmative relation between the determining powers of reason and history”339 —would be an unhelpful resource because such thinking “does not open up to where work needs to be done for these new forms of polity to emerge.”340 In other words, critical thinking, according to Beardsworth, needs to articulate and point out possible political avenues and to orient thought and action in concrete ways so as to contribute to progressive political change rather than dwelling on the encounter of the incalculable and calculation and im-possibility of world democracy in a Derridean fashion. In similar ways to the first debate on critique that I discussed, critical thinking is once again called upon to respond to political time in a strategic and efficient manner. As critical inquiry gets summoned up to the court of reason in Beardsworth’s account, its realm of engagement is limited to that which the light of reason can be shed upon, and its politics is confined to mapping out the achievable and the doable in a given historical context without questioning or disrupting the limits of what is presented as “realistic” choices. Hence, if untimely critical thought is to be meaningful it has to be on time by responding to political exigency in a practical, efficient, and strategic manner. In contrast to this prevalent form of understanding the untimeliness of critical theory, I will now turn to a different account of the untimely provided by Wendy Brown whose work informs the project of dismantling security as untimely critique. Drawing from her discussion of the relationship between critique, crisis, and political time, I will suggest that untimely critique of security entails, simultaneously, an attunement to the times and an aggressive violation of their self-conception. It is in this different sense of the untimely that the suggestion of dismantling security needs to be situated. Critique and Political Time As I suggested in the Prelude to this chapter, elevating security itself to the position of major protagonist and extending a call to “dismantle security” was itself declared to be an untimely pursuit in a time depicted as the time of crisis in security. Such a declaration stood as an exemplary moment (not in the sense of illustration or allegory, but as a moment of crystallization) for disciplinary prohibitions to think and act otherwise—perhaps the moment when a doxa exhibits its most powerful hold. Hence, what is first needed is to overturn the taken-for-granted relations between crisis, timeliness, and critique. The roots krisis and kritik can be traced back to the Greek word krinõ, which meant “to separate”, to “choose,” to “judge,” to “decide.”341 While creating a broad spectrum of meanings, it was intimately related to politics as it connoted a “divorce” or “quarrel,” but also a moment of decision and a turning point. It was also used as a jurisprudential term in the sense of making a decision, reaching a verdict or judgment (kritik) on an alleged disorder so as to provide a way to restore order. Rather than being separated into two domains of meaning—that of “subjective critique” and “objective crisis”—krisis and kritik were conceived as interlinked moments. Koselleck explains this conceptual fusion: [I]t wasin the sense of “judgment,” “trial,” “legal decision,” and ultimately “court” that crisis achieved a high constitutionalstatus, through which the individual citizen and the community were bound together. The “for and against” wastherefore present in the original meaning of the word and thisin a manner that already conceptually anticipated the appropriate judgment. 342 Recognition of an objective crisis and subjective judgments to be passed on it so as to come up with a formula for restoring the health of the polity by setting the times right were thereby infused and implicated in each other.343 Consequently, as Brown notes, there could be no such thing as “mere critique” or “untimely critique” because critique always entailed a concern with political time: “[C]ritique as political krisis promise[d] to restore continuity by repairing or renewing the justice that gives an order the prospect of continuity, that indeed ma[de] it continuous.”344 The breaking of this intimate link between krisis and kritik, the consequent depoliticization of critique and its sundering from crisis coincides with the rise of modern political order and redistribution of the public space into the binary structure of sovereign and subject, public and private.345 Failing to note the link between the critique it practiced and the looming political crisis, emerging philosophies of history, according Koselleck, had the effect of obfuscating this crisis. As he explains, “[n]ever politically grasped, [this political crisis] remained concealed in historico-philosophical images of the future which cause the day’s events to pale.”346 It is this intimate, but severed, link between crisis and critique in historical narratives that Wendy Brown’s discussion brings to the fore and re-problematizes. She turns to Walter Benjamin’s “Theses on the Philosophy of History” and challenges conventional understandings of historical materialism, which conceives of the present in terms of unfolding laws of history.347 According to Brown, the practice of critical theory appeals to a concern with time to the extent that “[t]he crisis that incites critique and that critique engages itself signals a rupture of temporal continuity, which is at the same time a rupture in political imaginary.”348 Cast in these terms, it is a particular experience with time, with the present, that Brown suggests Benjamin’s theses aim to capture. Rather than an unmoving or an automatically overcome present (a present that is out of time), the present is interpreted as an opening that calls for a response to it. This call for a response highlights the idea that, far from being a luxury, critique is non-optional in its nature. Such an understanding of critical thought is premised on a historical consciousness that grasps the present historically so as to break with the selfconception of the age. Untimely critique transforms into a technique to blow up the present through fracturing its apparent seamlessness by insisting on alternatives to its closed political and epistemological universe.349 Such a conception resonates with the distinction that Žižek makes between a political subjectivity that is confined to choosing between the existing alternatives—one that takes the limits of what is given as the limits to what is possible—and a form of subjectivity that creates the very set of alternatives by “transcend[ing] the coordinates of a given situation [and] ‘posit[ing] the presuppositions’ of one's activity” by redefining the very situation within which one is active.”350 With its attempt to grasp the times in its singularity, critique is cast neither as a breaking free from the weight of time (which would amount to ahistoricity) nor being weighed down by the times (as in the case of teleology).351 It conceives the present as “historically contoured but not itself experienced as history because not necessarily continuous with what has been.”352 It is an attitude that renders the present as the site of “non-utopian possibility” since it is historically situated and constrained yet also a possibility since it is not historically foreordained or determined.353 It entails contesting the delimitations of choice and challenging the confinement of politics to existing possibilities. Rather than positing history as existing objectively outside of narration, what Brown’s discussion highlights is the intimate relation between the constitution of political subjectivity vis-à-vis the meaning of history for the present. It alludes to “the power of historical discourse,” which Mowitt explains as a power “to estrange us from that which is most familiar, namely, the fixity of the present” because “what we believe to have happened to us bears concretely on what we are prepared to do with ourselves both now and in the future.”354 Mark Neocleous concretizes the political stakes entailed in such encounters with history—with the dead—from the perspective of three political traditions: a conservative one, which aims to reconcile the dead with the living, a fascist one, which aims to resurrect the dead to legitimate its fascist program, and a historical materialist one, which seeks redemption with the dead as the source of hope and inspiration for the future.355 Brown’s discussion of critique and political time is significant for highlighting the immediately political nature of critique in contrast to contemporary invocations that cast it as a self-indulgent practice, an untimely luxury, a disinterested, distanced, academic endeavor. Her attempt to trace critique vis-à-vis its relation to political time provides a counter-narrative to the conservative and moralizing assertions that shun untimely critique of security as a luxurious interest that is committed to abstract ideals rather than to the “reality” of politics—i.e., running after utopia rather than modeling “real world” solutions. Dismantling security as untimely critique entails a similar claim to unsettle the accounts of “what the times are” with a “bid to reset time.”356 It aspires to be untimely in the face of the demands on critical thought to be on time; aims to challenge the moralizing move, the call to conscience that arrives in the form of assertions that saying “no!” to security, that refusing to write it, would be untimely. Rather than succumbing to the injunction that thought of political possibility is to be confined within the framework of security, dismantling security aims to open up space for alternative forms, for a different language of politics so as to “stop digging” the hole politics of security have dug us and start building a counter-discourse. Conclusion As an attempt to push a debate that is fixated on security to the limit and explore what it means to dismantle security, my engagement with various aspects of this move is not intended as an analysis raised at the level of causal interpretations or as an attempt to find better solutions to a problem that already has a name. Rather, it tries to recast what is taken-for-granted by attending to the conceptual assumptions, the historical and systemic conditions within which the politics of security plays itself out. As I tried to show in this chapter, it also entails a simultaneous move of refusing to be a disciple of the discipline of security. This implies overturning not only the silent disciplinary protocols about which questions are legitimate to ask, but also the very framework that informs those questions. It is from this perspective that I devoted two chapters to examining and clarifying the proposal to dismantle security as a claim on time. After explicating, in Chapter 4, the temporal structure that is enacted by politics of security and elaborating on how security structures the relation between the present and the future, in this chapter, I approached the question of temporality from a different perspective, by situating it in relation to disciplinary times in order to clarify what an untimely critique of security means. I tried to elaborate this notion of the untimely by exploring the understanding of untimeliness that informs certain conceptions of critical theorizing in International Relations. I suggested that such a notion of the untimely paradoxically calls on critical thought to be on time in the sense of being punctual and strategic. Turning to Wendy Brown’s discussion of the relation between critique and political time, I elaborated on the sense of untimely critique that dismantling security strives for—a critique that goes against the times that are saturated by the infinite passion to secure and works toward taking apart the architecture of security.

### 5 – Flex DA

#### The plan limits executive war fighting capabilities – devastates all operations

Kriner 10 (Douglas – asst prof of poli sci @ Boston Univ , "After the Rubicon: Congress, Presidents, and the Politics of Waging War," Ed. by William Howell and Jon Peverhouse, p. 285-286)

American history offers few examples of Congress using its legislative power to bring to heel a wayward commander in chief. Only in the rarest cases will Congress be able to marshall the supermajorities required to pass legislation compelling the president to abandon his preferred policy preferences. However, to focus only on the lack of concrete legislation terminating an ongoing war or blocking the use of force altogether is to miss the more indirect, yet still powerful means of influence through which members of Congress have routinely shaped the course of American military affairs. Even when Congress fails to write its military preferences into law, its members rarely stand on the sidelines of the policy process. Rather, members of Congress have historically engaged in a variety of actions from formal intiatives, such as introducing legislation or holding hearings that challenge the president's conduct of military action, to informal efforts to shape the nature of the policy debate in the public sphere. These actions can raise significantly the political and strategic costs to the president of waging large-scale, long-duration military actions to pursue their policy goals. In some cases, presidents may judge that the benefits of responding miltiarily to a foreign policy crisis or continuing an ongoing military engagement may outweigh even the heightened costs that congressional opposition generates. In these instances, enacting legislation to compel the president to change course may be the only remedy available to congressional opponents. In many other cases, however, congressional opposition has had tangible effects on policy outcomes. Again and again, the statistical and qualitative analyses have showed presidents modifying their policies, moderating the scale and duration of their military ventures, and sometimes foregoing a military response altogether, when faced with real or anticipated opposition on Capitol Hill. When exerted indirectly, congressional influence is less immediately visible and dramatic than it is in the rare occasions when Congress has enacted legislation to mandate a change in militar policy. Yet through indirect mechanisms, Congress has often encouraged presidents to pursue significantly different military policies than they would have adopted in the absence of congressional opposition.

#### It spills over to destabilize all presidential war powers

Heder 10 (Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is no constitutional provision on whether Congress has the legislative power to limit, end, or otherwise redefine the scope of a war. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 the same cannot be said about Congress’s legislative authority to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully declined to grant Congress such powers. And as this Article argues, granting Congress this power would be inconsistent with the general war powers structure of the Constitution. Such a reading of the Constitution would unnecessarily empower Congress and tilt the scales heavily in its favor. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time when the Executive’s expertise is needed. 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### The impact is the loss of fourth-gen warfighting capabilities that escalate to nuclear use

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A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

#### Bioterror causes extinction

Mhyrvold 13 (Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013)

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

### Pre-Emption

#### ------This entire advantage is about our offensive posture – the plan doesn’t change that – just going to congress doesn’t change the fact that we pre-empt

Their Dycus ev literally says -

. A preemptive strike to ward off an imminent enemy attack is considered defensive

It continues…

The important point here is that any use of cyber weapons, offensive or defensive,

#### No reason they solve this at all – they are only offense

#### -----Regulation is impossible without LARGE international agreements – their ev

Benavides 7/30/13 (Stephen Benavides is a policy analyst and union organizer from Dallas. He holds a bachelor's degree in political science from the University of North Texas and has done graduate research in econometrics and economic theory. , “The Coming Cyber-Cold War: US Pioneering Online Attacks”, <http://truth-out.org/news/item/17714-the-coming-cyber-cold-war>)

The question of how to regulate such a thing, if it's even possible, would require a level of international cooperation never before seen. And that's the problem. Outside of prosecuting domestic violations of the Constitution, we are in uncharted territory. At least with the Cold War of past, there were established rules of engagement. Everyone understood what brinksmanship may entail and had a contingency plan for every contingency plan. With the elimination of borders, there has been an elimination of international law. According to Mike Jacobs, former National Security Agency director, "If you are engaged in reconnaissance on an adversary's systems, you are laying the electronic battlefield and preparing to use it." Unreleased zero-day exploits in software allow governments to access networks and other systems of surveillance targets without the targets' knowledge. US Cyber Command has the ability to trace the physical and online address of every device connected to the Internet - and attack if need be. Any target who moves locally or internationally is now unable to escape government or corporate surveillance. If the US considers this type of activity to be warfare, it's fair to say that every other nation does too.

**--Where Emory’s Card Starts--**

The unregulated nature of the cyber arms trade not only leaves open the possibility of technology falling into an opposition organization's possession, but guarantees it. Once again, the US is leading weapons proliferation. Political inconvenience of a militarized conventional war also may play a part in the burgeoning cyber war. It is much more difficult for military commanders to justify the death of a sister or brother in combat operations widely understood to be about maintaining access to energy resources than a "victimless" attack on a foreign government to protect internal bank documents or dam vulnerabilities.

#### -----No nuclear escalation

Sanger and Baker 10 (David E. and Peter, Staff @ New York Times, “Obama Limits When U.S. Would Use Nuclear Arms”.  <http://www.nytimes.com/2010/04/06/world/06arms.html>)

WASHINGTON — President Obama said Monday that he was revamping American nuclear strategy to **substantially narrow** the conditions under which the United States would use nuclear weapons,**even in self defense. B**ut the president said in an interview that he was carving out an exception for “outliers like Iran and North Korea” that have violated or renounced the main treaty to halt nuclear proliferation. Discussing his approach to nuclear security the day before formally releasing his new strategy, Mr. Obama described his policy as part of a broader effort to edge the world toward making nuclear weapons obsolete, and to create incentives for countries to give up any nuclear ambitions. To set an example, the new strategy renounces the development of any new nuclear weapons, overruling the initial position of his own defense secretary. Mr. Obama’s strategy is a sharp shift from those adopted by his predecessors and seeks to revamp the nation’s nuclear posture for a new age in which rogue states and terrorist organizations are greater threats than traditional powers like Russia and China.  It eliminates much of the ambiguity that has deliberately existed in American nuclear policy since the opening days of the Cold War. For the first time, the United States is explicitly committing not to use nuclear weapons against non-nuclear states that are in compliance with the Nuclear Non-Proliferation Treaty, even if theyattacked the United States with biological or chemical weapons, or **launched a crippling cyberattack**.

#### Diminishing marginal returns means there’s no impact

Martin C. Libicki 9, Senior Management Scientist @ RAND and adjunct fellow @ Georgetown’s Center for Security Studies, “Cyberdeterrence and Cyberwar,” RAND, <http://www.rand.org/pubs/monographs/MG877.html>

Strategic Cyberwar Is Unlikely to Be Decisive ¶ No one knows how destructive any one strategic cyberwar attack would be. Estimates of the damage from today’s cyberattacks within the United States range from hundreds of billions of dollars to just a few billion dollars per year. ¶ The higher dollar figures suggest that cyberattacks on enemy civilian infrastructures—strategic cyberwar—may be rationalized as a way to assist military efforts or as a way to coerce the other side to yield to prevent further suffering. But can strategic cyberwar induce political compliance the way, say, strategic airpower would? Airpower tends to succeed when societies are convinced that matters will only get worse. With cyberattacks, the opposite is more likely. As systems are attacked, vulnerabilities are revealed and repaired or routed around. As systems become more hardened, societies become less vulnerable and are likely to become more, rather than less, resistant to further coercion.

#### -----Uncontrollability of cyber-war is a neg warrant --- means countries won’t use them

Thomas P.M. Barnett 13, special assistant for strategic futures in the U.S. Defense Department's Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat, March/April 2013, “Think Again: The Pentagon,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/04/the\_pentagon?page=full

As for cyber serving as a stand-alone war-fifighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, I'm deeply skeptical. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- nice to have, but hard to use. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor."¶ Please remember amid all this frenetic scaremongering that the Pentagon is never more frightened about our collective future than when it's desperately uncertain about its own. Given the rising health-care costs associated with America's aging population and the never-ending dysfunction in Washington, we should expect to be bombarded with frightening scenarios of planetary doom for the next decade or two. None of this bureaucratic chattering will bear any resemblance to global trends, which demonstrate that wars have grown increasingly infrequent, shorter in duration, and diminished in lethality. But you won't hear that from the next-warriors on the Potomac.

#### Zero impact to cyber arms race --- overwhelming consensus of qualified authors goes neg

- No motivation---can’t be used for coercive leverage

- Defenses solve---benefits of offense are overstated

- Too difficult to execute/mistakes in code are inevitable

- AT: Infrastructure attacks

- Military networks are air-gapped/difficult to access

- Overwhelming consensus goes neg

Colin S. Gray 13, Prof. of International Politics and Strategic Studies @ the University of Reading and External Researcher @ the Strategic Studies Institute @ the U.S. Army War College, April, “Making Strategic Sense of Cyber Power: Why the Sky Is Not Falling,” U.S. Army War College Press, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1147.pdf>

CONCLUSIONS AND RECOMMENDATIONS: THE SKY IS NOT FALLING¶ This analysis has sought to explore, identify, and explain the strategic meaning of cyber power. The organizing and thematic question that has shaped and driven the inquiry has been “So what?” Today we all do cyber, but this behavior usually has not been much informed by an understanding that reaches beyond the tactical and technical. I have endeavored to analyze in strategic terms what is on offer from the largely technical and tactical literature on cyber. What can or might be done and how to go about doing it are vitally important bodies of knowledge. But at least as important is understanding what cyber, as a fifth domain of warfare, brings to national security when it is considered strategically. Military history is stocked abundantly with examples of tactical behavior un - guided by any credible semblance of strategy. This inquiry has not been a campaign to reveal what cy ber can and might do; a large literature already exists that claims fairly convincingly to explain “how to . . .” But what does cyber power mean, and how does it fit strategically, if it does? These Conclusions and Rec ommendations offer some understanding of this fifth geography of war in terms that make sense to this strategist, at least. ¶ 1. Cyber can only be an enabler of physical effort. Stand-alone (popularly misnamed as “strategic”) cyber action is inherently grossly limited by its immateriality. The physicality of conflict with cyber’s human participants and mechanical artifacts has not been a passing phase in our species’ strategic history. Cyber action, quite independent of action on land, at sea, in the air, and in orbital space, certainly is possible. But the strategic logic of such behavior, keyed to anticipated success in tactical achievement, is not promising. To date, “What if . . .” speculation about strategic cyber attack usually is either contextually too light, or, more often, contextually unpersuasive. 49 However, this is not a great strategic truth, though it is a judgment advanced with considerable confidence. Although societies could, of course, be hurt by cyber action, it is important not to lose touch with the fact, in Libicki’s apposite words, that “[i]n the absence of physical combat, cyber war cannot lead to the occupation of territory. It is almost inconceivable that a sufficiently vigorous cyber war can overthrow the adversary’s government and replace it with a more pliable one.” 50 In the same way that the concepts of sea war, air war, and space war are fundamentally unsound, so also the idea of cyber war is unpersuasive. ¶ It is not impossible, but then, neither is war conducted only at sea, or in the air, or in space. On the one hand, cyber war may seem more probable than like environmentally independent action at sea or in the air. After all, cyber warfare would be very unlikely to harm human beings directly, let alone damage physically the machines on which they depend. These near-facts (cyber attack might cause socially critical machines to behave in a rogue manner with damaging physical consequences) might seem to ren - der cyber a safer zone of belligerent engagement than would physically violent action in other domains. But most likely there would be serious uncertainties pertaining to the consequences of cyber action, which must include the possibility of escalation into other domains of conflict. Despite popular assertions to the contrary, cyber is not likely to prove a precision weapon anytime soon. 51 In addition, assuming that the political and strategic contexts for cyber war were as serious as surely they would need to be to trigger events warranting plausible labeling as cyber war, the distinctly limited harm likely to follow from cyber assault would hardly appeal as prospectively effective coercive moves. On balance, it is most probable that cyber’s strategic future in war will be as a contribut - ing enabler of effectiveness of physical efforts in the other four geographies of conflict. Speculation about cyber war, defined strictly as hostile action by net - worked computers against networked computers, is hugely unconvincing.¶ 2. Cyber defense is difficult, but should be sufficiently effective. The structural advantages of the offense in cyber conflict are as obvious as they are easy to overstate. Penetration and exploitation, or even attack, would need to be by surprise. It can be swift almost beyond the imagination of those encultured by the traditional demands of physical combat. Cyber attack may be so stealthy that it escapes notice for a long while, or it might wreak digital havoc by com - plete surprise. And need one emphasize, that at least for a while, hostile cyber action is likely to be hard (though not quite impossible) to attribute with a cy - berized equivalent to a “smoking gun.” Once one is in the realm of the catastrophic “What if . . . ,” the world is indeed a frightening place. On a personal note, this defense analyst was for some years exposed to highly speculative briefings that hypothesized how unques - tionably cunning plans for nuclear attack could so promptly disable the United States as a functioning state that our nuclear retaliation would likely be still - born. I should hardly need to add that the briefers of these Scary Scenarios were obliged to make a series of Heroic Assumptions. ¶ The literature of cyber scare is more than mildly reminiscent of the nuclear attack stories with which I was assailed in the 1970s and 1980s. As one may observe regarding what Winston Churchill wrote of the disaster that was the Gallipoli campaign of 1915, “[t]he terrible ‘Ifs’ accumulate.” 52 Of course, there are dangers in the cyber domain. Not only are there cyber-competent competitors and enemies abroad; there are also Americans who make mistakes in cyber operation. Furthermore, there are the manufacturers and constructors of the physical artifacts behind (or in, depending upon the preferred definition) cyber - space who assuredly err in this and that detail. The more sophisticated—usually meaning complex—the code for cyber, the more certain must it be that mistakes both lurk in the program and will be made in digital communication.¶ What I have just outlined minimally is not a reluc - tant admission of the fallibility of cyber, but rather a statement of what is obvious and should be anticipat - ed about people and material in a domain of war. All human activities are more or less harassed by friction and carry with them some risk of failure, great or small. A strategist who has read Clausewitz, especially Book One of On War , 53 will know this. Alternatively, anyone who skims my summary version of the general theory of strategy will note that Dictum 14 states explicitly that “Strategy is more difficult to devise and execute than are policy, operations, and tactics: friction of all kinds comprise phenomena inseparable from the mak - ing and execution of strategies.” 54 Because of its often widely distributed character, the physical infrastruc - ture of an enemy’s cyber power is typically, though not invariably, an impracticable target set for physical assault. Happily, this probable fact should have only annoying consequences. The discretionary nature and therefore the variable possible characters feasible for friendly cyberspace(s), mean that the more danger - ous potential vulnerabilities that in theory could be the condition of our cyber-dependency ought to be avoidable at best, or bearable and survivable at worst. Libicki offers forthright advice on this aspect of the subject that deserves to be taken at face value: ¶ [T]here is no inherent reason that improving informa - tion technologies should lead to a rise in the amount of critical information in existence (for example, the names of every secret agent). Really critical information should never see a computer; if it sees a computer, it should not be one that is networked; and if the computer is networked, it should be air-gapped.¶ Cyber defense admittedly is difficult to do, but so is cyber offense. To quote Libicki yet again, “[i]n this medium [cyberspace] the best defense is not necessarily a good offense; it is usually a good defense.” 56 Unlike the geostrategic context for nuclear-framed competition in U.S.–Soviet/Russian rivalry, the geographical domain of cyberspace definitely is defensible. Even when the enemy is both clever and lucky, it will be our own design and operating fault if he is able to do more than disrupt and irritate us temporarily.¶ When cyber is contextually regarded properly— which means first, in particular, when it is viewed as but the latest military domain for defense planning—it should be plain to see that cyber performance needs to be good enough rather than perfect. 57 Our Landpower, sea power, air power, and prospectively our space systems also will have to be capable of accepting combat damage and loss, then recovering and carrying on. There is no fundamental reason that less should be demanded of our cyber power. Second, given that cyber is not of a nature or potential character at all likely to parallel nuclear dangers in the menace it could con - tain, we should anticipate international cyber rivalry to follow the competitive dynamic path already fol - lowed in the other domains in the past. Because the digital age is so young, the pace of technical change and tactical invention can be startling. However, the mechanization RMA of the 1920s and 1930s recorded reaction to the new science and technology of the time that is reminiscent of the cyber alarmism that has flour - ished of recent years. 58 We can be confident that cyber defense should be able to function well enough, given the strength of political, military, and commercial motivation for it to do so. The technical context here is a medium that is a constructed one, which provides air-gapping options for choice regarding the extent of networking. Naturally, a price is paid in convenience for some closing off of possible cyberspace(s), but all important defense decisions involve choice, so what is novel about that? There is nothing new about accepting some limitations on utility as a price worth paying for security.¶ 3. Intelligence is critically important, but informa - tion should not be overvalued. The strategic history of cyber over the past decade confirms what we could know already from the science and technology of this new domain for conflict. Specifically, cyber power is not technically forgiving of user error. Cyber warriors seeking criminal or military benefit require precise information if their intended exploits are to succeed. Lucky guesses should not stumble upon passwords, while efforts to disrupt electronic Supervisory Con - trol and Data Acquisition (SCADA) systems ought to be unable to achieve widespread harmful effects. But obviously there are practical limits to the air-gap op - tion, given that control (and command) systems need to be networks for communication. However, Internet connection needs to be treated as a potential source of serious danger.¶ It is one thing to be able to be an electronic nuisance, to annoy, disrupt, and perhaps delay. But it is quite another to be capable of inflicting real persisting harm on the fighting power of an enemy. Critically important military computer networks are, of course, accessible neither to the inspired amateur outsider, nor to the malignant political enemy. Easy passing reference to a hypothetical “cyber Pearl Harbor” reflects both poor history and ignorance of contemporary military common sense. Critical potential military (and other) targets for cyber attack are extremely hard to access and influence (I believe and certainly hope), and the technical knowledge, skills, and effort required to do serious harm to national security is forbiddingly high. This is not to claim, foolishly, that cyber means absolutely could not secure near-catastrophic results. However, it is to say that such a scenario is extremely improbable. Cyber defense is advancing all the time, as is cyber offense, of course. But so discretionary in vital detail can one be in the making of cyberspace, that confidence—real confidence—in cyber attack could not plausibly be high. It should be noted that I am confining this particular discussion to what rather idly tends to be called cyber war. In political and strategic practice, it is unlikely that war would or, more importantly, ever could be restricted to the EMS. Somewhat rhetorically, one should pose the question: Is it likely (almost anything, strictly, is possible) that cyber war with the potential to inflict catastrophic damage would be allowed to stand unsupported in and by action in the other four geographical domains of war? I believe not.¶ Because we have told ourselves that ours uniquely is the Information Age, we have become unduly respectful of the potency of this rather slippery catch-all term. As usual, it is helpful to contextualize the al - legedly magical ingredient, information, by locating it properly in strategic history as just one important element contributing to net strategic effectiveness. This mild caveat is supported usefully by recognizing the general contemporary rule that information per se harms nothing and nobody. The electrons in cyber - ized conflict have to be interpreted and acted upon by physical forces (including agency by physical human beings). As one might say, intelligence (alone) sinks no ship; only men and machines can sink ships! That said, there is no doubt that if friendly cyber action can infiltrate and misinform the electronic informa - tion on which advisory weaponry and other machines depend, considerable warfighting advantage could be gained. I do not intend to join Clausewitz in his dis - dain for intelligence, but I will argue that in strategic affairs, intelligence usually is somewhat uncertain. 59 Detailed up-to-date intelligence literally is essential for successful cyber offense, but it can be healthily sobering to appreciate that the strategic rewards of intelligence often are considerably exaggerated. The basic reason is not hard to recognize. Strategic success is a complex endeavor that requires adequate perfor - mances by many necessary contributors at every level of conflict (from the political to the tactical). ¶ When thoroughly reliable intelligence on the en - emy is in short supply, which usually is the case, the strategist finds ways to compensate as best he or she can. The IT-led RMA of the past 2 decades was fueled in part by the prospect of a quality of military effec - tiveness that was believed to flow from “dominant battle space knowledge,” to deploy a familiar con - cept. 60 While there is much to be said in praise of this idea, it is not unreasonable to ask why it has been that our ever-improving battle space knowledge has been compatible with so troubled a course of events in the 2000s in Iraq and Afghanistan. What we might have misunderstood is not the value of knowledge, or of the information from which knowledge is quarried, or even the merit in the IT that passed information and knowledge around. Instead, we may well have failed to grasp and grip understanding of the whole context of war and strategy for which battle space knowledge unquestionably is vital. One must say “vital” rather than strictly essential, because relatively ignorant armies can and have fought and won despite their ig - norance. History requires only that one’s net strategic performance is superior to that of the enemy. One is not required to be deeply well informed about the en - emy. It is historically quite commonplace for armies to fight in a condition of more-than-marginal reciprocal and strategic cultural ignorance. Intelligence is king in electronic warfare, but such warfare is unlikely to be solely, or even close to solely, sovereign in war and its warfare, considered overall as they should be.¶ 4. Why the sky will not fall. More accurately, one should say that the sky will not fall because of hostile action against us in cyberspace unless we are improb - ably careless and foolish. David J. Betz and Tim Ste vens strike the right note when they conclude that “[i]f cyberspace is not quite the hoped-for Garden of Eden, it is also not quite the pestilential swamp of the imagination of the cyber-alarmists.” 61 Our understanding of cyber is high at the technical and tactical level, but re - mains distinctly rudimentary as one ascends through operations to the more rarified altitudes of strategy and policy. Nonetheless, our scientific, technological, and tactical knowledge and understanding clearly indicates that the sky is not falling and is unlikely to fall in the future as a result of hostile cyber action. This analysis has weighed the more technical and tactical literature on cyber and concludes, not simply on balance, that cyber alarmism has little basis save in the imagination of the alarmists. There is military and civil peril in the hostile use of cyber, which is why we must take cyber security seriously, even to the point of buying redundant capabilities for a range of command and control systems. 62 So seriously should we regard cyber danger that it is only prudent to as - sume that we will be the target for hostile cyber action in future conflicts, and that some of that action will promote disruption and uncertainty in the damage it will cause.¶ That granted, this analysis recommends strongly that the U.S. Army, and indeed the whole of the U.S. Government, should strive to comprehend cyber in context. Approached in isolation as a new technol - ogy, it is not unduly hard to be over impressed with its potential both for good and harm. But if we see networked computing as just the latest RMA in an episodic succession of revolutionary changes in the way information is packaged and communicated, the computer-led IT revolution is set where it belongs, in historical context. In modern strategic history, there has been only one truly game-changing basket of tech - nologies, those pertaining to the creation and deliv - ery of nuclear weapons. Everything else has altered the tools with which conflict has been supported and waged, but has not changed the game. The nuclear revolution alone raised still-unanswered questions about the viability of interstate armed conflict. How - ever, it would be accurate to claim that since 1945, methods have been found to pursue fairly traditional political ends in ways that accommodate nonuse of nuclear means, notwithstanding the permanent pres - ence of those means.¶ The light cast by general strategic theory reveals what requires revealing strategically about networked computers. Once one sheds some of the sheer wonder at the seeming miracle of cyber’s ubiquity, instanta - neity, and (near) anonymity, one realizes that cyber is just another operational domain, though certainly one very different from the others in its nonphysi - cality in direct agency. Having placed cyber where it belongs, as a domain of war, next it is essential to recognize that its nonphysicality compels that cyber should be treated as an enabler of joint action, rather than as an agent of military action capable of behav - ing independently for useful coercive strategic effect. There are stand-alone possibilities for cyber action, but they are not convincing as attractive options either for or in opposition to a great power, let alone a superpower. No matter how intriguing the scenario design for cyber war strictly or for cyber warfare, the logic of grand and military strategy and a common sense fueled by understanding of the course of strategic history, require one so to contextualize cyber war that its independence is seen as too close to absurd to merit much concern.

#### ------Diminishing marginal returns means there’s no impact

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Strategic Cyberwar Is Unlikely to Be Decisive ¶ No one knows how destructive any one strategic cyberwar attack would be. Estimates of the damage from today’s cyberattacks within the United States range from hundreds of billions of dollars to just a few billion dollars per year. ¶ The higher dollar figures suggest that cyberattacks on enemy civilian infrastructures—strategic cyberwar—may be rationalized as a way to assist military efforts or as a way to coerce the other side to yield to prevent further suffering. But can strategic cyberwar induce political compliance the way, say, strategic airpower would? Airpower tends to succeed when societies are convinced that matters will only get worse. With cyberattacks, the opposite is more likely. As systems are attacked, vulnerabilities are revealed and repaired or routed around. As systems become more hardened, societies become less vulnerable and are likely to become more, rather than less, resistant to further coercion.

#### No risk of cyber war

**Clark ’12** (MA candidate – Intelligence Studies @ American Military University, senior analyst – Chenega Federal Systems, 4/28/’12 (Paul, “The Risk of Disruption or Destruction of Critical U.S. Infrastructure by an Offensive Cyber Attack,” American Military University)

The Department of Homeland Security worries that our critical infrastructure and key resources (CIKR) may be exposed, both directly and indirectly, to multiple threats because of CIKR reliance on the global cyber infrastructure, an infrastructure that is under routine cyberattack by a “spectrum of malicious actors” (National Infrastructure Protection Plan 2009). CIKR in the extremely large and complex U.S. economy spans multiple sectors including agricultural, finance and banking, dams and water resources, public health and emergency services, military and defense, transportation and shipping, and energy (National Infrastructure Protection Plan 2009). The disruption and destruction of public and private infrastructure is part of warfare, without this infrastructure conflict cannot be sustained (Geers 2011). Cyber-attacks are desirable because they are considered to be a relatively “low cost and long range” weapon (Lewis 2010), but prior to the creation of Stuxnet, the first cyber-weapon, the ability to disrupt and destroy critical infrastructure through cyber-attack was theoretical. The movement of an offensive cyber-weapon from conceptual to actual has forced the United States to question whether offensive cyber-attacks are a significant threat that are able to disrupt or destroy CIKR to the level that national security is seriously degraded. It is important to understand the risk posed to national security by cyber-attacks to ensure that government responses are appropriate to the threat and balance security with privacy and civil liberty concerns. The risk posed to CIKR from cyber-attack can be evaluated by measuring the threat from cyber-attack against the vulnerability of a CIKR target and the consequences of CIKR disruption. As the only known cyber-weapon, Stuxnet has been **thoroughly analyzed** and **used as a model** for predicting future cyber-weapons. The U.S. electrical grid, a key component in the CIKR energy sector, is a target that has been analyzed for vulnerabilities and the consequences of disruption predicted – the electrical grid has been used in multiple attack scenarios including a classified scenario provided to the U.S. Congress in 2012 (Rohde 2012). Stuxnet will serve as the weapon and the U.S. electrical grid will serve as the target in this risk analysis that concludes that there is a low risk of disruption or destruction of critical infrastructure from a an offensive cyber-weapon because of the complexity of the attack path, the limited capability of non-state adversaries to develop cyber-weapons, and the existence of multiple methods of mitigating the cyber-attacks. To evaluate the threat posed by a Stuxnet-like cyber-weapon, the complexity of the weapon, the available attack vectors for the weapon, and the resilience of the weapon must be understood. The complexity – how difficult and expensive it was to create the weapon – identifies the relative cost and availability of the weapon; inexpensive and simple to build will be more prevalent than expensive and difficult to build. Attack vectors are the available methods of attack; the larger the number, the more severe the threat. For example, attack vectors for a cyberweapon may be email attachments, peer-to-peer applications, websites, and infected USB devices or compact discs. Finally, the resilience of the weapon determines its availability and affects its usefulness. A useful weapon is one that is resistant to disruption (resilient) and is therefore available and reliable. These concepts are seen in the AK-47 assault rifle – a simple, inexpensive, reliable and effective weapon – and carry over to information technology structures (Weitz 2012). The evaluation of Stuxnet identified malware that is “unusually complex and large” and required code written in multiple languages (Chen 2010) in order to complete a variety of specific functions contained in a “vast array” of components – **it is one of the most complex threats ever analyzed by Symantec** (Falliere, Murchu and Chien 2011). To be successful, Stuxnet required a **high** **level of technical knowledge across multiple disciplines**, a laboratory with the target equipment configured for testing, and a foreign intelligence capability to collect information on the target network and attack vectors (Kerr, Rollins and Theohary 2010). The malware also needed careful monitoring and maintenance because it could be easily disrupted; as a result Stuxnet was developed with a high degree of configurability and was upgraded multiple times in less than one year (Falliere, Murchu and Chien 2011). Once introduced into the network, the cyber-weapon then had to utilize four known vulnerabilities and four unknown vulnerabilities, known as zero-day exploits, in order to install itself and propagate across the target network (Falliere, Murchu and Chien 2011). Zero-day exploits are **incredibly difficult to find** and fewer than twelve out of the 12,000,000 pieces of malware discovered each year utilize zero-day exploits and this rarity makes them valuable, zero-days can fetch $50,000 to $500,000 each on the black market (Zetter 2011). The use of four rare exploits in a single piece of malware is “unprecedented” (Chen 2010). Along with the use of four unpublished exploits, Stuxnet also used the “first ever” programmable logic controller rootkit, a Windows rootkit, antivirus evasion techniques, intricate process injection routines, and other complex interfaces (Falliere, Murchu and Chien 2011) all **wrapped up in “layers of encryption** like Russian nesting dolls” (Zetter 2011) – including custom encryption algorithms (Karnouskos 2011). As the malware spread across the now-infected network it had to utilize additional vulnerabilities in proprietary Siemens industrial control software (ICS) and hardware used to control the equipment it was designed to sabotage. Some of these ICS vulnerabilities were published but some were unknown and **required such a high degree of inside knowledge** that there was speculation that a Siemens employee had been involved in the malware design (Kerr, Rollins and Theohary 2010). The unprecedented technical complexity of the Stuxnet cyber-weapon, along with the extensive technical and financial resources and foreign intelligence capabilities required for its development and deployment, indicates that the malware was likely developed by a nation-state (Kerr, Rollins and Theohary 2010). Stuxnet had very limited attack vectors. When a computer system is connected to the public Internet a host of attack vectors are available to the cyber-attacker (Institute for Security Technology Studies 2002). Web browser and browser plug-in vulnerabilities, cross-site scripting attacks, compromised email attachments, peer-to-peer applications, operating system and other application vulnerabilities are all vectors for the introduction of malware into an Internetconnected computer system. **Networks that are not connected to the public internet are “air gapped**,” a technical colloquialism to identify a physical separation between networks. Physical separation from the public Internet is a common safeguard **for sensitive networks** including classified U.S. government networks. If the target network is air gapped, infection can only occur through physical means – an infected disk or USB device that **must be physically introduced** into a possibly access controlled environment and connected to the air gapped network. The first step of the Stuxnet cyber-attack was to initially infect the target networks, a difficult task given the probable disconnected and well secured nature of the Iranian nuclear facilities. Stuxnet was introduced via a USB device to the target network, a method that suggests that the attackers were familiar with the configuration of the network and knew it was not connected to the public Internet (Chen 2010). This assessment is supported by two rare features in Stuxnet – having all necessary functionality for industrial sabotage fully embedded in the malware executable along with the ability to self-propagate and upgrade through a peer-to-peer method (Falliere, Murchu and Chien 2011). Developing an understanding of the target network configuration was a significant and daunting task based on Symantec’s assessment that Stuxnet repeatedly targeted a total of five different organizations over nearly one year (Falliere, Murchu and Chien 2011) with physical introduction via USB drive being the only available attack vector. The final factor in assessing the threat of a cyber-weapon is the resilience of the weapon. There are two primary factors that make Stuxnet non-resilient: the complexity of the weapon and the complexity of the target. Stuxnet was highly customized for sabotaging specific industrial systems (Karnouskos 2011) and needed a large number of very complex components and routines in order to increase its chance of success (Falliere, Murchu and Chien 2011). The malware required eight vulnerabilities in the Windows operating system to succeed and therefore would have failed if those vulnerabilities had been properly patched; four of the eight vulnerabilities were known to Microsoft and subject to elimination (Falliere, Murchu and Chien 2011). Stuxnet also required that two drivers be installed and required two stolen security certificates for installation (Falliere, Murchu and Chien 2011); driver installation would have failed if the stolen certificates had been revoked and marked as invalid. Finally, the configuration of systems is ever-changing as components are upgraded or replaced. There is no guarantee that the network that was mapped for vulnerabilities had not changed in the months, or years, it took to craft Stuxnet and successfully infect the target network. Had specific components of the target hardware changed – the targeted Siemens software or programmable logic controller – the attack would have failed. Threats are less of a threat when identified; this is why zero-day exploits are so valuable. Stuxnet went to great lengths to hide its existence from the target and utilized multiple rootkits, data manipulation routines, and virus avoidance techniques to stay undetected. The malware’s actions occurred only in memory to avoid leaving traces on disk, it masked its activities by running under legal programs, employed layers of encryption and code obfuscation, and uninstalled itself after a set period of time, all efforts to avoid detection because its authors knew that detection meant failure. As a result of the complexity of the malware, the changeable nature of the target network, and the chance of discovery, Stuxnet is not a resilient system. It is a fragile weapon that required an investment of time and money to constantly monitor, reconfigure, test and deploy over the course of a year. There is concern, with Stuxnet developed and available publicly, that the world is on the brink of a storm of highly sophisticated Stuxnet-derived cyber-weapons which can be used by hackers, organized criminals and terrorists (Chen 2010). As former counterterrorism advisor Richard Clarke describes it, there is concern that the technical brilliance of the United States “has created millions of potential monsters all over the world” (Rosenbaum 2012). Hyperbole aside, technical knowledge spreads. The techniques behind cyber-attacks are “constantly evolving and making use of lessons learned over time” (Institute for Security Technology Studies 2002) and the publication of the Stuxnet code may make it easier to copy the weapon (Kerr, Rollins and Theohary 2010). **However**, this is something of a zero-sum game because **knowledge works both ways** and cyber-security techniques are also evolving, and “understanding attack techniques more clearly is the first step toward increasing security” (Institute for Security Technology Studies 2002). Vulnerabilities are discovered and patched, intrusion detection and malware signatures are expanded and updated, and monitoring and analysis processes and methodologies are expanded and honed. Once the element of surprise is lost, weapons and tactics are less useful, this is the core of the argument that “uniquely surprising” **stratagems like Stuxnet are single-use**, like Pearl Harbor and the Trojan Horse, the “very success [of these attacks] precludes their repetition” (Mueller 2012). This paradigm has already been seen in the “son of Stuxnet” malware – named Duqu by its discoverers – that is based on the same modular code platform that created Stuxnet (Ragan 2011). With the techniques used by Stuxnet now known, other variants such as Duqu are being discovered and countered by security researchers (Laboratory of Cryptography and System Security 2011). It is obvious that the effort required to create, deploy, and maintain Stuxnet and its variants is massive and it is not clear that the rewards are worth the risk and effort. Given the location of initial infection and the number of infected systems in Iran (Falliere, Murchu and Chien 2011) it is believed that Iranian nuclear facilities were the target of the Stuxnet weapon. A significant amount of money and effort was invested in creating Stuxnet but yet the expected result – assuming that this was an attack that expected to damage production – was minimal at best. Iran claimed that Stuxnet caused only minor damage, probably at the Natanz enrichment facility, the Russian contractor Atomstroyeksport reported that no damage had occurred at the Bushehr facility, and an unidentified “senior diplomat” suggested that Iran was forced to shut down its centrifuge facility “for a few days” (Kerr, Rollins and Theohary 2010). Even the most optimistic estimates believe that Iran’s nuclear enrichment program was only delayed by months, or perhaps years (Rosenbaum 2012). The actual damage done by Stuxnet is not clear (Kerr, Rollins and Theohary 2010) and the primary damage appears to be to a higher number than average replacement of centrifuges at the Iran enrichment facility (Zetter 2011). Different targets may produce different results. The Iranian nuclear facility was a difficult target with limited attack vectors because of its isolation from the public Internet and restricted access to its facilities. What is the probability of a successful attack against the U.S. electrical grid and what are the potential consequences should this critical infrastructure be disrupted or destroyed? An attack against the electrical grid is a reasonable threat scenario since power systems are “a high priority target for military and insurgents” and there has been a trend towards utilizing commercial software and integrating utilities into the public Internet that has “increased vulnerability across the board” (Lewis 2010). Yet the increased vulnerabilities are mitigated by an increased detection and deterrent capability that has been “honed over many years of practical application” now that power systems are using standard, rather than proprietary and specialized, applications and components (Leita and Dacier 2012). The security of the electrical grid is also enhanced by increased awareness after a smart-grid hacking demonstration in 2009 and the identification of the Stuxnet malware in 2010; as a result the public and private sector are working together in an “unprecedented effort” to establish robust security guidelines and cyber security measures (Gohn and Wheelock 2010).

#### Defensive measures overwhelm

**Rid 12** (Thomas, PhD, Reader in War Studies @ King's College London, Non-Resident Fellow at the Center for Transatlantic Relations in the School for Advanced International Studies at Johns Hopkins, "Think Again: Cyberwar," March/April, Foreign Policy, http://www.foreignpolicy.com/articles/2012/02/27/cyberwar?page=0,0,

"In Cyberspace, Offense Dominates Defense." Wrong again. The information age has "offense-dominant attributes," Arquilla and Ronfeldt wrote in their influential 1996 book, The Advent of Netwar. This view has spread through the American defense establishment like, well, a virus. A 2011 Pentagon report on cyberspace stressed "the advantage currently enjoyed by the offense in cyberwarfare." The intelligence community stressed the same point in its annual threat report to Congress last year, arguing that offensive tactics -- known as vulnerability discovery and exploitation -- are evolving more rapidly than the federal government and industry can adapt their defensive best practices. The conclusion seemed obvious: Cyberattackers have the advantage over cyberdefenders, "with the trend likely getting worse over the next five years." A closer examination of the record, however, reveals three factors that put the offense at a disadvantage. First is the high cost of developing a cyberweapon, in terms of time, talent, and target intelligence needed. Stuxnet, experts speculate, took a superb team and a lot of time. Second, the potential for generic offensive weapons may be far smaller than assumed for the same reasons, and significant investments in highly specific attack programs may be deployable only against a very limited target set. Third, once developed, an offensive tool is likely to have a far shorter half-life than the defensive measures put in place against it. Even worse, a weapon may only be able to strike a single time; once the exploits of a specialized piece of malware are discovered, the most critical systems will likely be patched and fixed quickly. And a weapon, even a potent one, is not much of a weapon if an attack cannot be repeated. Any political threat relies on the credible threat to attack or to replicate successful attack. If that were in doubt, the coercive power of a cyberattack would be drastically reduced.

### China

#### ---No incentive for China to attack – stable relationship prevents it

#### ----No US-China conflict

Allison & Blackwill 3/5 -- \*director of the Belfer Center for Science and International Affairs and Douglas Dillon Professor at Harvard's John F. Kennedy School of Government AND \*\*Henry A. Kissinger Senior Fellow for U.S. foreign policy at the Council on Foreign Relations (Graham and Robert D., 2013, "Interview: Lee Kuan Yew on the Future of U.S.- China Relations," http://www.theatlantic.com/china/archive/2013/03/interview-lee-kuan-yew-on-the-future-of-us-china-relations/273657/)

Interview with Lee Kuan Yew, the founding prime minister of Singapore, one of Asia's most prominent public intellectuals, a member of the Fondation Chirac's honour committee

Competition between the United States and China is inevitable, but conflict is not. This is not the Cold War. The Soviet Union was contesting with the United States for global supremacy. China is acting purely in its own national interests. It is not interested in changing the world. There will be a struggle for influence. I think it will be subdued because the Chinese need the United States, need U.S. markets, U.S. technology, need to have students going to the United States to study the ways and means of doing business so they can improve their lot. It will take them 10, 20, 30 years. If you quarrel with the United States and become bitter enemies, all that information and those technological capabilities will be cut off. The struggle between the two countries will be maintained at the level that allows them to still tap the United States. Unlike U.S.-Soviet relations during the Cold War, there is no irreconcilable ideological conflict between the United States and a China that has enthusiastically embraced the market. Sino-American relations are both cooperative and competitive. Competition between them is inevitable, but conflict is not. After the collapse of the Soviet Union, the United States and China are more likely to view each other as competitors if not adversaries. But the die has not been cast. The best possible outcome is a new understanding that when they cannot cooperate, they will coexist and allow all countries in the Pacific to grow and thrive. A stabilizing factor in their relationship is that each nation requires cooperation from and healthy competition with the other. The danger of a military conflict between China and the United States is low. Chinese leaders know that U.S. military superiority is overwhelming and will remain so for the next few decades. They will modernize their forces not to challenge America but to be able, if necessary, to pressure Taiwan by a blockade or otherwise to destabilize the economy. China's military buildup delivers a strong message to the United States that China is serious about Taiwan. However, the Chinese do not want to clash with anyone -- at least not for the next 15 to 20 years. The Chinese are confident that in 30 years their military will essentially match in sophistication the U.S. military. In the long term, they do not see themselves as disadvantaged in this fight.

#### --Impact should have been triggered – evidence talks about defensive cyber operations

#### ------China-US cyber-dialogue solves

Mohan 3/18 -- Nonresident Senior Associate of South Asia Program @ Carnegie (C. Raja, 2013, "The New Cyber Axis," http://carnegieendowment.org/2013/03/18/new-cyber-axis/frgr)

U.S. Treasury Secretary Jack Lew, who is in China this week, is expected to probe the Chinese leaders for the terms of the bilateral dialogue on cyber security. While the United States is deeply concerned about Chinese cyber attacks, there is a new tone that has begun to emerge from Washington underlining the importance of bilateral cooperation with Beijing. The need to avoid confrontation with China came through clearly in Donilon's remarks at the Asia Society: "Economies as large as the United States and China have a tremendous shared stake in ensuring that the internet remains open, interoperable, secure, reliable, and stable." Both countries face risks when it comes to protecting personal data and communications, financial transactions, critical infrastructure, or the intellectual property and trade secrets that are so vital to innovation and economic growth," Donilon added. Despite the many tensions in the bilateral relationship, the Chinese public reaction to the spate of recent U.S. allegations on cyber theft and commercial espionage has been moderate. There have been substantive Track Two conversations between the United States and China on the economic dimension of cyber warfare and the need to build mutual trust. The incipient Sino-American bilateral dialogue has the potential to alter the current international discourse on cyber security. Until now, Russia has led the debate in multilateral forums like the United Nations on information security. Russia, China and many developing countries have also ranged themselves against the United States and the West on questions relating to internet freedom and the sovereign right of states to regulate and control cyberspace. Although these ideological issues might retain some salience, the new Sino-American dialogue is about managing the profound interdependence between the world's two largest economies in the cyber age. Just as the US and the erstwhile Soviet Union defined the nuclear discourse in the last century, Washington and Beijing are likely to shape the international regulation of the cyber domain in the coming decades.

#### -----No military invasion to regain Taiwan - -they'll use other methods

Fischer 11/27 -- clean energy entrepreneur and is the founder and CEO of Lumicity Ltd (Tristan, 2012, " Why China could invade Taiwan – and get away with it," http://www.historyfuturenow.com/wp/why-china-could-invade-taiwan-and-get-away-with-it/)

The People’s Republic of China has been very patient with Taiwan. It knows that time is on its side. However, it could also force the issue within the next few years and force Taiwan to rejoin mainland China under the authority of the PRC. It could show Taiwan a stick and a carrot. The stick is that mainland China will invade to reestablish control over Taiwan. Both the Taiwanese government and the mainland Chinese government say that they are not separate nations, but one, with different governments. The US would not enter into a “civil war” with the two Chinas. In addition, bearing in mind that the US has a huge trade deficit with both China and Taiwan and that the Taiwan Straits are effectively already off limits to the US Navy, it is hard to see the US defending Taiwan, even if it could afford to do so, which it cannot, or were able to do so, which it could not. As a carrot, the mainland Chinese market has become increasingly attractive to Taiwanese businesses. The PRC could offer increased incentives, such as low cost loans from the PRC, to Taiwanese companies, and better market access making the business classes increasingly open to reunification with mainland China.

#### -----LOAC flexibility checks collapse

Stewart 11 (Darren, Colonel, British Army; Director, Military Department, International Institute of Humanitarian Law, “New Technology and the Law of Armed Conflict,” International Law Studies Vol. 87)

Useful processes, such as those forming part of the AP I Article 36 weapons review, seem purpose designed not only to act as initial control valves to ensure that military methods and means can advance in a coherent and effective manner but also to act as red flags to possible LOAC issues associated with the employment of new technology. It is unfortunate that too few States engage actively in the weapons review process, an area where greater effort to comply with the law should occur. Generally the existing LOAC rules would seem sufficiently flexible to adapt to the deployment of new technology on the battlefield. In many respects new technology has greatly aided the application of LOAC and contributed to an increase in the protection of civilians. In this sense, the story is a good news one. The extant LOAC paradigm has responded in a flexible manner, benefiting from the positive synergies afforded by technological advances. The virtue of such a system, however, comes with compliance rather than the creation of new standards or responsibilities, such as CDRs, or use of the capabilities afforded by new technology to argue that a human rights paradigm is more appropriate. Armed conflict continues to be an unpredictable, often base affair, where significant ambiguity prevails, notwithstanding the employment of considerable technological capability. The benefits afforded by new technology in such circumstances are significant if they can ameliorate even some of the suffering caused by armed conflict, but they are by no means a panacea.

#### Nations won’t adopt norms

Somin 9 (Ilya, George Mason University School of Law, AND John McGinnis, Northwestern University - School of Law, “Democracy and International Human Rights Law”, July 1, 2009, Notre Dame Law Review, Vol. 84, No. 4, pp 1739-1798, May 2009 Northwestern Public Law Research Paper No. 08-08 George Mason Law & Economics Research Paper No. 08-19, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1116406, ZBurdette)

Besides the influence of nondemocratic states, there is another more fundamental problem that contributes to the democracy deficit of multilateral international human rights treaties: **the assent** of many democratic nations **to multilateral human rights treaties is** cheap talk, insofar as that **assent does not commit them to making the provisions** of those treaties a part of their **domestic law**. Nations that have dualist systems with respect to international law do not make such commitments. In dualist systems, international legal obligations are separate from domestic legal obligations and do not displace contrary domestic law without action by the government to incorporate international law into domestic legislation.112 Thus, even democratic ratification by dualist nations does not show that its citizens and legislators wish to have international law enforced without additional intermediate steps.113 Many, if not most, legal systems are dualist with respect to international law.114 For instance, the United Kingdom has a dualist system, and Commonwealth nations, which compose a substantial proportion of the world’s democracies, follow the lead of their former sovereign.115

By contrast, treaties signed by nations with monist legal systems may be incorporated into domestic law once they have been concluded without further legislation.116 But even some monist nations have complex structures through which treaties ratified as a matter of international law must pass before they will be given domestic effect.117 Others, while nominally giving treaties domestic effect, do not readily permit their courts to enforce those that seem vague or aspirational.118 As a result, the number of nations whose judiciaries actually enforce multilateral human rights treaties as rules of decision that set aside their own law seem relatively few in number.119

The United States does not enforce treaties unless they are deemed self-executing, as the recent case of Medell´ın v. Texas demonstrates. 120 The political branches must intend that a treaty be given direct effect in our domestic jurisprudence. Otherwise it will be deemed non-self-executing and fail to create binding federal law.121 **The U.S. Senate has declared** all **the provisions in our human rights treaties to be non-self-executing**.122

Beyond these important doctrinal points lie functional reasons for refusing to give these treaties direct domestic effect. Nations have many reasons for declining to implement the international rules of treaties without first subjecting them to domestic legislative processes. They may regard international law, particularly when human rights are involved, as aspirational.123 Or **they may believe that the international rules are too vague or open-ended to be given automatic effect**.124 Whatever their reasons, when nations do not agree to have international law trump their own law, international law is, in economic terms, cheap talk, and is a less plausible source of norms to displace those norms to which a democratic nation actually agrees to be bound.125

Thus, norms created by multilateral agreements are unlikely to be as beneficial as those created by democratic domestic political processes. The democracy deficit of multilateral agreements may be most self-evident when authoritarian and totalitarian nations participate in their formation. But on closer inspection, the even more important point is the attenuated nature of most nations’ agreement to these norms. **The refusal to give treaties domestic force detracts from the clarity, force, and perhaps the sincerity of the commitment to the norms embodied in them.**126

#### Secrecy means Congress would be ineffective—no solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

The National Security Act of 1947 23 showed Congress’s determination to exert some control over this nation’s intelligence apparatus. That determination was strengthened after the disclosure of widespread intelligence abuses by the CIA and other agencies.24¶ In 1991, in response to the Iran-Contra Affair, Congress adopted a measure directing the President to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity.”25 The term “intelligence activity” expressly includes “covert actions,”26 which additionally require a written finding by the President that they are “necessary to support identifiable foreign policy objectives of the United States and [are] important to the national security of the United States.”27 Intelligence activities are also understood to include “all activities that elements of the Intelligence Community are authorized to conduct pursuant to [Executive Order No. 12,333],” the executive charter for such activities.28 The “intelligence community” includes the Office of the Director of National Intelligence, CIA, NSA, other Defense Department intelligence components, and other federal intelligence elements,29 which are authorized to engage in, inter alia, intelligence collection and analysis and “activities to protect against international terrorism . . . and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents.”30 This broad mandate certainly encompasses many U.S. efforts to defend against cyber attack and to employ cyber weapons offensively. By this definition, most preparations for and conduct of cyber warfare should be reported to the intelligence committees as “intelligence activities.” It is significant that the reporting requirement in the 1991 law is not limited to agencies within the intelligence community. ¶ Yet this legislation provides no guarantee that Congress will receive the information it needs to play a meaningful role in the development or execution of cyber warfare policy. It is not known, for example, precisely what it means for the intelligence committees to be “fully and currently” informed, § Marked 15:25 § what kinds of intelligence activities are regarded as “significant” enough to report, or who decides.31 Other sections of the 1991 law call on all agencies involved in intelligence activities, not just the President, to keep the intelligence committees informed about those activities, but only “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.”32 The “due regard for” language might be invoked to keep Congress in the dark. ¶ Under the 1991 law, “covert actions,” those with respect to which “it is intended that the role of the United States Government will not be apparent or acknowledged publicly,”33 need only be reported to a small group of legislators known as the “Gang of Eight,”34 and then only in a “timely fashion,” a term not defined by statute.35 Characterization of U.S. planning and execution of electronic warfare as “covert” could enable reporting to the smaller group, making it more difficult for Congress to play a significant role.36 Moreover, any reporting might be delayed indefinitely.37

#### Military procedures means cyber operations wouldn’t be reported—kills solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Another potential obstacle to congressional involvement is the reportedly common but statutorily unauthorized practice of informal reporting to an even smaller “Gang of Four” – the leaders of the intelligence committees – generally for sensitive non-covert intelligence activities.38¶ The Defense Department is heavily engaged in preparations for cyber warfare, having recently announced the establishment of a new U.S. Cyber Command.39 But congressional oversight of the work of this command could be hampered by the military’s reported practice of labeling its clandestine activities – § Marked 22:21 § those that are intended to be secret, but that can be publicly acknowledged if discovered or inadvertently revealed – as “operational preparation of the environment,” rather than intelligence activities, even though they may pose the same diplomatic and national security risks.40 As thus characterized, these activities might not be reported to the intelligence committees.41 Any oversight that occurred would be conducted instead by the House and Senate Armed Services Committees.42 Such a division of responsibilities might create dangerous confusion. ¶ Congressional involvement also might be frustrated by the statutory exclusion of “traditional . . . military activities or routine support to such activities” from the definition of “covert action.”43 If secret military preparations for cyber war are regarded as “traditional military activities,” under the rationale outlined above they might escape both the presidential findings requirement for covert actions and any reporting to the intelligence committees.44

#### The President would ignore the plan

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Congress’s active role in the development and implementation of cyber warfare policy is no guarantee of national security. The policy might be flawed in various ways. There is also a risk that whatever policy is adopted will not be properly executed or that its execution will have unintended results. The policy might be misunderstood or might not provide clear or appropriate guidance in the urgent circumstances facing its interpreter. The person charged with implementing the policy might make a mistake – for example, by interpreting a potential enemy’s electronic espionage as an attack. Available cyber weaponry might not work as planned. Or a purely defensive move by U.S. operators might be construed by another nation as offensive, and provoke an attack. Nor can the clearest policy, statutory or executive, guarantee compliance by an Executive determined to ignore it.71 The rules might be construed by the President in a way that reduces the importance of Congress’s role. Or they might be challenged in court.

#### Norms fail—cheating and miscalc

Stewart Baker 12, former official at the U.S. Department of Homeland Security and the National Security Agency, 5/1/12, “What Is the Role of Lawyers in Cyberwarfare?,” http://www.abajournal.com/magazine/article/what\_is\_the\_role\_of\_lawyers\_in\_cyberwarfare/

Former Prime Minister Stanley Baldwin summed up Britain’s strategic position in 1932 with a candor no American leader has dared to match in talking about cyberwar: “I think it is well also for the man in the street to realize that there is no power on earth that can protect him from being bombed, whatever people may tell him. The bomber will always get through. ... The only defense is in offense, which means that you have got to kill more women and children more quickly than the enemy if you want to save yourselves.”¶ The British may have been realists about air war, but Americans still hoped to head off the nightmare. The American tool of choice was international law. (Some things never change.) When war broke out on Sept. 1, 1939, President Franklin D. Roosevelt sent a cable to all the combatants seeking express limits on the use of airpower and expressing his view that “ruthless bombing from the air of civilians in unfortified centers of population … has sickened the hearts of every civilized man and woman, and has profoundly shocked the conscience of humanity. ... I am therefore addressing this urgent appeal to every government which may be engaged in hostilities publicly to affirm its determination that its armed forces shall in no event, and under no circumstances, undertake the bombardment from the air of civilian populations or of unfortified cities.”¶ Roosevelt had a pretty good legal case. The Hague Conventions on the Law of War, adopted just two years after the Wright Brothers’ first flight, declared that in bombardments “all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.” The League of Nations had recently declared that, in air war, “the intentional bombing of civilian populations is illegal.”¶ But FDR didn’t rely just on law. He asked for a public pledge that would bind all sides. Remarkably, he got it. The horror of aerial bombardment ran so deep in that era that England, France, Germany and Poland all agreed—before nightfall on the same day.¶ What’s more, they tried to honor their pledges. In a June 1940 order for Luftwaffe operations against Britain, Hermann Göring “stressed that every effort should be made to avoid unnecessary loss of life amongst the civilian population.”¶ It began to look like a great victory for the international law of war. All sides had stared into the pit of horrors that civilian bombing would open up. And all had stepped back.¶ It was exactly what the lawyers and diplomats now dealing with cyberwar hope to achieve.¶ But as we know, that’s not how this story ends. On the night of Aug. 24, a Luftwaffe air group made a fateful navigational error. Aiming for oil terminals along the Thames, they miscalculated, instead dropping their bombs in the civilian heart of the city of London.¶ It was a mistake. But that’s not how Churchill saw it. He insisted on immediate retaliation. The next night, British bombers hit targets in Berlin for the first time. The military effect was negligible, but the political impact was profound. Göring had promised that the Luftwaffe would never allow a successful attack on Berlin. The Nazi regime was humiliated, the German people enraged. Ten days later, Hitler told a wildly cheering crowd that he had ordered the bombing of London: “Since they attack our cities, we will extirpate theirs.”¶ The Blitz was on.¶ In the end, London survived. But the extirpation of enemy cities became a permanent part of both sides’ strategy. No longer an illegal horror to be avoided at all costs, the destruction of enemy cities became deliberate policy. Later in the war, British strategists would launch aerial attacks with the avowed aim of causing “the destruction of German cities, the killing of German workers, … the disruption of civilized life throughout Germany … the creation of a refugee problem on an unprecedented scale, and the breakdown of morale both at home and at the battle fronts.”¶ The Hague Conventions, the League of Nations resolution, even the explicit pledges given to President Roosevelt—all these “norms” for the use of airpower had been swept away by the logic of the technology and the predictable psychology of war.¶ So, why do today’s lawyers think that their limits on cyberwar will fare better than FDR’s limits on air war?¶ It beats me. If anything, they have a much harder task. Roosevelt could count on a shared European horror at the aerial destruction of cities. He used that to extract an explicit and reciprocal understanding from both sides as the war was beginning. We have no such understanding, indeed no such shared horror. Quite the contrary, for some of our potential adversaries, cyberweapons are uniquely asymmetric—a horror for us, another day in the field for them. It doesn’t take a high-tech infrastructure to maintain an army that is ready in a pinch to live on grass.¶ What’s more, cheating is easy and strategically profitable. American compliance will be enforced by all those lawyers. Our adversaries can ignore the rules and say—hell, they are saying—“We’re not carrying out cyberattacks. We’re victims too. Maybe you’re the attacker. Or maybe it’s Anonymous. Where’s your proof?”¶ Even if all sides were genuinely committed to limiting cyberwar, as all sides were in 1939, we’ve seen that the logic of airpower eventually drove all sides to the horror they had originally recoiled from. Each side felt that it had observed the limits longer than the other. Each had lawyerly justifications for what it did, and neither understood or gave credence to the other’s justifications. In that climate, all it took was a single error to break the legal limits irreparably.¶ And error was inevitable. Bombs dropped by desperate pilots under fire go astray. But so do cyberweapons. Stuxnet infected thousands of networks as it searched blindly for Natanz. The infections lasted far longer than intended. Should we expect fewer errors from code drafted in the heat of battle and flung at hazard toward the enemy?¶ Of course not. But the lesson for the lawyers and the diplomats is stark: Their effort to impose limits on cyberwar is almost certainly doomed.¶ No one can welcome this conclusion, at least not in the United States. We have advantages in traditional war that we lack in cyberwar. We are not used to the idea that launching even small wars on distant continents may cause death and suffering here at home. That is what drives the lawyers. They hope to maintain the old world. But they’re driving down a dead end.¶ If we want to defend against the horrors of cyberwar, we need first to face them with the candor of a Stanley Baldwin. Then we need to charge our military strategists, not our lawyers, with constructing a cyberwar strategy for the world we live in, not the world we’d like to live in.

#### Cyberweapons are inev --- US restraint does nothing --- norm setting is utopian

James Lewis 12, Director of the Technology and Public Policy Program at the Center for Strategic and International Studies, “Benefits Are Great, and the Risks Exist Anyway,” Oct 17, NYT, http://www.nytimes.com/roomfordebate/2012/06/04/do-cyberattacks-on-iran-make-us-vulnerable-12/benefits-are-great-and-the-risks-exist-anyway

Nor do cyberattacks against Iran increase the risk of damaging cyberattacks against the United States. It is true that we are defenseless; efforts to make us safer are hamstrung by self-interest, ideology and the gridlock of American politics. But we are no more vulnerable today than we were the day before the news. If someone decides to attack us, they may cite Iran as precedent, but it will only be to justify a decision they had already made.¶ We could ask whether the United States creates more problems for itself when it makes public a new weapon while potential opponents keep it secret. Four other countries can launch sophisticated and damaging cyber attacks -- including China and Russia -- and plan to use them in warfare. Another 30 nations are acquiring cyber weapons, including Iran and North Korea.¶ There is a very old argument for disarmament that holds that if the United States were to renounce some weapons -- usually nuclear weapons -- the world would be a better place. This utopianism has a revered place in American political thinking, but when humans invent weapons they rarely give them up, especially useful weapons whose components are easy to acquire. Cyberattack is now part of warfare, no different from any other weapon. The publicity around Stuxnet may complicate U.S. efforts to get international rules for the use of cyberattack, but the White House decided that tampering with Iran’s nuclear program was more important than possible risk to slow-moving negotiations.

#### Pandora’s box has already been opened --- cyber-war inevitable

Mikko Hypponen 12, an authority on cybercrime and one of Foreign Policy’s ‘Top 100 Global Thinkers,’ is the chief research officer at F-Secure Corporation, “A Pandora’s Box We Will Regret Opening,” June 5, NYT, http://www.nytimes.com/roomfordebate/2012/06/04/do-cyberattacks-on-iran-make-us-vulnerable-12/a-pandoras-box-we-will-regret-opening

If somebody would have told me five years ago that by 2012 it would be commonplace for countries to launch cyberattacks against each other, I would not have believed it. If somebody would have told me that a Western government would be using cybersabotage to attack the nuclear program of another government, I would have thought that's a Hollywood movie plot. Yet, that's exactly what's happening, for real.¶ Cyberattacks have several advantages over traditional espionage or sabotage. Cyber attacks are effective, cheap and deniable. This is why governments like them. In fact, if Obama administration officials would not have leaked the confirmation that the U.S. government (together with the Israelis) was behind Stuxnet, we probably would have never known for sure.¶ In that sense, it's a bit surprising that the U.S. government seems to have taken the credit ­ and the blame ­ for Stuxnet. Why did they do it? The most obvious answer seems to be that it's an election year and the voters like to see the president as taking on adversaries like Iran. But we don't really know.¶ The downside for owning up to cyberattacks is that other governments can now feel free to do the same. And the United States has the most to lose from attacks like these. No other country has so much of its economy linked to the online world.¶ Other governments are already on the move. The game is on, and I don't think there's anything we could do to stop it any more. International espionage has already gone digital. Any future real-world crisis will have cyberelements in play as well. So will any future war. The cyberarms race has now officially started. And nobody seems to know where it will take us.¶ By launching Stuxnet, American officials opened Pandora's box. They will most likely end up regretting this decision.

#### Can’t stop cyberweapons --- incentives to use are too high

Dr. Paul Kaminski 13, Chairman of the Defense Science Board Task Force on Resilient Military Systems & PhD from Stanford, “Department of Defense Defense Science Board Task Force Report: Resilient Military Systems and the Advanced Cyber Threat,” January, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, http://www.acq.osd.mil/dsb/reports/ResilientMilitarySystems.CyberThreat.pdf

There is no single silver bullet to solve the threat posed by cyber-attack or warfare. Solving this problem is analogous to previous complex national security and military strategy developments including counter U-boat strategy in WWII, nuclear deterrence in the Cold War , commercial air travel safety and countering IEDs in the Global War on terrorism . The risks involved with these challenges were never driven to zero, but through broad systems engineering of a spectrum of techniques, the challenges were successfully contained and managed. ¶ There are several characteristics of the cyber challenge that collectively thwart our attempts to discover a closed-form solution to this national security issue. First, DoD’s comprehensive dependence on this vulnerable technology is a magnet to U.S. opponents. DoD’s dependency is not going to be reduced and will continue to grow. Thus, the adversary is not going away and their attraction to this weakness will increase. This adversarial persistence yields a never-ending challenge.¶ Secondly, there are no technical approaches that will comprehensively protect DoD against a determined adversary. DoD’s diligent work over decades attempting to drive inherent vulnerability out of these systems and components has resulted in some progress, although DoD has barely begun to address the daunting problem of operationally introduced vulnerabilities into systems which is compounded by the large dependence on the global supply chain. In the face of the evolving cyber threat, DoD must recognize the limits to vulnerability reduction and the effectiveness of protection mechanisms and move to employ the threshold of “good enough ” and work to reduce overall risk by managing all three risk parameters from a systems perspective.¶ Third, while there are many tests to demonstrate the vulnerability or weakness in a system, there will never be a test that demonstrates or proves the security of a system. This fact reinforces the need to seek “good enough” and the enduring existence of residual uncertainty. ¶ Finally, because the opponent’s advantage in exploiting/compromising /attacking DoD’s information technology is substantial (game - changing), they will be highly motivated in their pursuit, innovative in their approach, and adaptive to U.S. strategy. The adversary gets a vote and this brings us back to the never-ending challenge. (However, they have many of the same risks to their systems).

#### Chinese cyber-attack is hyperbole

Bennett 12 -- covers national security and foreign policy for U.S. News & World Report (John T, 3/30, "Cyber Attack Talk May Outpace The Actual Threat," http://www.usnews.com/news/blogs/dotmil/2012/05/30/cyber-attack-talk-may-outpace-the-actual-threat)

Acting Deputy Assistant Secretary of Defense for East Asia and Asia Pacific Security Affairs David Helvey told reporters on May 18 that officials now have greater confidence that many cyber attacks emanate from Chinese soil. "China's investing in not only capabilities to better defend their networks, but also they're looking at ways to use cyber for offensive operations, Havely says. Korb chuckles about the prospect of a major Chinese cyber strike on U.S. national security networks. "Okay, and then what?" Korb asks. "So the Chinese do it, but then what do they do?" While there are pockets of doubts in national security circles about the severity of the cyber threat, even the most skeptical experts acknowledge government and industry officials are right to be paying ever-increasing attention. "It is a big deal," says Friedman. "It's a really important problem," pointing to activities like cyber-based espionage and the theft of data on less-secure networks. Korb says "there certainly is a need to be concerned about it … but if people do it, I think they'll do it for commercial reasons."

#### China isn’t a threat --- conservatives blow a hypothetical Chinese conflict way out of proportion

Guardiano, 10 – Writer and analyst who focuses on political, military, and public-policy issues (John Guardiano, “Overstating the China Threat,” FrumForum, 5-13, http://www.frumforum.com/overstating-the-china-threat)

Devore, in fact, has it exactly backwards: We have to prepare for the real enemy, and it’s not China. The real and immediate enemy is a network of Islamic radicals determined to destabilize the world and wreck havoc and destruction on America and the West. Yet, China is what preoccupies the Weekly Standard’s Noonan, Goldfarb and indeed, most conservative defense hawks. To be sure, China is a potential military threat. The United States certainly should maintain military superiority over China; and we certainly should guarantee the independence of Taiwan. But the Right’s obsession with a hypothetical and distant Chinese military threat is seriously misplaced and inappropriate — especially given the wartime exigencies of today. American Soldiers and Marines are being targeted and killed, after all, not by China, but by Islamic radicals in Iraq and Afghanistan. And it is this global war against the Islamists — and not a distant, hypothetical war with China — that is the future of warfare. It’s a future involving lots of messy asymmetric fights in which American troops are integral to stability, security, and gradual, long-term democratization. It is not, however, a future that conservatives like or wish to accept. Conservatives don’t like messy asymmetric fights which involve counterinsurgency and nation building: because to many on the Right, that’s not “real war.” That’s not the role and purpose of the U.S. military. The Right dreams or imagines, instead, of a conventional “big war” with China. Dream on, because it ain’t gonna happen, not in our lifetime anyhow. The Chinese are interested in making money, not war. Their increasing military prowess is a natural and inevitable reflection of their growing economic strength and vitality. Indeed, as a country modernizes and develops, so, too, does its military. Again, I’m not suggesting that we let our guard down with China. I’m simply saying that we view the potential Chinese military threat in context and with perspective and that we plan and budget accordingly. Unfortunately, the Right’s misplaced obsession with China has deleterious real-world consequences. It causes conservatives to too often give short shrift to the existential Jihadist threat that now confronts us, and too little attention to the war we are now fighting in Iraq, Afghanistan and elsewhere. What’s more, because the Right has yet to come to terms with the nature of 21st irregular asymmetric warfare, it has been AWOL and ineffective in the defense budget battles of recent years. For example, when President Obama and Defense Secretary Robert Gates last year pushed dramatic defense budget cuts in the name of canceling “Cold War weapon systems,” most conservatives were flummoxed and stymied. They rightly sensed that eliminating some of our most advanced weapon systems was a bad idea. However, conservatives also realized that the world and warfare had changed, and that defense budget reform might well be necessary. Conventional set-piece battles, after all, are largely a thing of the past. Except that they’re not, because in the minds of conservative hawks, the Chinese military threat is always looming.  Thus, the Right fell back on old and dated Cold War modes of analysis, lamenting the loss of aircraft like the F-22 — even though the F-22 has not been used in either Iraq or Afghanistan, and even though modern-day conflicts are inherently land-based and ground-force intensive. My point is not that we don’t need any more F-22s, because we might. My point is that conservatives should focus their intellectual and rhetorical firepower on more relevant and urgent military priorities like the need for ground-force modernization, a new Army combat vehicle, and networking our Army and Marine Corps with state-of-the-art communication capabilities. But the sad reality is that most conservative defense hawks — and certainly most conservative politicians and elected officials — haven’t a clue about U.S. military requirements. And they are especially clueless about the needs of our ground-force Soldiers and Marines. That’s why conservatives last year lost the defense budget battle; and that’s why they’re still losing and losing badly: because they have yet to come to terms with new geostrategic and military realities. They’re stuck in a Cold War time warp and are mistakenly focused on China. But the Chinese are eager to sell us commercial goods; they are not eager to destroy our cities and our people. The same cannot be said, however, of the Jihadists who plan and plot for our destruction. You’d think that nine years after the terrorist attacks on the Pentagon and World Trade Center, and with wars still raging in Iraq and Afghanistan, conservatives would understand this. But alas, you would be wrong. The Right still doesn’t get it. But they should and they must. The fate of American national security, and the survival of our Soldiers and Marines, hangs in the balance. Time to modernize our thinking. Now.

International law doesn’t change state action—no compliance and selective interpretation of the law.

Posner 12 (Eric, law prof, Slate, “Obama’s Drone Dilemma”, Oct. 8, 2012, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2012/10/obama\_s\_drone\_war\_is\_probably\_illegal\_will\_it\_stop\_.single.html, ZBurdette)

The Wall Street Journal recently reported on debates within the Obama administration about the legality of the drone war in Pakistan. State Department legal adviser Harold Koh, the former dean of Yale Law School and even more former darling of the left for his criticisms of the Bush administration’s aggressive theories of executive power, plays a prominent role in them. Koh apparently concluded that the drone war “veers near the edge” of illegality but does not quite tumble over it.

That is a questionable judgment. The U.N. Charter permits countries to use military force abroad only with the approval of the U.N. Security Council, in self-defense, or with the permission of the country in which military force is to be used. The U.N. Security Council never authorized the drone war in Pakistan. Self-defense, traditionally defined to mean the use of force against an “imminent” armed attack by a nation-state, does not apply either, because no one thinks that Pakistan plans to invade the United States. That leaves consent as the only possible legal theory.

But Pakistan has never consented to the drone war. Publicly and officially the country has opposed it. Before the raid that killed Osama bin Laden in May 2011, the CIA sent a fax every month to Pakistan’s Inter-Services Intelligence agency that would identify the airspace in which drones would be sent. The ISI would send back an acknowledgment that it had received the fax, and the U.S. government inferred consent on the basis of the acknowledgments. But after the raid, the ISI stopped sending back the acknowledgments.

Now what to do? The administration argues that consent can still be inferred despite the unanswered faxes. The reason is that “the Pakistani military continues to clear airspace for drones and doesn’t interfere physically with the unpiloted aircraft in flight”—meaning that Pakistan does not shoot down the drones or permit private aircraft to collide with them.

We might call this “coerced consent.” Consider it this way: You walk into a jewelry store and the proprietor announces that he will deem you to have consented to the purchase of a diamond tiara for $10,000, despite all your protests to the contrary, unless you use physical force to stop him as he removes your wallet from your pocket. Imagine further that he’s 7 feet tall and weighs 400 pounds. This is what a Pakistani official meant when he told the Wall Street Journal that shooting down a drone would be “needlessly provocative.” He meant that such an action would risk provoking retaliation from the United States, a risk that Pakistan cannot afford to take. Because Pakistan lies prostrate and endures the pummeling rather than makes a futile effort to stop it, it is deemed to consent to the bombing of its own territory.

But don’t blame government lawyers like Koh for devising this theory. International law lacks the resources for constraining the U.S. government. Koh knows this now if he did not before. Since he built his academic career on the claim that international law can and should be used to control nation-states and harshly criticized the Bush administration for violating international law, this must have been a bitter pill to swallow. (Though he has swallowed so many bitter pills that perhaps he has lost his sense of taste: The man who told the Senate at the end of the Bush administration that the United States must “unambiguously reassert our historic commitments to human rights and the rule of law as a major source of our moral authority” has backed away from his earlier opposition to expansive war powers, targeted killing, military commissions, and military detention.)

The weakness of international law governing the use of military force goes back to the signing of the U.N. Charter in 1945. The founders understood that a simple rule prohibiting the use of military force except in self-defense, or with the consent of another state, would not be adequate for regulating war. But they could not draft a code complex enough to anticipate all the contingencies that might justify war. Instead they set up the Security Council and reasoned that this body could determine when war might be justified for purposes other than self-defense. But the Security Council was frozen first by the Cold War rivalry between the United States and the Soviet Union, and then the cold peace rivalries between the United States, Russia, and China. It has authorized only two wars since its inception (the Korean War and the first Iraq War; it also retroactively approved the U.S. invasion of Afghanistan in 2001).

Needless to say, there have been dozens of wars since 1945. Participants have included countries as diverse as China, the Soviet Union, India, Pakistan, the United Kingdom, Vietnam, Iran, Iraq, Egypt, Israel, and Argentina. Even the supposedly pacific European countries participated via NATO in several of these wars. The United States has on several occasions justified wars (for example, in Kosovo in 1999, Libya in 2011) as humanitarian interventions—a principle that can be found nowhere in the U.N. Charter but enjoys some international support. In other cases, including current drone operations in Pakistan, the United States has invoked a new idea of the “unable or unwilling” country, one that outside powers can invade because that country cannot prevent terrorists located on its territory from launching attacks across its borders. But most U.S. wars can be fit into these two categories only with difficulty. Those wars are undertaken to shut down a destabilizing or dangerous regime, one that typically has used violence to keep itself in power. One can put the second Iraq War in this category, as well as the Panama intervention in 1990, the interventions in Yugoslavia in the 1990s, and the intervention in Granada in 1983. During the Cold War, the United States also often evaded the U.N. prohibition on interstate war by funding and training a domestic insurgency.

The U.N. Charter does not permit states to use military force to unilaterally address long-term threats in this way. It is too easy for states to characterize other states as long-term threats regardless of whether they are. And yet this omission rendered the charter unworkable, because all states must take long-term threats seriously, whether or not the members of the Security Council can be persuaded or bribed to agree with them.

Government lawyers like Koh must scramble to revise their interpretation of international law so as to keep up with the new events that justify, in the eyes of the president, a military intervention. The “coerced consent” doctrine, the “unable and unwilling” doctrine, and the exception for humanitarian intervention all whittle away at whatever part of the law on United Nations use of force blocks U.S. goals. If the United States ever decides to invade Iran in order to prevent it from acquiring nuclear weapons, expect a new doctrine to take shape, perhaps one that emphasizes the unique dangers of nuclear weapons and Iran’s declared hostility toward a nearby country.

It is curious that there is not a global outcry about the illegality of the wars in Pakistan or Libya, as there was about the illegality of the recent war in Iraq, which the Bush administration dubiously justified on the basis of Iraq’s violations of earlier U.N. resolutions that had suspended hostilities after the first Iraq War. Maybe the world doesn’t care as much about Pakistan, which has no oil. Or maybe people have finally realized that the United States, which has been almost continuously at war since the collapse of the Soviet Union, will not be swayed by legal arguments. A powerful army is too useful not to use, whether you are a Republican president or a Democratic one.

## Neg v. Emory – Block

### Politics – XO – 2NC

#### Executive orders save political capital – recent empirics

Warshaw 6 (Professor of Political Science at Gettysburg College, Spring 2006, Extensions, The Administrative Strategies of President George W. Bush)

However, in recent administrations, particularly since the Reagan administration, presidents have often bypassed Congress using administrative actions. They have opted for a strategy through administrative actions that is less time-consuming and clearly less demanding of their political capital. Using an array of both formal and informal executive powers, presidents have effectively directed the executive departments to implement policy without any requisite congressional authorization. In effect, presidents have been able to govern without Congress. The arsenal of administrative actions available to presidents includes the power of appointment, perhaps the most important of the arsenal, executive orders, executive agreements, proclamations, signing statements, and a host of national security directives. More than any past president, George W. Bush has utilized administrative actions as his primary tool for governance.

#### Executive orders avoid backlash – prior framing

Mayer 1 (Ken Mayer 01, Princeton University Press, “With the Stroke of a Pen”, page 90.)

For the same reasons, presidents who have low levels of public approval may be more likely to resort to executive orders. Doing so offers a way of getting around other institutional actors who might be emboldened in their opposition to what they perceive as a weak white house, and also provides presidents with a method of position taking, framing policy questions, or delivering on promises made to key constituencies.

#### Executive orders reduce expenditure of political capital – Clinton and war powers prove

Kassop 2 (Nancy, Chair of the Political Science Department @ State University of New York, The Presidency and the Law: The Clinton Legacy, ed. Alder, p. 6)

As a president facing an opposition party in Congress, it is not surprising that President Clinton made bold use of executive orders as a means of circumventing the uncertainties of a legislature that was unlikely to be friendly to his initiatives. Here, too, as in war powers, Clinton followed in the paths of his Republican predecessors, who also operated under conditions of divided government. Thus, Clinton may not have blazed new trails for his successors by his use of executive orders to accomplish indirectly what he was unwilling to spend political capital on to accomplish directly.

#### Executive orders are fast and build political capital

Krause and Cohen 97 (George and David, Professors of Political Science @ South Carolina, “Presidential Use of Executive Orders” American Politics Quarterly, Vol 25 No 4, October 1997, Sage Journals Online)

The aim of this study is to answer the question: What causes presidents to issue executive orders with greater (or less) frequency in a given year? This is an important topic of inquiry, not only because of the dearth of research that has been conducted to date but also because it is a valuable way to assess both the managerial and policymaking characteristics associated with the office of the presidency. Executive orders are another weapon in the arsenal that presidents have at their disposal. They both afford the chief executive the ability to make quick and efficient policy decisions without consultation from Congress or from the public, and they are also a tool that allows presidents to exert bargaining pressure on Congress to enact legislation more favorable to the White House (Wigton 1996). Thus, explaining how and why executive orders are used by presidents allows scholars a better understanding of the presidency and the powers that are inherent in that office.

### Politics – 2NC – XO CP (Authority)

#### Disagreements over authority trigger constitutional showdowns – even if the executive wants the plan – it’s about who decides, not the decision itself

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy – the perm ensures a fight

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In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

#### The perm and the plan guarantee a veto

Covington 12 Megan Covington(School of Engineering, Vanderbilt University) “Humanities and Social Sciences: Executive Legislation and the Expansion of Presidential Power” Spring 2012 | Volume 8 | © 2012 • Vanderbilt University Board of Trust http://webcache.googleusercontent.com/search?q=cache:K7qBxiQpm5AJ:ejournals.library.vanderbilt.edu/index.php/vurj/article/download/3556/1738+&cd=2&hl=en&ct=clnk&gl=us //Chappell

In actuality, however, Congress is generally unwilling or unable to respond to the president’s use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 44 The 2/3 vote of both houses needed to override a veto basically means that unless the president’s executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to limit the power of the president, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president’s actions; the War Powers Act does little to restrain the president’s ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power.

#### Veto drains political capital

Eggspuehler 8 (Chad – J.D., The Ohio State University Moritz College of Law, “NOTE: The S-Words Mightier than the Pen: Signing Statements as Express Advocacy of Unlawful Action”, 2008, 43 Gonz. L. Rev. 461, lexis)

The pragmatist's argument for presidential review acknowledges the countervailing efficiency and political interests preventing the president from repeatedly vetoing every bill presenting constitutionally suspect language. n93 Even if [\*479] the president determines that the constitutional infirmities warrant vetoing the bill, congressional override and/or presentment of a similar bill with similar failings puts the onus on the president to once again expend political capital to veto the bill.

### A2: Perm – Do Both – Politics

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### Theory – Agent CP – 2NC

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Neg flex – we need to test from all angles – agent ground is vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place, not whether they should be there

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

### Object Fiat – 2NC

#### 2. It’s vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place by the executive vs. other branches

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### 1NC/2NC – Terminal Impacts

#### **Yoo says a flexible executive is critical to solving a number of security threats –**

#### Terrorism

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Prolif

Utgoff 2 (Victor A., Deputy Director of the Strategy, Forces, and Resources Division of the Institute for Defense Analysis, Survival Vol 44 No 2 Proliferation, Missile Defence and American Ambitions, p. 87-90)

In sum, widespread proliferation is likely to lead to an occasional shoot-out with nuclear weapons, and that such shoot-outs will have a substantial probability of escalating to the maximum destruction possible with the weapons at hand. Unless nuclear proliferation is stopped, we are headed toward a world that will mirror the American Wild West of the late 1800s. With most, if not all, nations wearing nuclear 'six-shooters' on their hips, the world may even be a more polite place than it is today, but every once in a while we will all gather on a hill to bury the bodies of dead cities or even whole nations.

### 2NC Link – Congress

#### Legislative checks on war powers destroy the President – causes crisis escalation

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Congress moderating the president causes a power imbalance

Yoo 08

[John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, On Presidential Power, 2008, <http://www.writersreps.com/feature.aspx?FeatureID=152>]

The idea behind the “executive power,” which traces its origins from Alexander Hamilton and the first Washington administration, to thinkers such as Machiavelli, Locke, Montesquieu, and Blackstone, requires the perspectives of many disciplines: law, history, and political science. In the 20th century, the idea of presidential power has taken full advantage of the broad language of the Constitution and expanded to include management of the agencies and other powers inherently “executive” in nature—in contrast with the Constitution’s grant of specified, or "enumerated," powers to Congress. Presidential power also grew through the development of the President as party leader. Lastly, it grew in response to pressing challenges to the nation through its history. **Claims of an out-of-control executive have been much bandied about lately**. Most are overblown, aimed at a campaign season and audience. The Bush administration went to Congress twice for authorization for foreign combat. Congress has always has full power to cut off or roll back any military operations it chooses—however, it often does not so choose, and this fact makes no headlines. The political effort to curb the President's power over judicial appointments today has been heated: filibusters withholding Senate approval, for example, have proliferated to the point of judicial system paralysis. Judicial nominees are kept in limbo or subjected to smear campaigns, and this, at least theoretically, encourages a talent deficit in the judiciary. The national interest requires executive and legislative branches to cooperate politically. Congress can be eager to micromanage the executive branch, but whenever it addresses difficult subjects on which there is no consensus, it tends to pass ambiguous laws—sometimes bad law, incorporating contradictory goals—in its effort to placate warring interest groups and to seem to be doing good. I believe there is a current power imbalance that checks presidential action in matters of national security that were misguidedly enacted during the nation's over-reaction to Watergate and Vietnam and which have, ever since, hindered the executive branch's ability to do its job effectively—including to address dangers from terrorist networks about which many workers in government knew, as these individuals have since disclosed in scores of books. Many sensed the need to prevent the nation from attacks such as that which occurred on 9/11, but were paralyzed into inaction due to legal concerns that were sometimes overdrawn.

#### Congressional intrusions into war powers have a deterrent effect -- causes the President to actively use less power

Kriner 10 -- asst prof of poli sci @ Boston Univ (Douglas, "After the Rubicon: Congress, Presidents, and the Politics of Waging War," Ed. by William Howell and Jon Peverhouse, p. 285-286)

American history offers few examples of Congress using its legislative power to bring to heel a wayward commander in chief. **Only in the rarest cases** will Congress be able to marshall the supermajorities required to pass legislation **compelling the president to abandon his preferred policy preferences**. However, to focus only on the lack of concrete legislation terminating an ongoing war or blocking the use of force altogether is to miss the more indirect, yet still powerful means of influence through which members of Congress have routinely shaped the course of American military affairs. Even when Congress fails to write its military preferences into law, its members rarely stand on the sidelines of the policy process. Rather, members of Congress have historically engaged in a variety of actions from formal intiatives, such as introducing legislation or holding hearings that challenge the president's conduct of military action, to informal efforts to shape the nature of the policy debate in the public sphere. These actions can **raise significantly the political and strategic costs** to the president of waging large-scale, long-duration military actions to pursue their policy goals. In some cases, presidents may judge that the benefits of responding miltiarily to a foreign policy crisis or continuing an ongoing military engagement may outweigh even the heightened costs that congressional opposition generates. In these instances, enacting legislation to compel the president to change course may be the only remedy available to congressional opponents. In many other cases, however, **congressional opposition has had tangible effects on policy outcomes**. Again and again, the statistical and qualitative analyses have showed presidents modifying their policies, moderating the scale and duration of their military ventures, and sometimes foregoing a military response altogether, when faced with real or anticipated opposition on Capitol Hill. When exerted indirectly, congressional influence is less immediately visible and dramatic than it is in the rare occasions when Congress has enacted legislation to mandate a change in militar policy. Yet through indirect mechanisms, Congress has often encouraged presidents to pursue significantly different military policies than they would have adopted in the absence of congressional opposition.

#### Statutory limitations on presidential war powers undermine congressional deference

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

Since at least the Vietnam War, discussions of constitutional war powers have consistently depicted a Congress so fearful of taking responsibility for wartime judgments that it hardly acts at all. Although there is an important element of truth in this common understanding, it is also misleading. In particular, whatever utility the scholarly paradigm of congressional abdication might once have had, it is inadequate in the special context of the so-called "war on terrorism." n1 The specific methods and means of warfare that this conflict privileges; the unusual and geographically transient nature of the nonstate enemy that it targets; and a host of other factors all conspire to ensure that the President's prosecution of the conflict against al Qaeda will bump up against statutory regulations more often than has been the case in traditional military operations. Moreover, the congressional abdication paradigm is not even adequate to explain important war powers issues that now often arise in more traditional military contexts. It is commonly thought that the de facto expansion since the Korean War of unilateral executive authority to use military force confirms Congress's timidity. But if a war goes badly, or if concerns about its wisdom become significant, the modern Congress has been willing - more than in previous eras - to temper or constrain the President's preferred prosecution of the war, and sometimes even to contract or end the conflict contrary to the President's wishes. For this reason, the Commander in Chief increasingly confronts disabling statutory restrictions even in conducting conventional military operations abroad. [\*693] In this Article, therefore, we disclaim the traditional assumption that Congress has ceded the field to the President when it comes to war, and proceed from a contrary premise: that even when hostilities are underway, the Commander in Chief often operates in a legal environment instinct with legislatively imposed limitations. This reframing suggests that executive defiance is no less important a potential threat to the balance of war powers than legislative inaction, and thus that the constitutional war powers issue that now demands scrutiny is very different from the one that has long attracted the lion's share of academic attention. Over the past half-century, the predominant question has been the scope of the President's independent or "inherent" power as Commander in Chief to act in the absence of prior congressional authorization. By contrast, we argue, attention should now shift to the equally fundamental questions of whether and when the President may exercise Article II war powers in contravention of congressional limitations. The need to examine this issue has become particularly urgent precisely because President George W. Bush and his lawyers have recognized that the congressional abdication paradigm poorly describes the legal world they inhabit. Having identified a number of statutes that clearly do conflict with its preferred means of prosecuting military conflicts, the Bush Administration has proceeded to claim the constitutional authority to disregard many of them. The Administration's legal theory that Congress is severely constrained in its ability to interfere with presidential discretion extends not only to measures already enacted to govern the conduct of the war on terrorism, but also to those that have been proposed concerning the war in Iraq. n2 Thus, the war powers issue that is now at the forefront of the most important clashes between the political branches - and that is likely to remain [\*694] there for the foreseeable future - is the one Justice Jackson famously described in Youngstown Sheet & Tube Co. v. Sawyer n3 as arising when the President's authority as Commander in Chief is at its "lowest ebb," namely, when the chief executive acts contrary to congressional will. n4 Perhaps because the question of how to determine what should happen at the "lowest ebb" has long been of only marginal scholarly interest, it has been obscured by a dense fog of half-developed and largely unexamined intuitions. Chief among these is the notion, supposedly deeply embedded in the constitutional plan, that the Commander in Chief Clause prevents Congress from interfering with the President's operational discretion in wartime by "directing the conduct of campaigns." n5 Or, as it is sometimes more broadly put, the idea is that Congress may not regulate the President's judgments about how best to defeat the enemy - that the Commander in Chief's discretion on such matters is not only constitutionally prescribed but is preclusive of the exercise of Congress's Article I powers. n6 In its most persuasive form, the Bush Administration's assertion of preclusive executive war powers rests on precisely this contention - that Congress cannot "dictate strategic or tactical decisions on the battlefield." n7 It follows from that premise, the Administration argues, that Congress may not enact statutes restricting troop levels in Iraq or defining the mission of the armed forces operating there. Nor may it "place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response." n8 "These decisions," [\*695] claims the Bush Administration, "under our Constitution, are for the President alone to make." n9 There is an understandable temptation to dismiss as aberrant constitutional claims that are so broad and unconditional. Indeed, the Supreme Court's decisions in high-profile war powers cases that have enforced statutory limitations against the Commander in Chief might be thought to justify one's doing so. But in fact, the Court's message in these cases is much more equivocal than is often acknowledged. n10 And just as appeals to judicial precedent cannot resolve the issue, neither can the various distinctions that war powers analysts and scholars have often invoked to cabin such preclusive executive powers, such as those between so-called framework statutes and detailed regulations of the battlefield, or between ex ante measures and statutes enacted in the midst of a specific operation. n11 In our view, these taxonomies are much less capable of identifying the bounds of preclusive executive war powers than is usually acknowledged. The issue, therefore, is less whether a test for defining such inviolate powers of presidential tactical discretion can be enunciated than whether it is justifiable to accept in the first place the common premise that Congress may not enact legislation that "interferes with the command of the forces and the conduct of campaigns." n12 Accordingly, we seek to move the discussion of the "lowest ebb" issue beyond the taxonomic in order to examine the logically prior question whether, as a matter of original constitutional understanding and longstanding constitutional practice, operational or tactical matters are in fact within the exclusive, and preclusive, province of the Commander in Chief. n13 Surprisingly, that question has never been evaluated [\*696] fully. Discussions of the "lowest ebb" question have been uninformed by a deep and broad historical interrogation of the underlying assumption of inviolable executive "military campaign" authority, notwithstanding the role that history and practice have long played in informing our understandings of constitutional war powers more generally. This Article, then, is the first of a two-part effort to determine how the constitutional argument for preclusive executive war powers, now being pressed so boldly, is best conceived. Is it properly understood to be rooted in fidelity to the founding generation? Does it reflect instead the principles established by a longstanding constitutional tradition that, although concededly at odds with that early understanding, has emerged over time as exigencies presented themselves? Or is it instead dependent on the stark contention that the world has changed, due to either the advent of nuclear weapons or the rise of terrorism, in such a way as to render obsolete and intolerable the constitutional mechanisms for checking the Commander in Chief that earlier generations consistently accepted? In this Article, we reject the first possibility by reviewing two foundational sources of constitutional guidance: the text of the Constitution and the original understandings associated with it. In starting this way, we do not mean to suggest that evidence of Founding-era understandings and intentions is necessarily determinative; but it plainly has significant contemporary relevance, if only because of its potential to influence both popular and elite understandings of the legitimacy of a particular constitutional claim regarding executive war powers. n14 As we show, notwithstanding recent attempts to yoke the defense of executive defiance in wartime to original understandings, there is surprisingly little Founding-era evidence supporting the notion that the conduct of military campaigns is beyond legislative control and a fair amount of evidence that affirmatively undermines it. Instead, the text and evidence of original understanding provide substantial support only for the recognition of some version of a very different sort of preclusive power of the Commander in Chief - namely, a prerogative of superintendence when it comes to the military chain of command itself. That is, the President must to some considerable extent retain control over the vast reservoirs of military discretion that exist in every armed conflict, even when bounded by important statutory [\*697] limitations; and thus Congress may not assign such ultimate decisionmaking discretion to anyone else (including subordinate military officers).

### 2NC Precedence Key

#### Presidential power is shaped by historical precedent – it will expand absent limitations

Bradley and Morrison 13

[Curtis Bradley- \* William Van Alstyne Professor of Law, Duke Law School. Trevor Morrison- Liviu Librescu Professor of Law, Columbia Law School, PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, COLUMBIA LAW REVIEW, May 1, 2013 Vol. 113:1097]

Presidential power in the United States is determined in part by historical practice. Especially **when the text of the Constitution is unclear** or does not specifically address a particular question, the way in which the government has operated over time can provide what Justice Frankfurter famously called a constitutional “gloss” on presidential power.1 This gloss often develops without significant judicial review. A variety of justiciability limitations—including the general disallowance of legislative standing, ripeness considerations, and the political question doctrine—are regularly invoked by courts as a basis for declining to resolve issues of presidential power, especially when individual rights are not directly implicated.2 This has been particularly true in the area of foreign affairs, concerning issues such as the initiation of war, the use of “executive agreements,” and the termination of international commitments.3 Even when courts do get involved, they often defer to longstanding practice when discerning the President’s constitutional (and statutory) authority.4 The customary nature of much of the law governing presidential power, together with the typically limited role of the courts, might inspire doubts about whether the apparent norms in this area truly are legal norms capable of constraining the President. Without either a clear text or an authoritative adjudicator, the argument might run, **the President’s authority is simply the product of the push and pull of the political process**. To the extent that there appear to be stable arrangements with respect to this authority, they might simply be “nonnormative equilibria” with no authoritative status. If so, any apparent consistency between presidential behavior and purported legal norms might simply be the result of political and policy considerations, not any constraint imposed by law. In recent years, a number of influential legal scholars have made claims of precisely this sort.5 Other leading scholars, meanwhile, take the proposition that the President is constrained by law as irrefutably correct.6 Yet specifying precisely how the President might be constrained by law is anything but straightforward,7 and it becomes all the more difficult once one appreciates the practice-based nature of much of the law of presidential power.

#### Powers are shaped by precedent – limits undermine the presidency

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, **there are remarkably few Supreme Court cases analyzing presidential power.** And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that **much of presidential power exists in a “zone of twilight.”**29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33 2. The Precedential Effects of Executive Branch Action Presidential power also inevitably expands because of the way **executive branch precedent is used to support later exercises of power.**34 Many of the defenders of broad presidential power cite historical examples, such as President Lincoln’s suspension of habeas corpus, as **authority for the position that Presidents have considerable powers** in times of war and national emergency.35 Their position is straight-forward. The use of such powers by previous Presidents stands as **authority for a current or future President to engage in similar actions**.36 Such arguments have considerable force, but they also create a one-way ratchet in favor of expanding the power of the presidency. The fact is that every President but Lincoln did not suspend habeas corpus. But **it is a President’s action in using power, rather than forsaking its use, that has the precedential significance**.37 In this manner, **every extraordinary use of power by one President expands the availability of executive branch power for use by future Presidents.**

#### Executive powers set future precedent – increases over time

Ackerman 00

[Bruce, Sterling Professor of Law and Political Science, Yale University, THE NEW SEPARATION OF POWERS, Harvard Law Review, VOLUME 113 JANUARY 2000 NUMBER 3, pp 642-727]

Once the crisis begins, it gives rise to a vicious cycle. Presidents break legislative impasses by “solving” pressing problems with unilateral decrees that often go well beyond their formal constitutional authority; rather than protesting, representatives are relieved that they can evade political responsibility for making hard decisions; subsequent presidents use these precedents to expand their decree power further; the emerging practice may even be codified by later constitutional amendments. Increasingly, the house is reduced to a forum for demagogic posturing, while the president makes the tough decisions unilaterally without considering the interests and ideologies represented by the leading political parties in congress. This dismal cycle is already visible in countries like Argentina and Brazil, which have only recently emerged from military dictatorships.22 A less pathological version is visible in the homeland of presidentialism, the United States.23

### 2NC War Powers Link – General

#### War powers are the lynchpin of presidential power

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The President’s power is also enhanced by the vast military and intelligence capabilities under his command. In his roles as Commander-in-Chief and head of the Executive Branch, the President directly controls the most powerful military in the world and directs clandestine agencies such as the Central Intelligence Agency and National Security Agency.75 That control provides the President with immensely effective, non-transparent capabilities to further his political agenda and/or diminish the political abilities of his opponents. 76 Whether a President would cynically use such power solely for his political advantage has, of course, been the subject of political thrillers and the occasional political attack. President Clinton, for one, was accused of ordering the bombing of terrorist bases in Afghanistan to distract the nation from the Lewinsky scandal,77 and President Nixon purportedly used the Federal Bureau of Investigation to investigate his political enemies.78 But regardless whether such abuses actually occurred, there is no doubt that control of covert agencies provides ample opportunity for political mischief, particularly since the inherently secretive nature of these agencies means their actions often are hidden from public view. And as the capabilities of these agencies increase through technological advances in surveillance and other methods of investigation, so does the power of the President. Presidential power also has increased because of the exigencies of decision making in the modern world. At the time of the founding, it would take weeks, if not months, for a foreign government to attack American soil. In the twentyfirst century, the weapons of war take only seconds to arrive. The increased speed of warfare necessarily vests power in the institution that is able to respond the fastest – the presidency, not the Congress.79 Consequently, the President has unparalleled ability to direct the nation’s political agenda.80 The power that comes with being the first to act, moreover, does not end when the immediate emergency is over. Decisions made in times of emergency are not easily reversed; this is particularly true in the context of armed conflict. The President’s commitment of troops inevitably creates a “rally round the flag” reaction that reinforces the initial decision.81 As Vietnam and now Iraq have shown, Congress is likely to be very slow in second guessing a President’s decision that places soldiers’ lives in harm’s way. That Congress would use its powers (as opposed to its rhetoric) to directly confront the President by cutting off military appropriations seems fanciful.

### AT Single Issues Irrelevant

#### Issues can’t be taken in isolation – each one invites other countries to take advantage of us

Talent 13

[Jim, National Review, Edward Snowden and the Consequences of Leading From Behind, 6/25/13, <http://www.nationalreview.com/corner/352010/edward-snowden-and-consequences-leading-behind-jim-talent>]

And why shouldn’t they stick their fingers in our eye? Over the last few years, the United States has repudiated the strategic principles which have underpinned its foreign policy since World War II. The Obama Administration has moved America away from the forefront of world events, preferring to “lead from behind” – which of course means not leading at all. It has neglected traditional alliances with Britain, Israel, and Eastern Europe and failed to build new ones. It has eschewed the tools of soft power, pointedly failing to recognize, much less support (even rhetorically) those fighting for human rights in places like Russia, China, or Iran. Worst of all, the government is systematically dismantling America’s hard power. Over the last four years, American defense budgets have been cut by almost 1.5 trillion dollars — far more than any other part of the budget. The last round of cuts embodied in the sequester are eating into readiness. The force is “hollowing,” sacrificing the training and maintenance that are essential for the military to operate on a day-to-day basis. Training has been curtailed for 80% of the Army; one third of America’s fighters and bombers have stood down; and two thirds of the Navy will, by year’s end, not be ready for combat. The hollowing out of America’s military is the worst thing that could happen for our national security. America’s power is what gives efficacy to the rest of our foreign policy. Without it, nothing that we do is likely to work. Our rights will be disregarded; our warnings will be ignored; our initiatives for peace will be taken as signs of weakness; our allies will distance themselves from us, and our enemies will increase their provocations. The insult America has suffered in the Snowden matter is by itself a small thing. But it cannot be taken in isolation. America is a wealthy nation with traditions that not only recognize but enshrine the principle of human dignity. For those reasons, the United States will always be a target for governments and movements that covet what we have and fear what we believe. In the context of other recent events — the threats from North Korea, the aggressiveness of the Chinese in the South and East China Seas, the intervention by the Russians in Syria – the Snowden case is **another sign that the power of the United States is no longer taken seriously**. As long as that is the case, the provocations will continue, until they escalate into confrontations which cannot be ignored and which America does not have the power to control.

### 2NC Threat Cred – Congress

#### Congressional opposition to the president destroys his threat credibility – causes allied resentment and presidential abandonment

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to **threatened force**, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress **vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end.** Sensing hesitation on the part of the United States, allies may be **reluctant to contribute to a military campaign**, and adversaries are likely to **fight harder and longer** when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy **emboldened by domestic critics**, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests.145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policyrelevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing threats in the first place, making only those commitments that would not incite widespread political opposition should the threat be carried through.151 Political opponents within a legislature also have few electoral incentives to collude in an executive’s bluff, and they are capable of expressing opposition to a threatened use of force in ways that could expose the bluff to a threatened adversary.152 This again narrows the President’s range of viable policy options for brandishing military force.

#### Threat credibility solves everything – [terrorism, prolif, East Asia arms race, Iran, China, North Korea, Asian alliances]

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten **any conceivable adversary** with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state **terrorist threats**, the **proliferation of** nuclear and other weapons of mass destruction (**WMD**), and rapidly changing power balances in **East Asia**, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our *adversaries*, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as **aggressive Iranian moves**), intervening in humanitarian crises (as in Libya), and **reassuring allies**.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for **deterring Chinese and North Korean aggression** as well as reassuring other Asian powers of U.S. protection, to **avert a destabilizing arms race**.111

### 2NC Conflict – Congress

#### Deference k2 executive urgency and flexibility

Posner & Sunstein 7 -- \* Kirkland & Ellis Professor of Law, University of Chicago AND\*\* Karl N. Llewellyn Distinguished Service Professor, Law School and Department of Political Science, University of Chicago (Eric A. and Cass R., 4/1/2007, "Chevronizing foreign relations law" Yale Law Journal, L/N)

Critics of this transformation greatly fear executive overreaching, 180 and there is reasonable dispute about the extent of this risk and about how best to limit it; but critics and supporters agree that changes in the global environment jus tify at least some expansion of executive powers. A modern president, unlike George Washington, needs to be able to respond quickly to intercontinental ballistic missiles, cyberattacks, terrorist attacks, global financial crises, and other dangers that will not wait for Congress to act. The critics of broad executive power have not argued that ambiguities in federal statutes should be construed by judges, rather than by the Pr esident and those who operate under him. To say this is not to take a stand on th e question whether the President can act on his own. It is merely to acknowledge that legislation often grants the executive some discretion to act rapidly in response to perceived threat s—and hence the increase in executive power, usually made possible by statutes, has reflect ed a recognition by Congress itself of this pragmatic point. 181 In these circumstances, deference to the executive’s views on the meaning of ambiguous statutes, rather than invocation of the comity principles, is a step that seems at once modest and a bit late.

#### Deference to the president solves nuclear war

Paul 98

[Joel R. Paul, Professor, University of Connecticut School of Law, 7.98.- 86 Calif. L. Rev. 671 lexis]

Whatever the complexity of causes that led to the Cold War - ideology, economics, power politics, Stalin's personality, Soviet intrigue, or American ineptitude - the tension of the bipolar order seemed real, immutable, and threatening to the U.S. public. [135](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n135#n135" \t "_self) The broad consensus of U.S. leadership held that the immediacy of the nuclear threat, the need for covert operations and intelligence gathering, and the complexity of U.S. relations with both democracies and dictatorships made it impractical to engage in congressional debate and oversight of foreign policy-making. [136](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n136#n136" \t "_self) The eighteenth-century Constitution did not permit a rapid response to twentieth-century foreign aggression. The reality of transcontinental ballistic missiles collapsed the real time for decision-making to a matter of minutes. Faced with the apparent choice between the risk of nuclear annihilation or amending the constitutional process for policy-making, the preference for a powerful executive was clear. [137](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n137#n137" \t "_self) Early in the Cold War one skeptic of executive power, C.C. Rossiter, acknowledged that the steady increase in executive power is unquestionably a cause for worry, but so, too, is the steady increase in the magnitude and complexity of the problems the president has been called upon by the American people to solve in their behalf. They still have more to fear from the ravages of depression, rebellion, and especially atomic war than they do from whatever decisive actions may issue from the White House in an attempt to put any such future crises to rout....It is not too much to say that the destiny of this nation in the Atomic Age will rest in the  [\*700]  capacity of the Presidency as an institution of constitutional dictatorship. [138](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n138#n138" \t "_self) The call for executive leadership in the face of international crisis came not only from members of the executive branch, [139](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n139#n139" \t "_self) but also from members of Congress, [140](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n140#n140" \t "_self) academics, [141](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n141#n141" \t "_self) and legal commentators. [142](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n142#n142" \t "_self) Reviewing the history of this period, the Senate Foreign Relations Committee reported at the height of the Vietnam War, our country has come far toward the concentration in its national executive of unchecked power over foreign relations, particularly over the disposition and use of the Armed Forces. So far has this process advanced that in the committee's view, it is no longer accurate to characterize our government, in matters of foreign relations, as one of separated powers checked and balanced, against each other... [143](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n143#n143" \t "_self)  [\*701]  In the committee's view, the continuing series of Cold War crises and the perceived need to expedite decision-making in the nuclear age led to a concentration of power in the executive: Since 1940 crisis has been chronic and, coming as something new in our experience, has given rise to a tendency toward anxious expediency in our response to it. The natural expedient - natural because of the real or seeming need for speed - has been executive action....Perceiving, and sometimes exaggerating, the need for prompt action, and lacking traditional guidelines for the making of decisions in an emergency, we have tended to think principally of what needed to be done and little, if at all, of the means of doing it. [144](http://www.lexis.com/research/retrieve?_m=3dfef83817c1e0c1bfd5ae3fc10ee7f2&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAV&_md5=fd6d9a3a4636a89c21e0c003d3344ee1&focBudTerms=&focBudSel=all" \l "n144#n144" \t "_self)

### Link – OCOs

#### Power over OCOs provides the president with flexibility in war powers – Congressional checks fail

Lorber 13 (Eric, JD Candidate, University of Pennsylvania Law School, PhD Candidate, Duke University Department of Political Science, "Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legilsation Successfully Constrain Presidential Power?", January, University of Pennsylvania Journal of Constitutional Law, 15, 961, Lexis)

Based on analysis of the War Powers Resolution, the lack of oversight for OCOs does not radically shift the balance between the legislative and executive branches' war-making authority. Most notably, because the War Powers Resolution itself has proven ineffective in providing Congress with a powerful tool to govern presidential use of force, bringing OCOs under the War Powers Resolution's statutory umbrella likely would not provide the possibility of such oversight. However, insofar as the President has increasingly turned to covert action since the passage of the War Powers Resolution to avoid its reporting requirements, [n233](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n233) offensive cyber operations [\*1001] provide the President another means by which to continue this trend. OCOs therefore may give the President substantially more flexibility than he already has under the War Powers Resolution by adding what will become an increasingly frequent tool of warfare to his option-set.¶ The lack of congressional oversight of offensive cyber operations under the Intelligence Authorization Act also likely does not seriously shift the balance between congressional and executive war-making powers. The reason is inherent in the limitations of the legislation itself: the Intelligence Authorization Act specifies reporting requirements, but does not require the non-use or withdrawal of forces. [n234](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n234) Further, these reports must be made in a "timely" fashion (the definition of which is undefined) and only to a small number of Congressmen (at most eight). [n235](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n235) Thus even if the President had to report offensive cyber operations to Congress, it is unclear he would have to do so in a way that gave Congress an effective check, as these reports would be made only to a small group of Congressmen (who would not be able to share the information, because of its classified nature, with other members of the legislature) and could be done well after the employment of these capabilities. The resulting picture is one of increased presidential flexibility**;** the War Powers Resolution and the Intelligence Authorization Act - while arguably ineffective in many circumstances - provide increased congressional oversight of presidential war-making actions such as troop deployments and covert actions. Yet these statutes do not cover offensive cyber operations, giving the President an increasingly powerful foreign policy tool outside congressional reach.¶ Should these statutes be adjusted (or new ones created) that give Congress additional oversight in this area? Two competing desiderata suggest that oversight should be increased, but only to a limited extent. On the one hand, policymakers have suggested that developing strict rules and limitations on the use of offensive cyber operations will handicap the military's ability to quickly and effectively employ these tools in critical situations, such as cyber warfare against adversarial states. [n236](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n236) According to these arguments, developing red lines that proscribe the use of these capabilities will create reluctance and trepidation among strategists and will lead to disadvantages in combat situations. [n237](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n237) On the other hand, developing some legal rules is necessary to ensure that, as these cyber [\*1002] capabilities continue to develop, the President does not gain sufficient leverage to substantially tilt the balance between the President and Congress. Moreover, because these capabilities are still developing at a fast rate, understanding how they should and should not be employed is an important goal and having senior members of Congress and their staffs - professional staff members on the intelligence committees, who likely have substantial experience in these areas - provide input would be useful in developing this understanding.

#### Authority over OCOs is still being debated – any actions determine future power

Lorber 13 (Eric, JD Candidate, University of Pennsylvania Law School, PhD Candidate, Duke University Department of Political Science, "Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legilsation Successfully Constrain Presidential Power?", January, University of Pennsylvania Journal of Constitutional Law, 15, 961, Lexis)

Behind the scenes, however, the Obama administration and Pentagon officials considered heavily modifying this battle-tested approach with a [\*962] radical, new addition: offensive cyberattacks. [n4](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n4) In the lead-up to the March 19 attack, the administration debated disabling and destroying the Libyan air defense network and command and control nodes through concerted computer attacks that would prevent Libyan radars from effectively tracking allied aircraft. [n5](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n5) During these discussions, the administration raised a number of questions without clear answers, most notably whether a cyberattack could trigger invocation of the requirements of the War Powers Resolution. [n6](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n6) Although ultimately deciding to rely on more traditional kinetic operations, the administration's internal discussions highlight an emerging area of importance and uncertainty in both national security and the law: what domestic legal rules do and should govern the use of offensive cyber operations ("OCOs"), and how do these new capabilities play into the long-standing debate over the proper balance between congressional and executive war-making power? [n7](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n7)¶ Yet a surprising amount of uncertainty exists as to which - **if any** - domestic laws constrain the use of OCOs and how they fit into the congressional-executive balance. As policymakers, scholars, and journalists have lamented, a coherent policy framework governing the use of OCOs does not exist and many questions remain unanswered. [n8](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n8) Would an attack [\*963] using cyber weapons trigger the requirements of the War Powers Resolution? [n9](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n9) Would OCOs be subject to reporting requirements under the Intelligence Authorization Act? [n10](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n10) Conversely, do cyber operations grant the executive branch another tool with which it can prosecute attacks but avoid reporting and responding to congressional inquiries? These questions are largely unanswered both because the rise of OCOs is a relatively recent phenomenon and because much of the information about U.S. technical capability in this field is highly classified. [n11](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.909948.2817417112&target=results_DocumentContent&returnToKey=20_T18162626997&parent=docview&rand=1379362776915&reloadEntirePage=true" \l "n11)

### Biot

#### Engineered pathogens cause extinction

**Sandberg et al 8**

Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

### 2NC Solvency

#### VornDick evidence = Chinese leaders don’t know what is going on with the strategy

One crucial point lost amid the backdrop of the new digitized battlefield is the lack of Chinese leadership experience both military and political in utilizing key principles of the laws of armed conflict

#### Austin and Grady advocate a direct policy engagement with China

Austin & Gady 12 (Greg Austin – phD in International Relations, Vice President for the Worldwide Security Initiative, including a leadership role in the institute's work on cybersecurity, is now a Professorial Fellow. Greg has a 30-year career in international affairs, including senior posts in academia and government., Franz Stefan Gady -- M.A. in Strategic Studies/International Economics from the School of Advanced International Studies, Johns Hopkins University., “CYBER DETENTE BETWEEN THE U.S. AND CHINA: Shaping the Agenda, http://www.ewi.info/system/files/detente.pdf)

There are three proposals that the authors feel warrant immediate attention and may produce benefits in a reasonable time frame. First, the United States and China should agree on a joint public study on the interdependence of their respective critical information infrastructures in terms of likely economic effects of criminal attacks with strategic impacts. This could be done under the framework of the United States- China Strategic and Economic Dialogue. This may not be welcome by some private operators. Yet the need for such a study exists on a political level. It is a consequence of the strategic impact of private ownership of critical infrastructure. As much as such a study might intrude on narrowly defined private sector interests, leading ICT businesses need a deeper understanding of the military implications of the intermingled, even tangled, character of U.S. and Chinese operations in cyberspace. Second, the United States should work to include China in the existing infrastructure of the 24/7 Network of Contacts for High-Tech Crime of the G8. This might be accompanied by an effort to set up bilateral cooperation between the two countries on emergency response that go beyond the current capacity of the Comput

er Emergency Response Teams (CERT) of the two countries. Third, cyber espionage, especially against intellectual property and critical infrastructure, is now too big a problem to ignore or to dismiss as a necessary evil. The U.S. and China need to take stock of the negative impacts and establish some limits. Both countries need some common understanding of the limits of cyber espionage.

#### Dycus says we need a more specific legislative approach

Dycus 10 your 1ac author (Professor Stephen Dycus is an internationally recognized authority on national security law and environmental law. The courses he has taught at Vermont Law School include Public International Law, National Security Law, Estates, Property, and Water Law. He was founding chair of the National Security Law Section of the Association of American Law Schools. He is the lead author of "National Security Law" (the field's leading casebook) and "Counterterrorism Law", and he was founding co-editor in chief of the Journal of National Security Law & Policy. (Stephen, "Congress' Role in Cyber Warfare," National Security Journal, Volume 4, Issue 155, 2010 http://jnslp.com/wp-content/uploads/2010/08/11\_Dycus.pdf)

Set out below are some steps that Congress might take to create an appropriate partnership. Some of these steps involve changes in congressional committees and responsibilities. Others would require coordination of cybersecurity functions within the executive branch. Still others would direct the President to keep Congress fully informed about anticipated and actual uses of cyber weapons. Several would restrict potential executive branch actions that seem – as a matter of policy – particularly unwise. 1. Designate a single committee in each House with primary responsibility for cyber warfare in order to develop a coherent and consistent legislative approach.60 2. Charge the designated committees with the development of broad policy and oversight of its implementation for both offensive and defensive uses of cyber weapons, given the close, perhaps indistinguishable, connection between the two uses. 3. Make the designated committees responsible for oversight of the relevant activities of the White House and every government agency concerned with cyber warfare, including the Defense Department, and their contractors, whether overt, clandestine, or covert. 4. Designate a lead federal agency to coordinate ongoing planning among agencies.61 The congressional committees would then have a principal point of contact for the collaborative development of policy. 5. Designate a lead agency to execute the cybersecurity plan.62 6. Order the preparation of a National Cybersecurity Strategy at prescribed intervals.63 This document should be declassified to the greatest extent possible, in order to inform every member of Congress and the public about the basic elements of U.S. cyber policy. 7. Require frequent, periodic briefings of the congressional committees, to enable serious consultation and advice in both directions as cyber policy evolves over time. These briefings should include information about rules of engagement, procedures for deciding to use cyber weapons, and any delegations of authority for such use. 8. Require consultation with the designated congressional committees in every possible instance before any significant use of cyber weapons.64 9. Require a written finding by the President, in advance of any significant use of cyber weapons whenever reasonably possible, or within a day or two afterward, that such use is or was necessary to the national security of the United States, that such use is or was as limited in scope as possible and consistent with the laws of armed conflict, and that Congress was consulted or could not be consulted because of the urgency of the threat. 10. Require immediate reports to the designated committees of any significant use of cyber weapons, either offensive or defensive. 11. Expressly forbid any withholding of information from the committees based on classification or for other reasons of secrecy. 12. Direct that all required reports be delivered to the designated committees as a whole, not merely to selected members.65 13. Expressly forbid automated offensive responses to actual or threatened cyber attacks on the United States under any circumstances. Given the potential for misperception or misinterpretation of an enemy attack, the difficulty of identifying the attacker and of assessing any resulting damage, and the risk of inadvertent escalation, any such response should be directed by a sentient human hand, informed by as much consultation with various government officials as the circumstances will permit.66 14. Create a government structure to coordinate assistance to private entities that come under cyber attack, so that such entities do not take matters into their own hands.67

### 2NC No China Model

#### China won’t model – too much mistrust over cybersecurity issues

IGCC, 12 – University of California Institute on Global Conflict and Cooperation (April, “China and Cybersecurity: Political, Economic, and Strategic Dimensions.” http://igcc.ucsd.edu/assets/001/503568.pdf)

Cybersecurity and Mistrust in U.S.–China Relations

In recent years the security of global information systems has become a contentious issue in U.S.–China relations. U.S. government sources allege that Chinese intrusions targeting proprie- tary economic data and sensitive national security information are on the rise. At the same time, a large proportion of malicious activity globally originates from computer hosts located in the United States. Both the U.S. Department of Defense and the Chinese People’s Liberation Army (PLA) view cyberspace as a new domain of conflict, and they eye each other warily. Nationalist “hacktivism,” in the form of website defacements, service denials, and network exploitation, flows both ways across the Pacific. This unfortunate situation exacerbates mistrust and raises suspicions in both countries regarding the others’ motives and activities. Cybersecurity as a Political Economy Problem There has been growing appreciation in the United States that cybersecurity, while superficially a technical issue, is actually a profoundly economic and political problem. The private sector ac- tors who generate risks often lack incentives to mitigate them, and the public sector has been unable to coordinate policy responses across government agencies with differing priorities. However, Western audiences have had little exposure to empirical research on the corresponding domestic policies, governing organizations, and economic tradeoffs in China. Failure to appreci- ate China’s domestic economy and politics can lead to a profound misunderstanding of its inter- national activities. It is especially important to understand the domestic civilian context of cyber- security given that the majority of day-to-day insecurity in cyberspace is economically motivated and risks of all types involve civilian information technologies.

### 2NC No Norms

#### Nations won’t adopt norms

Somin 9 (Ilya, George Mason University School of Law, AND John McGinnis, Northwestern University - School of Law, “Democracy and International Human Rights Law”, July 1, 2009, Notre Dame Law Review, Vol. 84, No. 4, pp 1739-1798, May 2009 Northwestern Public Law Research Paper No. 08-08 George Mason Law & Economics Research Paper No. 08-19, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1116406, ZBurdette)

Besides the influence of nondemocratic states, there is another more fundamental problem that contributes to the democracy deficit of multilateral international human rights treaties: **the assent** of many democratic nations **to multilateral human rights treaties is** cheap talk, insofar as that **assent does not commit them to making the provisions** of those treaties a part of their **domestic law**. Nations that have dualist systems with respect to international law do not make such commitments. In dualist systems, international legal obligations are separate from domestic legal obligations and do not displace contrary domestic law without action by the government to incorporate international law into domestic legislation.112 Thus, even democratic ratification by dualist nations does not show that its citizens and legislators wish to have international law enforced without additional intermediate steps.113 Many, if not most, legal systems are dualist with respect to international law.114 For instance, the United Kingdom has a dualist system, and Commonwealth nations, which compose a substantial proportion of the world’s democracies, follow the lead of their former sovereign.115 By contrast, treaties signed by nations with monist legal systems may be incorporated into domestic law once they have been concluded without further legislation.116 But even some monist nations have complex structures through which treaties ratified as a matter of international law must pass before they will be given domestic effect.117 Others, while nominally giving treaties domestic effect, do not readily permit their courts to enforce those that seem vague or aspirational.118 As a result, the number of nations whose judiciaries actually enforce multilateral human rights treaties as rules of decision that set aside their own law seem relatively few in number.119 The United States does not enforce treaties unless they are deemed self-executing, as the recent case of Medell´ın v. Texas demonstrates. 120 The political branches must intend that a treaty be given direct effect in our domestic jurisprudence. Otherwise it will be deemed non-self-executing and fail to create binding federal law.121 **The U.S. Senate has declared** all **the provisions in our human rights treaties to be non-self-executing**.122 Beyond these important doctrinal points lie functional reasons for refusing to give these treaties direct domestic effect. Nations have many reasons for declining to implement the international rules of treaties without first subjecting them to domestic legislative processes. They may regard international law, particularly when human rights are involved, as aspirational.123 Or **they may believe that the international rules are too vague or open-ended to be given automatic effect**.124 Whatever their reasons, when nations do not agree to have international law trump their own law, international law is, in economic terms, cheap talk, and is a less plausible source of norms to displace those norms to which a democratic nation actually agrees to be bound.125 Thus, norms created by multilateral agreements are unlikely to be as beneficial as those created by democratic domestic political processes. The democracy deficit of multilateral agreements may be most self-evident when authoritarian and totalitarian nations participate in their formation. But on closer inspection, the even more important point is the attenuated nature of most nations’ agreement to these norms. **The refusal to give treaties domestic force detracts from the clarity, force, and perhaps the sincerity of the commitment to the norms embodied in them.**126

### 2NC Circumventon

#### Military procedures means cyber operations wouldn’t be reported—kills solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Another potential obstacle to congressional involvement is the reportedly common but statutorily unauthorized practice of informal reporting to an even smaller “Gang of Four” – the leaders of the intelligence committees – generally for sensitive non-covert intelligence activities.38¶ The Defense Department is heavily engaged in preparations for cyber warfare, having recently announced the establishment of a new U.S. Cyber Command.39 But congressional oversight of the work of this command could be hampered by the military’s reported practice of labeling its clandestine activities – those that are intended to be secret, but that can be publicly acknowledged if discovered or inadvertently revealed – as “operational preparation of the environment,” rather than intelligence activities, even though they may pose the same diplomatic and national security risks.40 As thus characterized, these activities might not be reported to the intelligence committees.41 Any oversight that occurred would be conducted instead by the House and Senate Armed Services Committees.42 Such a division of responsibilities might create dangerous confusion. ¶ Congressional involvement also might be frustrated by the statutory exclusion of “traditional . . . military activities or routine support to such activities” from the definition of “covert action.”43 If secret military preparations for cyber war are regarded as “traditional military activities,” under the rationale outlined above they might escape both the presidential findings requirement for covert actions and any reporting to the intelligence committees.44

### 2NC China/Taiwan

#### The Taiwan war wouldn’t escalate at all – China wouldn’t let it.

Austin & Gady 12 (Greg Austin – phD in International Relations, Vice President for the Worldwide Security Initiative, including a leadership role in the institute's work on cybersecurity, is now a Professorial Fellow. Greg has a 30-year career in international affairs, including senior posts in academia and government., Franz Stefan Gady -- M.A. in Strategic Studies/International Economics from the School of Advanced International Studies, Johns Hopkins University., “CYBER DETENTE BETWEEN THE U.S. AND CHINA: Shaping the Agenda, http://www.ewi.info/system/files/detente.pdf)

The type of war that China would want to fight over Taiwan, if forced to, would not be an all-out massive attack on Taiwanese and United States forces. Instead, it would prefer a carefully designed strategy of political, economic and military gambits intended to weaken the capacity or will of the United States to deliver overwhelming military power in the Taiwan region and to weaken the capacity of the Taiwan government to control the civil affairs of the island. A partial economic blockade or sanctions are more likely tools of choice for China than heavy reliance on cyber weapons for strategic impact, though such weapons could be used for operational and tactical effects.

--Where Emory’s card starts—

In sum, China is probably engaged in cyber warfare planning for operations against the United States on a very serious level, and possibly more so than for naval or air combat operations against it. At least in relative terms, China’s cyber warfare capability is probably far more powerful but less lethal than its conventional military capabilities. That suits China enormously in both respects. China’s military strategy is highly defensive, but to defend against U.S. operations against China over Taiwan, China has to rely mainly on unconventional operations, and these include cyber operations as well as psy-ops of the classic kind, including through fifth- column policies.

### 2NC China War

#### No military aggression

Goldstein 11—Professor and Director of the China Maritime Studies Institute @ US Naval War College [Dr. Lyle J. Goldstein, “Resetting the US–China Security Relationship,” Survival | vol. 53 no. 2 | April–May 2011 | pp. 89–116]

Weighed in the aggregate, China’s rise remains a peaceful process, and the record to date should engender significant confidence. Beijing has not resorted to a significant use of force against another state in more than three decades. Its deployments of troops as UN peacekeepers to hot spots such as Lebanon and the Democratic Republic of the Congo have played a helpful role, as have the counter-piracy operations of its fleet in the Gulf of Aden. When dealing with weak and occasionally unstable states on its borders, such as Kyrgyzstan or Tajikistan, Beijing has not resorted to military intervention, nor even flexed its military muscles to gain advantage. Chinese maritime claims, whether in the South or the East China seas, are generally being enforced by unarmed patrol cutters, a clear signal that Beijing does not seek escalation to a major crisis on these matters. Contrary to the perception that China’s senior military officers are all irreconcilable hawks, one influential People’s Liberation Army Navy (PLAN) admiral recently said in an interview, with reference to lessons learned from recent border negotiations on China’s periphery: ‘If there are never any concessions or compromises, there is simply no possibility of reaching a breakthrough in border negotiations.’2 pg. 90

#### No catching up anyway

**Zenko and Cohen 12** (Micah Zenko, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and MIchael Cohen, Senior Fellow at the American Security Project, serves on the board of the National Security Network and has taught at Columbia University’s School of International and Public Affairs, served in the U.S. Department of State, former Senior Vice President at the strategic communications firm of Robinson, Lerer and Montgomery, bachelor’s degree in international relations from American University and a master’s degree from Columbia University, 3/14/2012, "Clear and Present Safety", yaleglobal.yale.edu/content/clear-and-present-safety)

As the threat from transnational terrorist groups dwindles, the United States also faces few risks from other states. China is the most obvious potential rival to the United States, and there is little doubt that China’s rise will pose a challenge to U.S. economic interests. Moreover, there is an unresolved debate among Chinese political and military leaders about China’s proper global role, and the lack of transparency from China’s senior leadership about its long-term foreign policy objectives is a cause for concern. However, the present security threat to the U.S. mainland is practically nonexistent and will remain so. Even as China tries to modernize its military, its defense spending is still approximately one-ninth that of the United States. In 2012, the Pentagon will spend roughly as much on military research and development alone as China will spend on its entire military. While China clumsily flexes its muscles in the Far East by threatening to deny access to disputed maritime resources, a recent Pentagon report noted that China’s military ambitions remain dominated by “regional contingencies” and that the People’s Liberation Army has made little progress in developing capabilities that “extend global reach or power projection.” In the coming years, China will enlarge its regional role, but this growth will only threaten U.S. interests if Washington attempts to dominate East Asia and fails to consider China’s legitimate regional interests. It is true that China’s neighbors sometimes fear that China will not resolve its disputes peacefully, but this has compelled Asian countries to cooperate with the United States, maintaining bilateral alliances that together form a strong security architecture and limit China’s room to maneuver. The strongest arguments made by those warning of Chinese influence revolve around economic policy. The list of complaints includes a host of Chinese policies, from intellectual property theft and currency manipulation to economic espionage and domestic subsidies. Yet none of those is likely to lead to direct conflict with the United States beyond the competition inherent in international trade, which does not produce zero-sum outcomes and is constrained by dispute-resolution mechanisms, such as those of the World Trade Organization. If anything, China’s export-driven economic strategy, along with its large reserves of U.S. Treasury bonds, suggests that Beijing will continue to prefer a strong United States to a weak one.

### Will Pass

#### Immigration reform likely to pass – Boehner supports, advocates are pressing the action, odds for passage are very strong

Shear and Parker 1/2/14 (Michael and Ashley, NYT, "Boehner Is Said to Back Change on Immigration," http://www.nytimes.com/2014/01/02/us/politics/boehner-is-said-to-back-change-on-immigration.html?pagewanted=2&\_r=1&rref=politics&hpw&&pagewanted=all)

Mr. Boehner has in recent weeks hired Rebecca Tallent, a longtime immigration adviser to Senator John McCain, the Arizona Republican who has long backed broad immigration changes. Advocates for an overhaul say the hiring, as well as angry comments by Mr. Boehner critical of Tea Party opposition to the recent budget deal in Congress, indicates that he is serious about revamping the immigration system despite deep reservations from conservative Republicans.¶ Aides to Mr. Boehner said this week that he was committed to what he calls “step by step” moves to revise immigration laws, which they have declined to specify.¶ But other House Republicans, who see an immigration overhaul as essential to wooing the Hispanic voters crucial to the party’s fortunes in the 2016 presidential election, said they could move on separate bills that would fast-track legalization for agricultural laborers, increase the number of visas for high-tech workers and provide an opportunity for young immigrants who came to the country illegally as children to become American citizens.¶ Although the legislation would fall far short of the demands being made by immigration activists, it could provide the beginnings of a deal.¶ For Mr. Boehner, hiring Ms. Tallent suggests a new commitment to confronting an issue that has long divided the Republican Party. Ms. Tallent is a veteran of more than a decade of congressional immigration battles and fought, ultimately unsuccessfully, for comprehensive overhauls of the immigration system in 2003 and 2007.¶ Although Mr. Boehner’s aides say she was brought on to carry out his views and not her own, advocates of immigration change say the only reason for Mr. Boehner to have hired Ms. Tallent is his desire to make a deal this year.¶ In addition, immigration advocates say that Mr. Boehner’s end-of-year rant against Tea Party groups — in which he said they had “lost all credibility” — is an indicator of what he will do this year on immigration. The groups are the same ones that hope to rally the Republican base against an immigration compromise, and while Mr. Boehner cannot say so publicly, he will have more room to maneuver on the issue if he feels free to disregard the arguments from those organizations.¶ Aides continue to say that Mr. Boehner remains opposed to a single, comprehensive bill like the Senate-passed measure that would tighten border security, increase legal immigration and offer an eventual path to American citizenship for an estimated 11 million illegal immigrants. Conservatives are staunchly opposed to sweeping legislation that would offer a path to citizenship.¶ “The American people are skeptical of big, comprehensive bills, and frankly, they should be,” Mr. Boehner told reporters recently. “The only way to make sure immigration reform works this time is to address these complicated issues one step at a time. I think doing so will give the American people confidence that we’re dealing with these issues in a thoughtful way and a deliberative way.”¶ Nonetheless, immigration activists say they are hopeful that politics may ultimately lead Mr. Boehner to ignore conservative voices who oppose a path to citizenship. Mitt Romney, the Republican nominee for president in 2012, who took a hard line on immigration, won only 27 percent of the Hispanic vote — a key reason for his loss to President Obama.¶ Mr. Obama has in the meantime said he is open to the piecemeal approach on immigration favored by House Republicans, but only if it does not abandon comprehensive goals in legislation that passed the Senate last summer. Reconciling the House approach with the broader ambitions of the Senate bill is the biggest hurdle, strategists in both camps say.¶ “We’ve got to grab the brass ring while it’s there,” said Kevin Appleby, the director of migration policy at the United States Conference of Catholic Bishops. “I’ve been in this debate long enough to know you can’t rely on anything happening at a certain time or on assurances that we’re going to do something this year.”¶ Advocates for an immigration overhaul will start 2014 with a race against the election-season clock and a new campaign aimed at forcing action on Capitol Hill. Civil disobedience demonstrations are planned in Washington and elsewhere. Business groups are readying lobbying blitzes on Capitol Hill. Labor leaders and evangelical ministers are considering more hunger fasts to dramatize what they say is the urgent need to prevent deportations.¶ The most likely legislative approach, according to lawmakers, White House officials and activists, is a push to pass legislation in the House by May or June — after most Republican lawmakers are through with their primary campaigns — with the goal of reaching a compromise that Mr. Obama could sign before the 2014 midterm election campaigns intensify next fall.¶ “That’s our first window,” said Jim Wallis, the president of Sojourners, a Christian social justice organization in Washington that is working to change the immigration laws. “We are organizing, mobilizing, getting ready here. I do really think that we have a real chance at this in the first half of the year.”¶ If a comprehensive overhaul is not completed by summer, strategists say they could make another push during a lame-duck session at the end of the year, after the November elections. If it did not happen then, lawmakers could wait until 2015, although advocates would have to start again in the Senate because the legislation would expire at the end of 2014.¶ Some party strategists on Capitol Hill remain skeptical about the willingness of Mr. Boehner and the House to embrace changes in the face of conservative critics who say the Senate bill represents amnesty for lawbreakers and does not do enough to seal the border against future illegal immigrants.¶ “They won’t try to push through something that conservatives can’t live with,” one top Republican aide said.¶ House Republicans have a retreat scheduled this month, and are unlikely to make any strategic decisions about immigration before then. Representative Paul D. Ryan of Wisconsin, the chief House negotiator on the budget compromise, is expected to play a large, if behind-the-scenes, role.¶ Immigration change advocates continue to demand an end to deportations, many of which have wrenched illegal immigrants from their families. The deportations have energized immigrants, religious leaders and some law enforcement groups behind their current push for legislation.¶ “I would bet money that it will be done before the presidential election of 2016, but I think there’s a very good chance it will get done considerably sooner than that — in 2014,” said Senator Charles E. Schumer, Democrat of New York and one of the architects of the immigration legislation in the Senate.

#### Will pass - budget agreement created momentum, Boehner now on board, Obama pushing

Public News Service 12/30/13 ("Immigration Reform Supporters: “Positive Signs” Headed into 2014 - See more at: http://www.publicnewsservice.org/2013-12-30/immigrant-issues/immigration-reform-supporters-positive-signs-headed-into-2014/a36538-1#sthash.6o96Av8C.dpuf," http://www.publicnewsservice.org/2013-12-30/immigrant-issues/immigration-reform-supporters-positive-signs-headed-into-2014/a36538-1)

NEW YORK - Supporters of comprehensive immigration reform fell short of their goal in 2013, but several things happened in December to swing momentum in their direction, they say. The first positive sign, according to Jim Wallis, Sojourners president and founder, was the House and Senate working together to pass a budget bill. And, while Speaker Boehner has said immigration reform would have to wait until next year, Wallis said there are signs Republicans are ready to act. "I hear Republican leaders - Goodlatte from Judiciary - saying this will be a top priority in 2014," Wallis said. "John Boehner has hired a really talented aide to help with immigration - she knows the topic well, and she's for reform." At his final 2013 news conference, President Obama called on House members to pass the immigration reform measure approved by the Senate, but Speaker Boehner has said he won't bring that version up for a vote.

#### Will pass – bipartisan support and electoral incentives for GOP to support

Harwood 1/2/14 (John, NYT, "When a 2nd-Term President and a Divided Congress Made Magic," http://www.nytimes.com/2014/01/03/us/politics/when-a-2nd-term-president-and-a-divided-congress-made-magic.html?pagewanted=print)

Immigration legislation boasts stronger prospects, since a bipartisan bill backed strongly by Mr. Obama and Democratic leaders has already cleared the Senate. Republicans have strong electoral incentives to strike a deal and improve the party’s national image with Hispanics.

#### Immigration reform will pass – Boehner is pushing despite Tea Party opposition, efforts will proceed after primaries, activists are confident

Herring 1/2/14 (Jessica, Latino Post, "Immigration Reform 2014: Boehner Said to Support 'Step by Step' Moves to Pass Immigration Reform," http://www.latinopost.com/articles/2698/20140102/immigration-reform-2014-boehner-said-to-support-step-by-step-moves-to-pass-immigration-reform.htm)

House Speaker John Boehner has indicated that he may support limited immigration reforms in 2014, giving immigration activists hope that comprehensive immigration reform will pass this year. ¶ Boehner already showed some signs of moving toward reform in recent months. He recently hired Rebecca Tallent, an immigration advisor to Sen. John McCain. Tallent fought for comprehensive immigration overhauls in 2003 and 2007.¶ Tallent's hiring, as well as Boehner's critical comments of Tea Party Republicans who opposed the budget deal in Congress, indicate that he wants to pass reform, despite opposition from conservative GOP members. Boehner said that Tea Party groups, which are against an immigration compromise, have "lost all credibility." ¶ This week, Boehner's aides said he wants to initiate "step by step" moves to revise immigration measures, according to The New York Times. ¶ Other House Republicans, who see immigration reform as a way to gain Hispanic voters ahead of the 2016 presidential election, said they could pass separate bills that would provide a faster path to citizenship for agricultural laborers, increase the number of visas for high-tech workers, and allow young immigrants who came to America as children to become citizens. ¶ Aides still say that Boehner is opposed to a single, comprehensive immigration reform bill, like the one passed by the Senate in June. The Senate-passed measure calls for tightened border security and a path to citizenship for 11 million undocumented immigrants. ¶ "The American people are skeptical of big, comprehensive bills, and frankly, they should be," Boehner told reporters recently. "The only way to make sure immigration reform works this time is to address these complicated issues one step at a time. I think doing so will give the American people confidence that we're dealing with these issues in a thoughtful way and a deliberative way."¶ President Obama also said that he is open to a piecemeal approach on immigration, but only if it does not abandon the goals passed by the Senate this summer. However, policy analysts say that reconciling the Senate goals with those of Republicans in a piecemeal fashion will be difficult. ¶ "We've got to grab the brass ring while it's there," said Kevin Appleby, the director of migration policy at the United States Conference of Catholic Bishops. "I've been in this debate long enough to know you can't rely on anything happening at a certain time or on assurances that we're going to do something this year."¶ While immigration activists are calling for an overhaul in 2014, lawmakers say they plan to pass legislation in the House by May or June, after most Republicans are through with their primary campaigns. They plan to reach a compromise that Obama could sign before the 2014 midterm elections next fall. ¶ "That's our first window," said Jim Wallis, president of Sojourners, a Christian social justice organization in Washington that is working to change the immigration laws. "We are organizing, mobilizing, getting ready here. I do really think that we have a real chance at this in the first half of the year."

#### Will pass – chances of passage are strong in 2014

Kaplan 12/26/13 (Rebecca, CBS News, "Can immigration reform pass in 2014?," http://www.cbsnews.com/news/can-immigration-reform-pass-in-2014/)

Though the conventional wisdom holds that passing any major legislation in an election year is a heavy lift, there are signs that may not hold true in 2014 because the growing population of Latino voters will exert greater influence in the coming elections.¶ “The chances of congressional passage of immigration reform are good because each party has political reasons for wanting to deliver for Latinos and the business community,” said Darrel West, an immigration policy expert at the Brookings Institution. “The biggest challenge is the pathway to citizenship, where the parties remain far apart. A possible compromise could involve creating a pathway that is longer and has more conditions that were in the Senate bill. That will displease reformers but provide cover for Boehner to move the legislation.”¶ John Feehery, a Republican strategist a­nd former congressional aide, said getting immigration done will be important for the GOP in the long run if they can do it on their own terms – in a series of shorter bills. But he also predicted that legislation won’t move for several months until the primaries for the 2014 elections have concluded House members will less concerned about challenges from the right.¶ “The timing on this is very important,” Feehery said. “What was stupid to do becomes smart to do a little bit later in the year.”¶ Eliseo Medina, an activist and former international secretary-treasurer of the Service Employees International Union (SEIU), promised that immigrant advocacy groups would visit “as many congressional districts as possible” in the coming months to press their case. Other advocates like Eddie Carmona, the campaign director for the PICO National Network’s Campaign for Citizenship, credited the work of activists around the country in securing support from Republican representatives like Jeff Denham and David Valadao of California. The two, along with Rep. Ileana Ros-Lehtinen, R-Fla., have signed onto the House Democrats’ immigration bill that includes a pathway to citizenship.¶ Advocates are certainly counting on the impending election to bolster their own pressure on Washington to act on the issue. Angelica Salas, Executive Director of the Coalition for Humane Immigrant Rights of Los Angeles said that if lawmakers don’t address the issue in 2014, “voters are ready to remind them at the ballot box they are replaceable.”¶ In a July poll, Latino Decisions, a group that studies Latino voting trends, found that among Latino voters who voted in the 2010 midterm elections, 39 percent of respondents said that they would be more likely to support Republican congressional candidates in the next election if the GOP took a leadership role in passing an immigration reform bill that includes a pathway to citizenship. In a separate question, 50 percent said that they would be more likely to support Republican congressional candidates who supported immigration reform with a pathway to citizenship even if they disagreed with Republicans on other issues like health care and taxes.¶ The future of immigration policy in the House rests largely in the hands of the leadership, and especially Boehner. He has expressed a commitment to overhauling the nation’s laws all year as long as it is done on the House’s terms, but has also failed so far to put a single bill on the floor. Still, the issue is not going away and Boehner announced earlier this month that he hired Rebecca Tallent, a former staffer for Sen. John McCain, R-Ariz., who was actively involved in the 2006-2007 reform efforts.¶ Despite his protestations he will never work with the Senate on the bill they passed, Senate Majority Leader Harry Reid, D-Nev., told The Hill newspaper that Boehner will ultimately face too much pressure from his members who could be at risk if the House doesn’t act on immigration.¶ “He’ll have a lot of pressure from his members now that the election is getting closer,” Reid said. “Some of his members are in very marginal districts, where they need to do something on immigration.”

### Top of Agenda

#### Immigration at the top of the agenda – Boehner will push

Lederman 12/27/13 (Josh, Associated Press, "Obama Looks Ahead To 2014 After Finishing 2013 Business," http://www.huffingtonpost.com/2013/12/27/obama-2014\_n\_4507493.html)

High on the agenda for the start of the year is a renewed push on immigration. Bipartisan consensus about the need for action on immigration in the wake of the 2012 presidential election gave way in 2013 to opposition from conservative House Republicans. House Speaker John Boehner, R-Ohio, has started offering subtle signs he'll put more weight behind the issue despite continued resistance from the tea party.

### A2 Boehner/GOP Block

#### Immigration reform will pass – Boehner will push and votes will haven AFTER primaries to ensure passage

Bump 1/2/14 (Philip, Columnist @ The Wire, "Congress' 2014 Could Be Even Worse Than Its 2013," http://www.thewire.com/politics/2014/01/congress-2014-could-be-even-lamer-its-2013/356632/)

The New York Times reports that 2014 is slated to begin where 2013 left off in the House. Speaker John Boehner says he'll push for immigration reform again, considered a key move for the Republican Party given its slumping numbers with Latino voters. Boehner has hired a staffer from the office of Arizona Sen. John McCain, with the goal of advancing "'step by step' moves to revise immigration laws," the Times reports. This paragraph is perhaps the most telling:¶ The most likely legislative approach, according to lawmakers, White House officials and activists, is a push to pass legislation in the House by May or June — after most Republican lawmakers are through with their primary campaigns — with the goal of reaching a compromise that Mr. Obama could sign before the 2014 midterm election campaigns intensify next fall.¶ See that? Wait on immigration reform until after members of Congress have to face staunch conservative opposition in primary battles but pass it before the general election when far more Latino voters will head to the polls. Not a bad move, politically.

### Obama Push Key

#### Obama working to push through agenda items – key to immigration passage compromise

WSJ 12/30/13 (Wall Street Journal, “Obama Seeks Way to Right His Ship,” <http://online.wsj.com/news/articles/SB10001424052702304361604579290264084633016>)

Mr. Obama's main consolation is that Republicans continue to fare even worse in public estimation. Indeed, his political high point in 2013 came when congressional Republicans shot themselves in the foot by allowing the government to shut down in October in a dispute over funding the president's health law. Republican leaders were so singed by the experience that they moved swiftly this month to strike the compromise budget plan that will keep the government funded through next year. Then, House Speaker John Boehner (R., Ohio) forcefully quashed complaints by the party's tea-party wing that the new deal didn't cut spending sufficiently. The emergence of a large bloc of House Republicans who voted in favor of that compromise has created the possibility that Mr. Obama may be able to work out at least a few deals on other issues. "The jury's still out on whether or not the budget agreement was a one-off or a sign of things to come," says Rep. Chris Van Hollen of Maryland, the top Democrat on the House Budget Committee. Mr. Van Hollen says an early test will come when the parties try to reach an understanding to raise the debt ceiling, due to be hit around the beginning of March. If there is a new phase of cooperation, he says, that might open the door to deals on more infrastructure spending, corporate tax reform and, crucially, an overhaul of immigration laws. Rep. Kevin McCarthy, the third-ranking Republican in the House, says the budget deal "does allow us to get more done," but adds that compromises are more likely between House and Senate leaders than with the White House. He predicts much of Mr. Obama's effort in the new year will be on keeping Democratic supporters from abandoning him as he tries to get his new health program working better. That brings Mr. Obama to his key strategic choice: Does he focus on trying to craft compromises with Republicans to show skeptical voters he is making Washington work? Or does he work around Congress, striking out on his own with executive actions, while attacking the GOP for failing to cooperate? The question of whether more deals with congressional Republicans are possible is "perhaps the question when it comes to predicting how 2014 will play out," says a senior White House official. "Our approach will be to test as much as possible for principled compromise where Republicans are willing, but also to push ahead with nonlegislative solutions where Congress stonewalls." Some observers wonder whether the president's decision in recent days to hire former White House chief of staff John Podesta, who has championed a muscular use of executive actions to pursue Democratic policies, suggests he is preparing for more confrontations with congressional Republicans.

### Pol Cap High Now

#### Obama’s not a lame duck – Syria, Iran, budget, appointments, economy prove he’s got clout now AND immigration reform likely will pass

Zogby 12/29/13 (John, Contributor @ Forbes + Veteran Political Pundit and Pollster, "Was Obama's Year So Bad After All," http://www.forbes.com/sites/johnzogby/2013/12/29/was-obamas-year-so-bad-after-all/)

I recommend that we look at Mr. Obama’s year not from the standpoint of expectations or historical comparisons but, rather, in terms of actual results. And I will start with his polling numbers, which while not good, are also not in the tank. As I write this, his approval rating average is 42%, nothing to brag about but far from the 20s and 30s where Presidents like Truman, Nixon, Carter and both Bushes found themselves during their tenure.¶ Now, let’s examine the record.¶ The horrible war in Syria continues and, while there is little the U.S. or any other power can do to stop the atrocities on both sides, Syrian chemical weapons are actually being destroyed. An accomplishment.¶ Following 34 years of hostility, the U.S. and other powers have negotiated an Iran nuclear deal that promises to limit Iran’s nuclear capabilities, unless Iran wants to lose all hope of limiting sanctions that are strangling its economy. Both sides are talking, there is a path to a bigger deal, and thus far the risks are all on the Iranian side.¶ The unemployment rate stands at 7%, down a full three percentage points from January 2009. Slow but real economic growth continues and economists project a decline in the unemployment rate to 6% to 6.2% by mid-2014, along with GDP growth up to 3%, the highest in years.¶ As with Iran, no final deal yet but there were also successful negotiations between two even more intractable enemies – Democrats and Republicans – averting another government shutdown for at least two years.¶ Long-term implications are one thing, but the President and his allies in the Senate figured out a way to prevent gridlock on his court appointments. Was it Presidential leadership or tyranny? It depends on who you are talking to. But it is not the weakness of a lame duck.¶ Obamacare is alive, signing up tens of thousands (perhaps up to two million by the end of the year), and will not be repealed.¶ As of this writing, a federal district judge in Washington has declared that the NSA policy of eavesdropping and bundling call records is legal. This will no doubt head to the Supreme Court but, at the end of the year, the Obama administration is a winner.¶ And, as always, the President is helped by the fact that he is playing against the worst team in the major leagues. Ratings for the GOP in Congress are at polling record lows.¶ To be sure, not all is rosy at the end of Mr. Obama’s fifth year. On the down side: Egypt and Syria are potential tinder boxes; too many Americans are either unemployed or underemployed; the national debt is impossibly high and growing with no real plan to reduce it; the miserable rollout for Mr. Obama’s signature health care legislation did real damage and he further damaged public trust by either lying about it or not knowing what he was talking about; and his popularity is down double digits from his re-election performance one year ago.¶ But the outlook for 2014 suggests that immigration reform in some form will pass (because both parties need it to pass) and Rep. Paul Ryan and Sen. Patty Murray are still talking.

### OCO – 2NC

#### Presidential cyber powers are extremely controversial – saps capital

Grant 10 (John – Minority Counsel for the Senate Committee on Homeland Security and Governmental Affairs, “

Cybersecurity Symposium: National Leadership, Individual Responsibility: Will There Be Cybersecurity Legislation?”, 2010, 4 J. Nat'l Security L. & Pol'y 103, lexis)

D. Inherent Authority In addition to the statutory authorities held by agencies, there is an argument that the President has certain inherent powers flowing from constitutionally granted war powers. If the concept of "war powers" is extended to encompass the broader notion of national security, then the President could have significant cybersecurity authorities that require no congressional authorization. n23 However, broad invocation of such powers remains controversial, and recent attempts based on a broad interpretation of these powers, such as to justify warrantless wiretapping, may make their use in the cybersecurity context politically unpalatable.

#### Legislative action on OCO’s saps President’s political capital

Rosenzweig 10 (Paul – founder of Red Branch Consulting PLLC, a homeland security consulting company and a Senior Advisor to The Chertoff Group. Mr. Rosenzweig formerly served as Deputy Assistant Secretary for Policy in the Department of Homeland Security. He is a Distinguished Visiting Fellow at the Homeland Security Studies and Analysis Institute. He also serves as a Professorial Lecturer in Law at George Washington University, a Senior Editor of the Journal of National Security Law & Policy, and as a Visiting Fellow at The Heritage Foundation, “Proceedings of a Workshop on Deterring Cyberattacks: Informing Strategies and Developing Options for U.S. Policy”, 2010, pg 264, http://www.nap.edu/openbook.php?record\_id=12997&page=245)

To achieve this level of coordination and secure the cooperation of other federal agencies, it is almost certain that the cyber coordinator will need to, effectively, have cabinet-rank and report directly to the President. Any lesser degree of empowerment will, with near certainty, foreclose any realistic possibility of success. In short, if it wishes to advance the coordinative function in a meaningful way the White House must take ownership of the cybersecurity issue and work with Congress to endow the cyber coordinator position with the authority necessary to achieve a set of clearly defined and articulated goals. The cyber coordinator will also have the difficult task of incorporating private-sector perspectives into the development of any Federal policy and in its implementation. Typically, Federal policy is informed by private sector views through the offices of the constituent cabinet agencies who participate in the policy development. Somewhat less frequently, private sector views are formally solicited through advisory committees and other less formal means of interaction. In the cyber domain, uniquely, Federal policies will have an impact on private sector equities and implementation issues will require private sector coordination. A critical task for the cyber coordinator will be the development of an effective mechanism for incorporating those view points. Finally, it is worth acknowledging that we should not be completely sanguine at the prospects for success in achieving this sort of restructuring. In addition to opposition from agencies whose roles and responsibilities will be modified we should anticipate significant opposition from both Congress and the regulated community. Congressional inertia and interest in protecting jurisdictional prerogatives is widespread, as is regulatory resistance to any activity that empowers governmental control. Coordinated budgeting will require the cooperation of the Appropriations Committees in both houses of Congress in consolidating their consideration of the President's budget request. To the extent that legislative enactments are required to achieve centralizing objectives, their passage will require a significant investment of Presidential political capital.

#### Offensive cyber operations create political battles between Congress and the President

Kesan and Hayes 12 (Jay P. – Professor, H. Ross & Helen Workman Research Scholar, and Director of the Program in Intellectual Property & Technology Law, University of Illinois College of Law, and Carol M. – Research Fellow, University of Illinois College of Law, “MITIGATIVE COUNTERSTRIKING: SELF-DEFENSE AND DETERRENCE IN CYBERSPACE”, 2012, 25 Harv. J. Law & Tec 429, lexis)

Cyberwarfare is likely to be especially attractive to military leaders because it conserves human and nonhuman resources, though the low costs may also remove disincentives against offensive operations. n149 However, there is no unified information operations doctrine for the whole military, n150 and creating such policies will require leaders to consider a number of highly technical issues that few leaders currently understand. n151 Thus, educating civilian and military leaders is an essential element to effectively addressing potential future international cyber crises. Because cyberwar is an example of an information operation, it can be viewed as a subcategory of activities involved in physical war. Accordingly, discussions of cyberwar implicate fundamental issues of war, such as how war is initiated and the rules that govern it, including [\*454] the respective warmaking powers of the President and Congress. The Constitution explicitly vests in Congress the authority to declare war, but the President has some authority to take actions relating to war. n152 It is relatively uncontroversial to assert that the President has warmaking powers when acting in the nation's self-defense. However, when ordering military action without congressional authorization for reasons other than self-defense, the President must comply with the War Powers Resolution. n153 Congress passed the War Powers Resolution after the Vietnam War, requiring the President to notify Congress of the use of the military in hostile situations and placing a time limit on such actions unless Congress expressly approves of continued deployment. n154 In addition to his authority as the Commander-in-Chief, the President also has statutory authority to take control of telecommunications networks in times of war. n155 The potential overlap between this authority and cyberwar activities could prove very significant in the future, though a discussion of these implications is beyond the scope of this Article. With as much conflict as currently exists between the executive and legislative branches with regard to warmaking powers, cyberwar will introduce even more strife. n156 The NRC Report indicates that Congress is likely not privy to regular or systematic information about cyberattacks in the United States. n157 Dycus asserts that congressional silence on cyberwar matters could potentially be viewed as giving full discretion to the President. n158 Dycus also proposes seventeen recommendations for creating a new policy on cyberwar, including an express prohibition on automating active defense. n159

#### Requires significant political capital – Bush proves

Sanger 9 (David – NYT, “U.S. Steps Up Effort on Digital Defenses”, 4/27, http://www.nytimes.com/2009/04/28/us/28cyber.html?pagewanted=all&\_r=0)

Because so many aspects of the American effort to develop cyberweapons and define their proper use remain classified, many of those officials declined to speak on the record. The White House declined several requests for interviews or to say whether Mr. Obama as a matter of policy supports or opposes the use of American cyberweapons. The most exotic innovations under consideration would enable a Pentagon programmer to surreptitiously enter a computer server in Russia or China, for example, and destroy a “botnet” — a potentially destructive program that commandeers infected machines into a vast network that can be clandestinely controlled — before it could be unleashed in the United States. Or American intelligence agencies could activate malicious code that is secretly embedded on computer chips when they are manufactured, enabling the United States to take command of an enemy’s computers by remote control over the Internet. That, of course, is exactly the kind of attack officials fear could be launched on American targets, often through Chinese-made chips or computer servers. So far, however, there are no broad authorizations for American forces to engage in cyberwar. The invasion of the Qaeda computer in Iraq several years ago and the covert activity in Iran were each individually authorized by Mr. Bush. When he issued a set of classified presidential orders in January 2008 to organize and improve America’s online defenses, the administration could not agree on how to write the authorization. A principal architect of that order said the issue had been passed on to the next president, in part because of the complexities of cyberwar operations that, by necessity, would most likely be conducted on both domestic and foreign Internet sites. After the controversy surrounding domestic spying, Mr. Bush’s aides concluded, the Bush White House did not have the credibility or the political capital to deal with the subject.

#### OCO restrictions are politically delicate – past controversies prove

Lorber 13 (Eric – J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science, “COMMENT: Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?”, 2013, 15 U. Pa. J. Const. L. 961, lexis)

 [\*976] To this end, this Comment examines the two primary statutory tools through which Congress has tried to regulate executive military action: the War Powers Resolution and the Intelligence Authorization Act. There are two reasons to focus on these statutes. First, they apply to instances in which offensive cyber weapons will most likely be employed outside of surveillance and espionage actions: covert actions to disable and disrupt adversary systems and capabilities, and overt actions taken in conjunction with kinetic operations to degrade an adversary's ability to effectively conduct combat operations. Second, they are the primary means through which Congress has attempted to constrain the President's exercise of his constitutional Commander-in-Chief function. n80 Historically, and particularly since 1970, Congress has been reluctant to use its primary power, the power of the purse, to defund military activities, utilizing it only a handful of times. n81 As recent controversies over funding for wars in Iraq and Afghanistan, as well as the intervention in Libya illustrate, threatening to defund ongoing military operations is politically delicate and many legislators prefer to avoid taking such action. n82 Before proceeding to analyze OCOs through the prism of these two statutes, however, sharpening our understanding of the different types of OCOs is necessary.

#### Presidential cyber powers are extremely controversial

Bambauer 11 (Derek – Associate Professor of Law, Brooklyn Law School, “Conundrum”, 2011, 96 Minn. L. Rev. 584, lexis)

The proposed legislation garnering the most attention, however, is the infamous "kill switch" bill, which demonstrates cybersecurity law at its most grandiose. Senators Joseph Lieberman and Susan Collins introduced a wide-ranging bill that would increase funding for implementing security measures, bolster information sharing between the public and private sectors, create security standards for federal agencies, and - most controversially - confer broad emergency powers on the U.S. President to protect critical infrastructure. n151 The legislation would enable the President, when confronted with a cyber-emergency, to compel owners and operators of critical infrastructure [\*610] to implement emergency plans, including stopping data flow. n152 The bill received widespread criticism, n153 particularly after the government of Egypt ordered that country's major ISPs to cease routing data during anti-government protests in early 2011. n154 The underlying concept of the legislation - to allow America to "pull up the drawbridge" in case of a cyberattack - is one supported by commentators such as Clarke and Knake. n155 It plainly involves substantial augmentation of the government's control over private Internet infrastructure, although proponents contend the President has similar authority under the Communications Act of 1934. n156 The "kill switch" legislation runs counter to the trend of minimalist proposals for legal regulation of cybersecurity, which accounts in part for the heated opposition to the bill. n157

### OCO – Obama Fights – 2NC

#### Administration fights the plan – DOD statements and secrecy prove

Lorber 13 (Eric – J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science, “COMMENT: Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?”, 2013, 15 U. Pa. J. Const. L. 961, lexis)

Despite these leaks of classified information, offensive cyber capabilities remain one of the U.S. government's most closely-guarded secrets. For example, in its recently released Strategy for Operating in Cyberspace, the Department of Defense did not mention its offensive capabilities. n56 Further, in response to congressional questions during the debates over the 2011 [\*972] National Defense Authorization Act, the Department of Defense did not directly address - at least in an unclassified forum - the extent of U.S. offensive cyber capabilities, nor the policies governing them. n57 However, it did reference that these capabilities exist: "The Department has the capability to conduct offensive operations... . DoD will conduct offensive cyber operations in a manner consistent with the policy principles and legal regimes that the Department follows for kinetic capabilities, including the law of armed conflict." n58

#### They are in a double-bind – if Obama does push the plan, then he still loses political capital – Congress supports giving OCO authority to the President

Johnson 11 (Nicole, “Congress gives DoD green light on cyber attacks”, 12/20, http://www.cnas.org/node/7455)

Congress has given the Defense Department explicit authority to launch offensive operations in cyberspace. The provision included in the National Defense Authorization Act passed by lawmakers last week affirms that DoD has offensive cyber capabilities and that the department "may conduct offensive operations in cyberspace" when directed to do so by the president. "This is a positive step, but there is nothing remarkable about it, and that's as it should be," said Kristin Lord, vice president and director of studies at the Center for a New American Security, a nonpartisan national security think tank in Washington. Lord said there is a move by other governments to develop international standards for cyber warfare. Alan Paller, director of research at the SANS Institute, a Maryland-based computer security research and training organization, said the law now gives DoD "explicit permission to do what needs to be done and what has been done." The legislation calls on DoD to select at least one official to coordinate, oversee and carry out collaborative cyber activities with the Department of Homeland Security. DHS is likewise required to assign a director of cybersecurity coordination to work with DoD. Lord said the authority to conduct offensive operations is clearly directed at DoD, not DHS or the intelligence community.

### A2: Winners Win – 2NC

#### Winners don’t win

Eberly 13 - assistant professor in the Department of Political Science at St. Mary's College of Maryland

Todd, “The presidential power trap,” Baltimore Sun, 1/21/13, Lexis

Only by solving the problem of political capital is a president likely to avoid a power trap. Presidents in recent years from have been unable to prevent their political capital eroding. When it did, their power assertions often got them into further political trouble. Through leveraging public support, presidents have at times been able to overcome contemporary leadership challenges by adopting as their own issues that the public already supports. Bill Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes — in Mr. Clinton's case, welfare reform and budget balance, in Mr. Bush's tax cuts and education reform — that at the time received popular approval.¶ However, short-term legislative strategies may win policy success for a president but do not serve as an antidote to declining political capital over time, as the difficult final years of both the Bill Clinton and George W. Bush presidencies demonstrate. None of Barack Obama's recent predecessors solved the political capital problem or avoided the power trap. It is the central political challenge confronted by modern presidents and one that will likely weigh heavily on the current president's mind today as he takes his second oath of office.

#### Obama thinks that pol cap is finite – he’ll back off controversial issues even if he’s winning

Kuttner 9 (Robert – , co-editor of The American Prospect and a senior fellow at Demos, author of "Obama's Challenge: America's Economic Crisis and the Power of a Transformative Presidency, 4/28/9, “Obama Has Amassed Enormous Political Capital, But He Doesn't Know What to Do with It,” [http://www.alternet.org/economy/138641/obama\_has\_amassed\_enormous\_political\_capital,\_but\_he\_doesn%27t\_know\_what\_to\_do\_with\_it/?page=entire](http://www.alternet.org/economy/138641/obama_has_amassed_enormous_political_capital%2C_but_he_doesn%27t_know_what_to_do_with_it/?page=entire))

We got a small taste of what a more radical break might feel like when Obama briefly signaled with the release of Bush's torture memos that he might be open to further investigation of the Bush's torture policy, but then backtracked and quickly asked the Democratic leadership to shut the idea down. Evidently, Obama's political self wrestled with his constitutional conscience, and won. Civil libertarians felt a huge letdown, but protest was surprisingly muted.

Thus the most important obstacle for seizing the moment to achieve enduring change: Barack Obama's conception of what it means to promote national unity. Obama repeatedly declared during the campaign that he would govern as a consensus builder. He wasn't lying. However, there are two ways of achieving consensus. One is to split the difference with your political enemies and the forces obstructing reform. The other is to use presidential leadership to transform the political center and alter the political dynamics. In his first hundred days, Obama has done a little of both, but he defaults to the politics of accommodation.

#### Controversial wins bleed momentum not build it.

**Politico**, 1/20/**2010** (Obama's first year: What went wrong, p. http://dyn.politico.com/printstory.cfm?uuid=4DF829C9-18FE-70B2-A8381A971FA3FFC9)

Obama believed that early success would be self-reinforcing, building a powerful momentum for bold government action. This belief was the essence of the White House’s theory of the “big bang” — that success in passing a big stimulus package would lead to success in passing health care, which in turn would clear the way for major cap-and-trade environmental legislation and “re-regulation” of the financial services sector — all in the first year. This proved to be a radical misreading of the dynamics of power. The massive cost of the stimulus package and industry bailouts — combined with the inconvenient fact that unemployment went up after their passage — meant that Obama spent the year bleeding momentum rather than steadily increasing public confidence in his larger governing vision. That vision was further obscured for many Americans by the smoke from the bitter and seemingly endless legislative battle on Capitol Hill over health care.

#### Wins don’t spill over – empirically proven

**Hertzberg**, 2/7/**2011** (Hendrik – senior editor and political essayist at the New Yorker, The New Yorker, p. http://www.newyorker.com/talk/comment/2011/02/07/110207taco\_talk\_hertzberg?printable=true)

Strong words. But now they are not even whispered. The climate bill, like hundreds of others less consequential, met its fate on the legislative terminal ward that is the United States Senate, where bleeding is still the treatment of choice. The bill died of complete organ failure, you might say. The contributing causes included the economic crisis, which made it easy to stoke fear; the power, money, and regional clout of sectors that benefit from the greenhouse-gas-producing status quo, especially the coal and oil industries; the Republican congressional leadership’s determination to forgo compromise in favor of a disciplined drive to block anything that might resemble a victory for Obama; the rise of the Tea Party right and the baleful influence of talk radio and Fox News; and, as always, the filibuster. But Obama and the White House cannot escape blame. They botched delicate negotiations in the Senate, were neglectful at key moments, and expended little of the courage, imagination, and resources they brought to health-care reform. Perhaps they calculated that winning health care would strengthen them for climate change, like Popeye after a helping of spinach. But the political effect, at least in its immediate manifestations, was more like Kryptonite.

#### Winners win not true for Obama – must be large, popular and on economic issue

**Kuttner 11** (Robert, co-founder and co-editor of The American Prospect, as well as a distinguished senior fellow of the think tank Demos, 5/16, http://prospect.org/cs/articles?article=barack\_obamas\_theory\_of\_power)

Obama won more legislative trophies during his first two years than Clinton did, but in many respects, they were poisoned chalices. Health reform proved broadly unpopular because of political missteps—a net negative for Democrats in the 2010 midterm. The stimulus, though valuable, was too small to be a major political plus. Obama hailed it as a great victory rather than pledging to come back for more until recovery was assured. He prematurely abandoned the fight for jobs as his administration’s central theme, though the recession still wracked the nation. And because of the administration’s alliance with Wall Street, Obama suffered both the appearance and reality of being too close to the bankers, despite a partial success on financial reform. Obama’s mortgage-rescue program was the worst of both worlds—it failed to deliver enough relief to make an economic difference yet still signaled politically disabling sympathy for both “deadbeat” homeowners and for bankers. (See this month’s special report on page A1.)

#### Wins only build long-term capital – link outweighs

Purdum 10, Columnist for Vanity Fair, (Todd, “Obama Is Suffering Because of His Achievements, Not Despite Them,” 12-20 [www.vanityfair.com/online/daily/2010/12/obama-is-suffering-because-of-his-achievements-not-despite-them.html](http://www.vanityfair.com/online/daily/2010/12/obama-is-suffering-because-of-his-achievements-not-despite-them.html))

 With this weekend’s decisive Senate repeal of the military’s “Don’t Ask, Don’t Tell” policy for gay service members, can anyone seriously doubt Barack Obama’s patient willingness to play the long game? Or his remarkable success in doing so? In less than two years in office—often against the odds and the smart money’s predictions at any given moment—Obama has managed to achieve a landmark overhaul of the nation’s health insurance system; the most sweeping change in the financial regulatory system since the Great Depression; the stabilization of the domestic auto industry; and the repeal of a once well-intended policy that even the military itself had come to see as unnecessary and unfair. So why isn’t his political standing higher? Precisely because of the raft of legislative victories he’s achieved. Obama has pushed through large and complicated new government initiatives at a time of record-low public trust in government (and in institutions of any sort, for that matter), and he has suffered not because he hasn’t “done” anything but because he’s done so much—way, way too much in the eyes of his most conservative critics. With each victory, Obama’s opponents grow more frustrated, filling the airwaves and what passes for political discourse with fulminations about some supposed sin or another. Is it any wonder the guy is bleeding a bit? For his part, Obama resists the pugilistic impulse. To him, the merit of all these programs has been self-evident, and he has been the first to acknowledge that he has not always done all he could to explain them, sensibly and simply, to the American public. But Obama is nowhere near so politically maladroit as his frustrated liberal supporters—or implacable right-wing opponents—like to claim. He proved as much, if nothing else, with his embrace of the one policy choice he surely loathed: his agreement to extend the Bush-era income tax cuts for wealthy people who don’t need and don’t deserve them. That broke one of the president’s signature campaign promises and enraged the Democratic base and many members of his own party in Congress. But it was a cool-eyed reflection of political reality: The midterm election results guaranteed that negotiations would only get tougher next month, and a delay in resolving the issue would have forced tax increases for virtually everyone on January 1—creating nothing but uncertainty for taxpayers and accountants alike. Obama saw no point in trying to score political debating points in an argument he knew he had no chance of winning. Moreover, as The Washington Post’s conservative columnist Charles Krauthammer bitterly noted, Obama’s agreement to the tax deal amounted to a second economic stimulus measure—one that he could never otherwise have persuaded Congressional Republicans to support. Krauthammer denounced it as the “swindle of the year,” and suggested that only Democrats could possibly be self-defeating enough to reject it. In the end, of course, they did not. Obama knows better than most people that politics is the art of the possible (it’s no accident that he became the first black president after less than a single term in the Senate), and an endless cycle of two steps forward, one step back. So he just keeps putting one foot in front of the other, confident that he can get where he wants to go, eventually. The short-term results are often messy and confusing. Just months ago, gay rights advocates were distraught because Obama wasn’t pressing harder to repeal “Don’t Ask, Don’t Tell.” Now he is apparently paying a price for his victory because some Republican Senators who’d promised to support ratification of the START arms-reduction treaty—identified by Obama as a signal priority for this lame-duck session of Congress—are balking because Obama pressed ahead with repealing DADT against their wishes. There is a price for everything in politics, and Obama knows that, too.

### A2 Thumpers

#### Nothing will thump--- recent deal created space and time to tackle reform

Reyes 12/30/13 (Raul, NY-based attorney and member of USA TODAY’s Board of Contributors, "Reason for hope on immigration reform for 2014: column," http://www.wisconsinrapidstribune.com/article/U0/20131230/WRT06/312300162/Reason-hope-immigration-reform-2014-column)

For supporters of immigration reform, 2013 was a roller coaster of hope and frustration. In February, President Obama declared in his State of the Union address that “the time has come to pass comprehensive immigration reform.” In June, theSenate passed a sweeping immigration overhaulwith bipartisan support. Then despite backing frombusiness, faith and labor leaders, the bill stalled in the House against a backdrop of record levels of deportations. Yet immigration reform is the issue that will not die, and there are reasons to be optimistic about it still becoming reality.¶ For starters, the just-passed budget deal shows that Congress is not completely dysfunctional. Although the agreement itself is not historic, it is remarkable because it broke through the gridlock that has lately paralyzed our government. That means there will be more time in January to tackle immigration.

## Neg v. Wake – 1NC

### 1 – Framework

A. Interpretation – debate is a game that requires the aff to ultimately defend a restriction in presidential war powers in one of the resolutional areas

#### Restrictions on authority must prohibit actions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

B. Violation – they claim to win for reasons entirely dependent of the desirability of that action

C. Reasons to prefer:

#### 1. Predictability – debate games open up dialogue which fosters information processing – they open up infinite frameworks making the game impossible

Haghoj 8 – PhD, affiliated with Danish Research Centre on Education and Advanced Media Materials, asst prof @ the Institute of Education at the University of Bristol (Thorkild, 2008, "PLAYFUL KNOWLEDGE: An Explorative Study of Educational Gaming," PhD dissertation @ Institute of Literature, Media and Cultural Studies, University of Southern Denmark, http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf)

Debate games are often based on pre-designed scenarios that include descriptions of issues to be debated, educational goals, game goals, roles, rules, time frames etc. In this way, debate games differ from textbooks and everyday classroom instruction as debate scenarios allow teachers and students to actively imagine, interact and communicate within a domain-specific game space. However, instead of mystifying debate games as a “magic circle” (Huizinga, 1950), I will try to overcome the epistemological dichotomy between “gaming” and “teaching” that tends to dominate discussions of educational games. In short, educational gaming is a form of teaching. As mentioned, education and games represent two different semiotic domains that both embody the three faces of knowledge: assertions, modes of representation and social forms of organisation (Gee, 2003; Barth, 2002; cf. chapter 2). In order to understand the interplay between these different domains and their interrelated knowledge forms, I will draw attention to a central assumption in Bakhtin’s dialogical philosophy. According to Bakhtin, all forms of communication and culture are subject to centripetal and centrifugal forces (Bakhtin, 1981). A centripetal force is the drive to impose one version of the truth, while a centrifugal force involves a range of possible truths and interpretations. This means that any form of expression involves a duality of centripetal and centrifugal forces: “Every concrete utterance of a speaking subject serves as a point where centrifugal as well as centripetal forces are brought to bear” (Bakhtin, 1981: 272). If we take teaching as an example, it is always affected by centripetal and centrifugal forces in the on-going negotiation of “truths” between teachers and students. In the words of Bakhtin: “Truth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction” (Bakhtin, 1984a: 110). Similarly, the dialogical space of debate games also embodies centrifugal and centripetal forces. Thus, the election scenario of The Power Game involves centripetal elements that are mainly determined by the rules and outcomes of the game, i.e. the election is based on a limited time frame and a fixed voting procedure. Similarly, the open-ended goals, roles and resources represent centrifugal elements and create virtually endless possibilities for researching, preparing, 51 presenting, debating and evaluating a variety of key political issues. Consequently, the actual process of enacting a game scenario involves a complex negotiation between these centrifugal/centripetal forces that are inextricably linked with the teachers and students’ game activities. In this way, the enactment of The Power Game is a form of teaching that combines different pedagogical practices (i.e. group work, web quests, student presentations) and learning resources (i.e. websites, handouts, spoken language) within the interpretive frame of the election scenario. Obviously, tensions may arise if there is too much divergence between educational goals and game goals. This means that game facilitation requires a balance between focusing too narrowly on the rules or “facts” of a game (centripetal orientation) and a focusing too broadly on the contingent possibilities and interpretations of the game scenario (centrifugal orientation). For Bakhtin, the duality of centripetal/centrifugal forces often manifests itself as a dynamic between “monological” and “dialogical” forms of discourse. Bakhtin illustrates this point with the monological discourse of the Socrates/Plato dialogues in which the teacher never learns anything new from the students, despite Socrates’ ideological claims to the contrary (Bakhtin, 1984a). Thus, discourse becomes monologised when “someone who knows and possesses the truth instructs someone who is ignorant of it and in error”, where “a thought is either affirmed or repudiated” by the authority of the teacher (Bakhtin, 1984a: 81). In contrast to this, dialogical pedagogy fosters inclusive learning environments that are able to expand upon students’ existing knowledge and collaborative construction of “truths” (Dysthe, 1996). At this point, I should clarify that Bakhtin’s term “dialogic” is both a descriptive term (all utterances are per definition dialogic as they address other utterances as parts of a chain of communication) and a normative term as dialogue is an ideal to be worked for against the forces of “monologism” (Lillis, 2003: 197-8). In this project, I am mainly interested in describing the dialogical space of debate games. At the same time, I agree with Wegerif that “one of the goals of education, perhaps the most important goal, should be dialogue as an end in itself” (Wegerif, 2006: 61).

#### 2. Ground – the resolution exists to create balanced difficulty, creating a topic that is supposed to be moral and controversial – games requires acceptance of rules whose purpose is to forbid the easiest means to a goal – this makes the game meaningful

Hurka 6 – philosopher who serves as the Jackman Distinguished Chair in Philosophical Studies at the University of Toronto (Thomas, 2006, "Games and the Good," Proceedings of the Aristotelian Society, Supplementary Volume 80, http://homes.chass.utoronto.ca/~thurka/docs/pass\_games.pdf)

I take this admiration to rest on the judgement that excellence in games is good in itself, apart from any pleasure it may give the player or other people but just for the properties that make it excellent. The admiration, in other words, rests on the perfectionist judgement that skill in games is worth pursuing for its own sake and can add value to one’s life. This skill is not the only thing we value in this way; we give similar honours to achievements in the arts, science, and business. But one thing we admire, and to a significant degree, is excellence in athletic and nonathletic games. Unless we dismiss this view, one task for philosophy is to explain why such excellence is good. But few philosophers have attempted this, for a well-known reason. A unified explanation of why excellence in games is good requires a unified account of what games are, and many doubt that this is possible. After all, Wittgenstein famously gave the concept of a game as his primary example of one for which necessary and sufficient conditions cannot be given but whose instances are linked only by looser “family resemblances.”2 If Wittgenstein was right about this, 2 there can be no single explanation of why skill in games is good, just a series of distinct explanations of the value of skill in hockey, skill in chess, and so on. But Wittgenstein was not right, as is shown in a little-known book that is nonetheless a classic of twentieth-century philosophy, Bernard Suits’s The Grasshopper: Games, Life and Utopia. Suits gives a perfectly persuasive analysis of playing a game as, to quote his summary statement, “the voluntary attempt to overcome unnecessary obstacles.”3 And in this paper I will use his analysis to explain the value of playing games. More specifically, I will argue that the different elements of Suits’s analysis give game-playing two distinct but related grounds of value, so it instantiates two related intrinsic goods. I will also argue that game-playing is an important intrinsic good, which gives the clearest possible expression of what can be called a modern as against a classical, or more specifically Aristotelian, view of value. But first Suits’s analysis. It says that a game has three main elements, which he calls the prelusory goal, the constitutive rules, and the lusory attitude. To begin with the first, in playing a game one always aims at a goal that can be described independently of the game. In golf, this is that a ball enter a hole in the ground; in mountain-climbing, that one stand on top of a mountain; in Olympic sprinting, that one cross a line on the track before one’s competitors. Suits calls this goal “prelusory” because it can be understood and achieved apart from the game, and he argues that every game has such a goal. Of course, in playing a game one also aims at a goal internal to it, such as winning the race, climbing the mountain, or breaking par on the golf course. But on Suits’s view this “lusory” goal is derivative, since achieving it involves achieving the prior prelusory goal in a specified way. This way is identified by the second element, the game’s constitutive rules. According to 3 Suits, the function of these rules is to forbid the most efficient means to the prelusory goal. Thus, in golf one may not carry the ball down the fairway and drop it in the hole by hand; one must advance it using clubs, play it where it lies, and so on. In mountain-climbing one may not ride a gondola to the top of the mountain or charter a helicopter; in 200-metre sprinting, one may not cut across the infield. Once these rules are in place, success in the game typically requires achieving the prelusory goal as efficiently as they allow, such as getting the ball into the hole in the fewest possible strokes or choosing the best way up the mountain. But this is efficiency within the rules, whose larger function is to forbid the easiest means to the game’s initial goal. These first two elements involve pursuing a goal by less than the most efficient means, but they are not sufficient for playing a game. This is because someone can be forced to use these means by circumstances he regrets and wishes were different. If this is the case – if, for example, a farmer harvests his field by hand because he cannot afford the mechanical harvester he would much rather use – he is not playing a game. Hence the need for the third element in Suits’s analysis, the lusory attitude, which involves a person’s willingly accepting the constitutive rules, or accepting them because they make the game possible. Thus, a golfer accepts that he may not carry the ball by hand or improve his lie because he wants to play golf, and obeying those rules is necessary for him to do so; the mountaineer accepts that he may not take a helicopter to the summit because he wants to climb. The restrictions the rules impose are adhered to not reluctantly but willingly, because they are essential to the game. Adding this third element gives Suits’s full definition: “To play a game is to attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by the rules ..., where the rules prohibit the use of more efficient in favour of less efficient means [constitutive rules], and where the rules are 4 accepted just because they make possible such activity [lusory attitude].” Or, in the summary statement quoted above, “playing a game is the voluntary attempt to overcome unnecessary obstacles.”4 This analysis will doubtless meet with objections, in the form of attempted counterexamples. But Suits considers a whole series of these in his book, showing repeatedly that his analysis handles them correctly, and not by some ad hoc addition but once its elements are properly understood. Nor would it matter terribly if there were a few counterexamples. Some minor lack of fit between his analysis and the English use of “game” would not be important if the analysis picks out a phenomenon that is unified, close to what is meant by “game,” and philosophically interesting. But the analysis is interesting if, as I will now argue, it allows a persuasive explanation of the value of excellence in games. Suits himself addresses this issue of value. In fact, a central aim of his book is to give a defence of the grasshopper in Aesop’s fable, who played all summer, against the ant, who worked. But in doing so he argues for the strong thesis that playing games is not just an intrinsic good but the supreme such good, since in the ideal conditions of utopia, where all instrumental goods are provided, it would be everyone’s primary pursuit. The grasshopper’s game-playing, therefore, while it had the unfortunate effect of leaving him without food for the winter, involved him in the intrinsically finest actvity. Now, I do not accept Suits’s strong thesis that gameplaying is the supreme good – I think many other states and activities have comparable value – and I do not find his arguments for it persuasive. But I will connect the weaker thesis that playing games is one intrinsic good to the details of his analysis more explicitly than he ever does.

#### 3. Education – debate as a competitive political game is the best framework to solve dogmatism and human brutality

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Vico asked his audience at the University of Naples in 1708 to debate two competing ways of knowing: Cartesian rationality versus the poetic world of the ancients. Vico, the “pre-law advisor” of his day, saw law as a rhetorical game. That is, he understood the civic (ethical) value of competi-tion itself.12 He understood that Cartesian rationality, like religious and ideological fundamentalism, generates a kind of certainty that shuts down robust debate. Vico’s comprehensive vision suggests, in effect, that people should practice law and politics not as the search for the most rational or logically correct outcomes but rather as passionate and embodied yet peaceful competitive play. Vico inspires this vision of law and politics as play because he sees that all things in the human mind, including law and politics, are at one with the human body. As Vico put it as he concluded his 1708 address, “[T]he soul should be drawn to love by means of bodily images; for once it loves it is easily taught to believe; and when it believes and loves it should be inflamed so that it wills things by means of its normal intemperance.”13 Vico had no hope that such abstract moral principles as liberty, equality, justice, and tolerance could effectively offset the “crude and rough” nature of men.14 The Holy Bible and the Qur’an contain normative principles of love, tolerance, equal respect, and peace, but these commands have not forestalled ancient and modern religious warfare. This essay proposes that humans learn how to keep the peace not by obeying the norms, rules, and principles of civil conduct but by learning how to play, and thereby reintegrating the mind and the body. People do law, politics, and economic life well when they do them in the same ways and by the same standards that structure and govern good competitive sports and games. The word “sport” derives from “port” and “portal” and relates to the words “disport” and “transport.” The word at least hints that the primitive and universal joy of play carries those who join the game across space to a better, and ideally safer, place—a harbor that Vico him-self imagined. This essay’s bold proposition honors Vico in many ways. Its “grand theory” matches the scope of Vico’s comprehensive and integrated vision of the human condition. It plausibly confirms Vico’s hope for a “concep-tion of a natural law for all of humanity” that is rooted in human historical practice.15 Seeing these core social processes as play helps us to escape from arid academic habits and to “learn to think like children,” just as Vico urged.16 Imagining law and politics as play honors Vico above all because, if we attain Ruskin’s epigraphic ideal,17 we will see that the peace-tending qualities of sports and games already operate under our noses. Seeing law and politics as play enables us “to reach out past our inclination to make experience familiar through the power of the concept and to engage the power of the image. We must reconstruct the human world not through concepts and criteria but as something we can practically see.”18 If at its end readers realize that they could have seen, under their noses, the world as this essay sees it without ever having read it, this essay will successfully honor Vico. As Vico would have predicted, formal academic theory has played at best a marginal role in the construction of competitive games. Ordinary people have created cricket and football, and common law and electoral politics and fair market games, more from the experience of doing them than from formal theories of competitive games. When they play interna-tional football today, ordinary people in virtually every culture in the world recreate the experience of competitive games. Playing competitive games unites people across cultures in a common normative world.19 Within Vico’s social anthropological and proto-scientific framework, the claim that competitive play can generate peaceful civic life is purely empirical: law and politics in progressively peaceful political systems already are nothing more or less than competitive games. All empirical description operates within some, though too often ob-scured, normative frame. This essay’s normative frame is clear. It holds, with Shaw’s epigraph, above: Human brutalities waged against other hu-mans—suicide bombings, genocides, tribal and religious wars that provoke the indiscriminate rape, murder, torture, and enslavement of men, women, and children, often because they are labeled “evil”—are the worst things that we humans do. We should learn not to do them. In Vico’s anti-Cartesian, non-foundational world, no method exists to demonstrate that this essay’s normative core is “correct,” or even “better than,” say, the core norm holding that the worst thing humans do is dishonor God. Readers who reject Shaw’s and this essay’s normative frame may have every reason to reject the essay’s entire argument. However, this essay does describe empirically how those whose core norm requires honoring any absolute, including God, above all else regu-larly brutalize other human beings, and why those who live by the norms of good competitive play do not. People brutalize people, as Shaw’s Caesar observed, in the name of right and honor and peace. Evaluated by the norm that human brutality is the worst thing humans do, the essay shows why and how the human invention of competitive play short circuits the psy-chology of a righteousness-humiliation-brutality cycle. We cannot help but see and experience on fields of contested play testosterone-charged males striving mightily to defeat one another. Yet at the end of play, losers and winners routinely shake hands and often hug; adult competitors may dine and raise a glass together.20 Whether collectively invented as a species-wide survival adaptation or not, institutionalized competitive play under-cuts the brutality cycle by displacing religious and other forms of funda-mentalist righteousness with something contingent, amoral, and thus less lethal. Play thereby helps humans become Shaw’s “race that can under-stand.”

#### 4. Decision-making – debate gaming through dramatic rehearsal strengthens decision-making – only maintained by a confined educational space

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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 meansendsschemes (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). 86 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 87 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.

### 2 – K

#### Political strategies should be made under the table – we shouldn’t organize and discuss, we should attempt to make territories unreadable and opaque to authority

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

More and more reformists today agree that with “the approach of peak oil,” and in order to “reduce greenhouse gas emissions,” we will need to “relocalize the economy,” encourage regional supply lines, small distribution circuits, renounce easy access to imports from faraway, etc. What they forget is that what characterizes everything that’s done in a local economy is that it’s done under the table, in an **“informal” way**; that this simple ecological measure of relocalizing the economy implies nothing less than total freedom from state control. **Or else total submission to it.** Today’s territory is the product of many centuries of police operations. People have been pushed out of their fields, then their streets, then their neighborhoods, and finally from the hallways of their buildings, in the **demented hope of containing all life between the four sweating walls of privacy**. The territorial question isn’t the same for us as it is for the state. For us it’s not about possessing territory. Rather, it’s a matter of increasing the density of the communes, of circulation, and of solidarities to the point that the territory becomes unreadable, opaque to all authority. We don’t want to occupy the territory, we want to be the territory. Every practice brings a territory into existence – a dealing territory, or a hunting territory; a territory of child’s play, of lovers, of a riot; a territory of farmers, ornithologists, or flaneurs. The rule is simple: the more territories there are superimposed on a given zone, the more circulation there is between them, the harder it will be for power to get a handle on them. Bistros, print shops, sports facilities, wastelands, second-hand book stalls, building rooftops, improvised street markets, kebab shops and garages can all easily be used for purposes other than their official ones if enough complicities come together in them. Local self-organization superimposes its own geography over the state cartography, scrambling and blurring it: it produces its own secession.

#### Your form of social activism is where revolutions go to die – taking comfort in past defeats means we don’t seize possibilities of the present

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

Far more dreadful are social milieus, with their supple texture, their gossip, and their informal hierarchies. Flee all milieus. Each and every milieu is orientated towards the neutralization of some truth. Literary circles exist to smother the clarity of writing. Anarchist milieus to blunt the directness of direct action. Scientific milieus to withhold the implications of their research from the majority of people today. Sport milieus to contain in their gyms the various forms of life they should create. **Particularly to be avoided are the cultural and activist circles**. They are the old people’s homes where all revolutionary desires traditionally go to die. The task of cultural circles is to spot nascent intensities and to explain away the sense of whatever it is you’re doing, while the task of activist circles is to sap your energy for doing it. Activist milieus spread their diffuse web throughout the French territory, and are encountered on the path of every revolutionary development. They offer nothing but **the story of their many defeats and the bitterness these have produced**. Their exhaustion has made them incapable of **seizing the possibilities of the present**. Besides, to nurture their wretched passivity **they talk far too much and this makes them unreliable when it comes to the police**. Just as it’s useless to expect anything from them, it’s stupid to be disappointed by their sclerosis. It’s best to just abandon this dead weight. All **milieus are counter-revolutionary because they are only concerned with the preservation of their sad comfort.**

#### Your performance posits women in the community as visible – introducing your ideas in a public forum exposes you to the state – seeking recognition is actually what causes social death in the first place

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

In a demonstration, a union member tears the mask off of an anonymous person who has just broken a window. “**Take responsibility for what you’re doing** instead of hiding yourself.” To be visible is to be exposed, that is to say above all, vulnerable. When leftists everywhere continually make their cause more “**visible**” – whether that of the homeless, of women, or of undocumented immigrants – in hopes that it will get dealt with, they’re doing exactly the contrary of what must be done. **Not making ourselves visible**, but instead **turning the anonymity to which we’ve been relegated to our advantage**, and through conspiracy, nocturnal or faceless actions, creating an invulnerable position of attack. The fires of November 2005 offer a model for this. **No leader, no demands, no organization, but words, gestures, complicities**. **To be socially nothing is not a humiliating condition, the source of** some **tragic** lack of recognition **– from whom do we seek recognition? –** but **is on the** contrary the condition for maximum freedom of action. Not claiming your illegal actions, only attaching to them some fictional acronym – we still remember the ephemeral BAFT (Brigade Anti-Flic des Tarterêts)- is a way to preserve that freedom. Quite obviously, one of the regime’s first defensive maneuvers was the creation of a “banlieue” subject to treat as the author of the “riots of November 2005.” Just looking at the faces on some of this society’s somebodies illustrates why there’s such joy in being nobody. **Visibility must be avoided**. But a force that gathers in the shadows can’t avoid it forever. Our appearance as a force must be pushed back until the opportune moment. **The longer we avoid visibility, the stronger we’ll be when it catches up with us**. And once we become visible our days will be numbered. Either we will be in a position to pulverize its reign in short order, or we’ll be crushed in no time.

#### This is not an advocacy with an alternative – we’re challenging how you’re using this debate round in the first place – rather than deciding actions, our actions should occur to us naturally – you reinstate expertism

The Invisible Committee 9 -- anonymous group of contributors whom French police identify with the Tarnac Nine, alleged anarchist saboteurs arrested in 2008 (The Coming Insurrection, Semiotext(e))

The same goes for deciding on actions. By starting from the principle that “the action in question should govern the assembly’s agenda” **we make** both **vigorous debate and effective action impossible**. A large assembly made up of people who don’t know each other is **obliged to call on action specialists**, that is, to abandon action for the sake of its control. On the one hand, people with mandates are by definition hindered in their actions, on the other hand, nothing hinders them from deceiving everyone. There’s no ideal form of action. What’s essential is that action assume a certain form, that it give rise to a form instead of having one imposed on it. This presupposes a shared political and geographical position – like the sections of the Paris Commune during the French Revolution – as well as the circulation of a shared knowledge. As for deciding on actions, the principle could be as follows: each person should do their own reconnaissance, the information would then be put together, and **the decision will occur to us rather than being made by us**. The circulation of knowledge cancels hierarchy; it equalizes by raising up. Proliferating horizontal communication is also the best form of coordination among different communes, the best way to put an end to hegemony.

### 3 – K

#### Their arguments are appealing but ultimately amount to a reification of fixed identities. The ballot won’t heal the aff’s pain and only serves to create a perverse competition for victimhood. This results in an endless pursuit of revenge, rather than provide emancipation to marginalized populations

Enns 12 (Diane, Associate Professor of Philosophy at McMaster University, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition at McMaster University, Canada*,* The Violence of Victimhood, pg. 28-30)

Guilt and Ressentiment We need to think carefully about what is at stake here. Why is this perspective appealing, and what are its effects? At first glance, the argument appears simple: white, privileged women, in their theoretical and practical interventions, must take into account the experiences and conceptual work of women who are less fortunate and less powerful, have fewer resources, and are therefore more subject to systemic oppression. The lesson of feminism's mistakes in the civil rights era is that this “mainstream” group must not speak for other women. But such a view must be interrogated. Its effects, as I have argued, include a veneration of the other, moral currency for the victim, and an insidious competition for victimhood. We will see in later chapters that these effects are also common in situations of conflict where the stakes are much higher. ¶ We witness here a twofold appeal: otherness discourse in feminism appeals both to the guilt of the privileged and to the resentment, or ressentiment, of the other. Suleri's allusion to “embarrassed privilege” exposes the operation of guilt in the misunderstanding that often divides Western feminists from women in the developing world, or white women from women of color. The guilt of those who feel themselves deeply implicated in and responsible for imperialism merely reinforces an imperialist benevolence, polarizes us unambiguously by locking us into the categories of victim and perpetrator, and blinds us to the power and agency of the other. Many fail to see that it is embarrassing and insulting for those identified as victimized others not to be subjected to the same critical intervention and held to the same demands of moral and political responsibility. Though we are by no means equal in power and ability, wealth and advantage, we are all collectively responsible for the world we inhabit in common. The condition of victimhood does not absolve one of moral responsibility. I will return to this point repeatedly throughout this book.¶ Mohanty's perspective ignores the possibility that one can become attached to one's subordinated status, which introduces the concept of ressentiment, the focus of much recent interest in the injury caused by racism and colonization. Nietzsche describes ressentiment as the overwhelming sentiment of “slave morality,” the revolt that begins when ressentiment itself becomes creative and gives birth to values. 19 The sufferer in this schema seeks out a cause for his suffering—“ a guilty agent who is susceptible to suffering”— someone on whom he can vent his affects and so procure the anesthesia necessary to ease the pain of injury. The motivation behind ressentiment, according to Nietzsche, is the desire “to deaden, by means of a more violent emotion of any kind, a tormenting, secret pain that is becoming unendurable, and to drive it out of consciousness at least for the moment: for that one requires an affect, as savage an affect as possible, and, in order to excite that, any pretext at all.” 20 In its contemporary manifestation, Wendy Brown argues that ressentiment acts as the “righteous critique of power from the perspective of the injured,” which “delimits a specific site of blame for suffering by constituting sovereign subjects and events as responsible for the ‘injury’ of social subordination.” Identities are fixed in an economy of perpetrator and victim, in which revenge, rather than power or emancipation, is sought for the injured, making the perpetrator hurt as the sufferer does. 21¶ 30¶ Such a concept is useful for understanding why an ethics of absolute responsibility to the other appeals to the victimized. Brown remarks that, for Nietzsche, the source of the triumph of a morality rooted in ressentiment is the denial that it has any access to power or contains a will to power. Politicized identities arise as both product of and reaction to this condition; the reaction is a substitute for action— an “imaginary revenge,” Nietzsche calls it. Suffering then becomes a social virtue at the same time that the sufferer attempts to displace his suffering onto another. The identity created by ressentiment, Brown explains, becomes invested in its own subjection not only through its discovery of someone to blame, and a new recognition and revaluation of that subjection, but also through the satisfaction of revenge. 22¶ The outcome of feminism's attraction to theories of difference and otherness is thus deeply contentious. First, we witness the further reification reification of the very oppositions in question and a simple reversal of the focus from the same to the other. This observation is not new and has been made by many critics of feminism, but it seems to have made no serious impact on mainstream feminist scholarship or teaching practices in women's studies programs. Second, in the eagerness to rectify the mistakes of “white, middle-class, liberal, western” feminism, the other has been uncritically exalted, which has led in turn to simplistic designations of marginal, “othered” status and, ultimately, a competition for victimhood. Ultimately, this approach has led to a new moral code in which ethics is equated with the responsibility of the privileged Western woman, while moral immunity is granted to the victimized other. Ranjana Khanna describes this operation aptly when she writes that in the field of transnational feminism, the reification of the other has produced “separate ethical universes” in which the privileged experience paralyzing guilt and the neocolonized, crippling resentment. The only “overarching imperative” is that one does not comment on another's ethical context. An ethical response turns out to be a nonresponse. 23 Let us turn now to an exploration of this third outcome.

#### The Aff’s depiction of male supremacy reinforces asymmetrical power relations and replicates the logic of victimhood

Bumiller 88 (Kristin, Prof of Poly Sci + Women’s/Gender Studies @ Amherst College, The Civil Rights Society: The Social Construction of Victims, p. 3)

Victims of discrimination often portray the perpetrators of discrimination as tyrants, for example. The interviews reveal that the bonds of the tyrant image are powerful because they allow the subjects to regard their superiors as immature and arrogant **yet justify their own impotence**. The image of the tyrant transforms the exchange between perpetrator and victim into a situation **in which the perpetrator controls and the victim transgresses**. Through detailed examination of responses to discrimination, it becomes clear that these struggles often end in defeat for the victim **because the bonds of victimhood inhibit challenges against the perpetrators**. The victims internalize the power struggle by submitting to the perpetrator’s ruthlessness and to their own anger and confusion. **Contrary to the assumption that antidiscrimination law benefits the victim against the more powerful opponent, the bonds of victimhood are reinforced rather than broken by the intervention of legal discourse.**

#### Reification of the logic of victimhood propels and unleashes the greatest forms of violence

Sengupta 6 (Shuddhabrata, media practitioner, filmmaker and writer with the Raqs Media Collective, "I/Me/Mine—Intersectional Identities as Negotiated Minefields," Signs: Journal of Women in Culture, http://www.journals.uchicago.edu/SIGNS/journal/issues/v31n3/40253/40253.html)

Once you position or foreground a particular circumstance of victimhood, it enables a scotoma, an inability to see oneself as anything other than a victim, **and this, if anything, propels and unleashes the greatest violence**. And so it is that the United States can disperse depleted uranium in faraway lands because Americans have been persuaded that 9/11, a tragedy for the whole world like any tragedy (be it the violence in Kashmir, or Afghanistan, or Palestine, or Rwanda, or Vietnam), comes to be seen as the special, particular tragedy of the American people **and thereby the launching pad for the exclusive claim to the righteous use of force on their behalf by the U.S. government.**

#### The only way to prevent endless violence between the victim and perpetuator is to reframe the conflict - we must focus on shared responsibility for the community that we both inhabit whether we like it or not. Their vision of dealing with makes violence and resentment inevitable

**Enns 12** (Diane, Associate Professor of Philosophy at McMaster University, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition at McMaster University, Canada*,* The Violence of Victimhood, pg. 11-14)

In chapter 1 I explore an ideology prominent in the “emancipatory” discourses of the North American academy Scholarly interest in “the other” on the part of critical theorists, feminists, and antiracist scholars concerned with the legacy of colonialism, imperialism, and patriarchy has had an enormous impact on how we View the condition and status of the victim. The “post” discourses—postmodernism, poststructuralism, postcolonialism—are in large part responsible for rightly drawing attention to “the wretched of the earth” as well as problematically venerating “the other,” a veneration that ultimately robs the subaltern (the native, woman, “those who have no part”)18 of moral agency and responsibility. While there are a number of important intellectual and political sources of this veneration, I trace it to a tradition in what has come to be known broadly as continental philosophy, which has greatly influenced and been influenced by contemporary feminist scholarship. This veneration of the other has resulted from readings—or rnisreadings—of the work of Emmanuel Levinas and Frantz Fanon, among others, rendering the other a pure victim, beyond moral and epistemic reproach—a good other. Its undesirable effects include the abdication of politics for an impotent ethics; a reticence to make moral judgments in the name of sensitivity to cultures other than one's own, both cultures rendered essentialist and immutable in their incommensurability; and an impoverished sense of justice—motivated by guilt or ressentiment, synonymous with retribution.¶ We are left with a bleak picture of political practice as policing and a moral judgment premised only on accepted ideological principles.19 A community of victims stand in judgment over those deemed responsible for their subordination. Justice becomes a matter of balancing the scales of suffering by making the perpetrator suffer as the victim has. Responsibility belongs solely to the perpetrator group. Yet no one has been able to establish why the view “from the margins” equips the victimized with a superior moral sensibility and power of judgment¶ that others ostensibly lack on the grounds of their privilege.¶ In chapter 1, then, we witness the antagonistic dynamic between essentialized categories of privileged and oppressed—characterized by an incommensurable, nonreciprocal, morally unequal relationship—that theorists of difference promote. Ironically, it is a mirror image of the antagonism, essentialisrn, and moral reproach inherent in the circumstances that reduced an individual or group to inferior status to begin with. This irony is the point of departure in chapter 2, which elaborates a theme prevalent in Mahmood Mamdani's analysis of the Rwandan genocide. Rather than privilege the view from the margins, Mamdani warns of the dangers of assuming the “worldview” of the victim, constructed as it is on the very hierarchical system politicized by the perpetrator. While a similar binary logic of victim versus perpetrator is evident in the identity politics of the West, the stakes are much higher in the context of violent conflict purported to be “ethnopolitical.” In the case of an intractable conflict like the ongoing crisis in Israel and Palestine-characterized by a severely asymmetrical power imbalance but also by the utmost conviction on both sides of a superior claim to victimhood and thus to truth, history; land, and a future state-the stakes are higher yet.¶ The focus of this second chapter is the troubling extent to which we often justify the violence of the victimized as a legitimate course of action, whether in the name of empowerment, self-determination, or—most often today—security. This is evident in analyses of Palestinian suicide bombing that justify killing on the basis of despair and misery, as well as in the American and Israeli governments' reliance on a paradigm of security to legitimize a brutal military occupation. Here we witness the moral capital of the victim writ large, each side of the struggle firm in its conviction that it fights a just war. The Palestinians fight to end an occupation of more than sixty years, with its systematized, normalized inequality and disenfranchisement, impassioned by the collective memory of expulsion. The Israelis fight a war against terror and anti-Semitism, impassioned by the collective memory of genocide and persecution. The asymmetry of political power and economic well-being is often ignored by supporters of the Israeli government and used to add moral currency to the Palestinians' position by those who act in solidarity with them.¶ Relying on the work of Frantz Fanon and Hannah Arendt to understand the nature of political violence, particularly in its emancipatory form, I conclude in this chapter that the violence of the victim is not a justifiable response to victimhood, nor is it as inevitable as we are led to believe. The unrelenting nature of violence and counterviolence, and the willful blindness to the binary logic of victim versus perpetrator, means that dissenting voices and the actions of those who do not comply are usually ignored. As in chapter 1, the view of politics here is bleak; “never again” is the mantra of a politics of death and destruction propelled by fear—or rather of a failure of politics, and a corresponding failure to take responsibility and exercise moral agency. The solutions can be found, I argue, in the work of countless individuals and groups who are not permitted the political tools necessary to make the leaps required for a viable future for all Palestinians and Israelis. Since it is the ideological framing of the conflict that blinds us to these solutions, it is our responsibility as bystanders, to engage in conceptual reframing, not to impose peace plans or political solutions ourselves but to stop preventing Israelis and Palestinians from creating them.¶ The third chapter elaborates the subjective or psychic effects of victimization. I seek to provide a phenomenology of victimhood based on the narratives and analyses of Jean Amery, Susan Brison, Frantz Fanon, and others who have explored the condition of victimhood and the process of recuperating a sense of self after a traumatic experience. I discuss these writers in the context of a contemporary discourse on trauma in the fields of psychology, psychoanalysis, feminism, anticolonialism, and military psychiatry An overview of the “birth of trauma” demonstrates that we have moved from recognizing injury to naturalizing it, and to a universalization of pain and suffering that trivializes the meaning of trauma, rendering indistinguishable the experiences of those who survive genocide, rape, or sexual harassment. Historicizing the experience of victimhood makes it impossible to essentialize the condition of the victim—that victims respond in diverse ways to acts of violence and violation should not be neglected—but I point to a number of features that broadly constitute what it means to be victimized.¶ Despite the focus in chapter 3 on the psychic pain and suffering victims experience—the alienated consciousness, dehumanization, self-enslavement, “amputation,” or shattered self—I argue that our empathic regard must not preclude judgment or the acknowledgment of responsibility for wrongdoing when we consider the violence that victims themselves perpetuate. While Fanon stresses the agency of the colonized subject in the work of reversing the alienation he suffers, Améry dwells in a kind of melancholia, valorizing what Nietzsche calls ressentiment—resentment against those who tortured him in a Nazi camp and against the German people who enabled the Nazi regime to carry out genocide.¶ How do we arrest the evolution of grief into grievance before further violence occurs in the name of victimhood? Brison provides an answer, demonstrating that victims can eventually forget their victimization, to some extent, through the long and painful process of narration. Raped and nearly beaten to death, Brison describes the pain of displacement and exile from her own body as well as from the human community, but she recognizes that although the self can be destroyed by others, it is also created and sustained by them. The devastating loss of security her attacker caused is mitigated over time by her acceptance that absolute control over one's life is never possible—we cannot escape our vulnerability—and by narrating the event into her past. The contrast between the reflections of Améry and Brison, however, points to the power of unconscious desires and motivations that render survival an individual matter. We are not all equal in our capacity to struggle and overcome.¶ The first three chapters throw into question the association of the victim with pure innocence and political incapacity or passivity, in effect accomplishing a deconstruction of the victim. They also demonstrate that this critical labor is not enough. We must do more than point out that victims and perpetrators are complex, the lines dividing them often blurry, or we are left with a perfect alibi for inaction. In chapter 4 I turn to Hannah Arendt for guidance in thinking through the provocative issue of responsibility and judgment with respect to the victim. Arendt was vilified and ostracized by her own friends, and by the Jewish community in general, for ostensibly “blaming the victim” in her controversial coverage of the Adolf Eichmann trial in 1961. But her emphasis on collective historical responsibility, as well as individual moral responsibility for the future, victims notwithstanding, neither blames victims for their own misfortunes nor detracts from the necessary judgment against the worst atrocities humans can commit. Rather, I argue, it enables us to conceive of a political future in which the seemingly inevitable transformation of victim into victimizer might be suspended.¶ With Arendt's help, we discover that moral judgments help us to create a world in which we want to live. Morality is not about following a moral code but about choosing with whom we want to live in proximity, and what kind of life we will share in our communities. We judge our own behavior in order to live with ourselves; we judge others in order to live among our fellow human beings and cultivate community in relative safety and trust. Accounting for our actions, acknowledging our freedom to make decisions and to act, and taking responsibility for this freedom are all inextricably linked to judgment. It is this careful discernment, derived as much from thinking, in concert with others, as from respect for others, that distinguishes judgment from the veneration described in the first chapter.

### Case

#### ---Gender-exclusive focus undermines collective liberation struggle – it nurtures and maintains squo systems of domination

hooks 94 (bell, Distinguished Professor in Residence @ Berea College, "Love as the Practice of Freedom," http://www.clas.ufl.edu/users/dreznik/Love%20as%20the%20Practice%20of%20Freedom%20by%20bell%20hooks.pdf)

Without an ethic of love shaping the direction of our political vision ¶ and our radical aspirations, we are often seduced, in one way or the other, ¶ into continued allegiance to systems of domination-imperialism, sex- ¶ ism, racism, classism. It has always puzzled me that women and men who ¶ spend a lifetime working to resist and oppose one form of domination can ¶ be systematically supporting another. I have been puzzled by powerful ¶ visionary black male leaders who can speak and act passionately in resistance to racial domination and accept and embrace sexist domination of women, by feminist white women who work daily to eradicate sexism but ¶ who have major blind spots when it comes to acknowledging and resisting ¶ racism and white supremacist domination of the planet. Critically examining these blind spots, I conclude that many of us are motivated to move ¶ against domination solely when we feel our self-interest is directly threatened. Often, then, the longing is not for a collective transformation of ¶ society, an end to politics of dominations, but rather simply for an end to ¶ what we feel is hurting us. This is why we desperately need an ethic of love ¶ to intervene in our self-centered longing for change. Fundamentally, if we ¶ are only committed to an improvement in that politic of domination that we feel leads directly to our individual exploitation or oppression, we not only remain attached to the status quo but act in complicity with it, nurturing and maintaining those very systems of domination. Until we are all able to accept the interlocking, interdependent nature of systems of domination and recognize specific ways each system is maintained, we will continue to act in ways that undermine our individual quest for freedom and ¶ collective liberation struggle.

#### Fostering coalitional politics based upon an ethic of love is key to human survival – alternatives are doomed to failure and leave white supremacist capitalist patriarchy in tact

Nienhuis 09 (Nancy, Senior Vice President for Operations, Dean of Students, and Professor (Non-Tenured) of Theology and Social Justice at Andover Newton Theological School, "Revolutionary Interdependence," Critical Perspectives on bell hooks, p. 205-6)

For hooks the goal of theoretical work must be to seek the highest good for all, and it is from this conviction that her call for revolutionary interdependence emerges. hooks argues that until we see how colluding with some systems while resisting others will never enable us to work together effectively, white supremacist capitalist patriarchy will win: "Until we are all able to accept the interlocking, interdependent nature of systems of domination and recognize specific ways each system is maintained, we will continue to act in ways that undermine our individual quest for freedom and collective liberation struggle." Too often for those of us with privilege, border crossing is something we merely dip our toes into before retreating into the safety and comfort of our privileged existence. Genuine solidarity recognizes that only interdependence can sustain life on the planet. ¶ The only way to ensure that our actions foster true solidarity is to return to the love ethic that hooks claims was prevalent in earlier liberation movements: "Unless love is the force undergirding our efforts to transform society, we lose our way." hooks has spent time explaining this love ethic and its transformative potential in great detail throughout her work for many years: "Love is profoundly political. Our deepest revolution will come when we understand this true...The transformative power of love is the foundation of all meaningful social change...Love is the heart of the matter. When all else has fallen away, love sustains." This love is not the stuff of romance books or soap operas. It is not sentimental emotion. As Cornell West explains, "Self-love and love of others are both modes toward increasing self-valuation and encouraging political resistance in one's community." For hooks, this love ethic is what made earlier movements like that for civil rights so powerful and effective. ¶ A love ethic requires work on behalf of others. It facilitates a "renewal of spirit" and leads to our "living in community," meaning that others are with us in the struggle for change. This love ethic is a way to insure that our motives are pure: "without love, our efforts to liberate ourselves and our world community from oppression and exploitation are doomed." This is in part because liberation movements often have self-interest at their base, a yearning for suffering of a specific group - women, blacks, gays and lesbians, for example - to end. Liberation movements aren't usually about a level of social transformation that positively impacts groups outside their own, and that's why they're vulnerable. An ethic of love commits us to social transformation where injustice against any particular group is intolerable. ¶ Such love has the potential to undermine how white supremacist capitalist patriarchy functions, because love facilitates the recognition of the other, the very thing dominant systems of power are designed to prevent. Recognition, hooks argues, "allows a certain kind of negotiation that seems to disrupt the possibility of domination."

#### ---Separatist feminism fails – marginalizes struggle via antagonism between the sexes

hooks 00 (bell, feminist scholar and social critic, Feminist Theory: From Margin to Center, p. 73)

During the course of contemporary feminist movement, reactionary separatism has led many women to abandon feminist struggle, yet it remains an accepted pattern for feminist organizing, e.g. autonomous women's groups within the peace movement. As a policy, it has helped to marginalize feminist struggle, to make it seem more a personal solution to individual problems, especially problems with men, than a political movement that aims to transform society as a whole. To return to an emphasis on feminism as revolutionary struggle, women can no longer allow feminism to be another arena for the continued expression of antagonism between the sexes. The time has come for women active in feminist movement to develop new strategies for including men in the struggle against sexism.

#### Separatist feminism preserves the status quo – it eliminates the need for genuine, revolutionary struggle

hooks 00 (bell, feminist scholar and social critic, Feminist Theory: From Margin to Center, p. 72-73)

The positive implications of separatist organizing were diminished when racial feminists, like Ti-Grace Atkinson, proposed sexual separatism as an ultimate goal of feminist movement. Reactionary separatism is rooted in the conviction that male supremacy is an absolute aspect of our culture, that women have only two alternatives: accepting it or withdrawing from it to create subcultures. This position eliminates any need for revolutionary struggle, and it is in no way a threat to the status quo. In the essay "Separate to Integrate," Barbara Leon stresses that male supremacists would rather feminist movement remain "separate and unequal." She gives the example of orchestra conductor Antonia Brico's efforts to shift from an all-women orchestra to a mixed orchestra, only to find that she could not get support for the latter: Antonia Brico's efforts were acceptable as long as she confined herself to proving that women were qualified musicians. She had no trouble finding 100 women who could play in an orchestra or getting financial backing for them to do so. But finding the backing for me and women to play together in a truly integrated orchestra proved to be impossible. Fighting for integration proved to be more of a threat to male supremacy and, therefore, harder to achieve. The women's movement is at the same point now. We can take the easier way of accepting segregation, but that would mean losing the very goals for which the movement was formed. Reactionary separatism has been a way of halting the push of feminism.

#### Feminist separatism replicates the logic of sexism

Phillips and McCaskill 95 (Layli and Barbara, Associate Prof in Women's Studies @ GSU + Assoc Prof in English @ UGA, "Daughters and Sons: The Birth of Womanist Identity," The Womanist Reader, p. 107)

(Black) male feminism as a politic of intervention (opposing sexism in black communities) represents a crucial step toward educating men on the ill-effects of male domination. According to bell hooks, the struggle against sexist oppression will be most successfully fought when men undergo feminist transformation - only when we are challenged by women to understand that the oppression of women is a form of self-oppression. Women can no longer afford to theorize men on the margin of feminism when sexist practices impacts the lives of women daily as its victims and men as its perpetrators. Women accepting progressive men as feminist allies end the stigma of feminist movement as a separatist enterprise. While separatist thinking may free women from the presence of men, it does not eradicate sexism in the society at large. Instead, it mirrors the very sexist behavior feminist women seek to end.

#### ---Communicatively constituted notions of the public sphere aren’t antithetical to difference – they permit the informal contestation of diverse opinions

Dahlberg 5 (Lincoln, Lecturer in Media Studies @ Massey Univ. (New Zealand), "The Habermasian public sphere: Taking difference seriously?" Theory and Society, 34, p. 111-136)

Difference democrat critics of Habermas’ earlier STPS based understanding¶ of the public sphere argued that it drew a homogenizing and¶ exclusionary boundary around a singular and topically sensitive public¶ sphere. These thinkers argued that this understanding was exclusionary¶ because it deemed some matters (e.g., domestic affairs) as off limits to¶ consideration.6 However, with the move to the theory of communicative¶ action, Habermas seems to have negated or at least sidestepped these¶ criticisms; the public sphere is now defined by a form of communication¶ and not by a particular content. The public sphere is constituted¶ wherever and whenever any matter of living together with difference¶ is debated. When talking of the public sphere, Habermas is not talking¶ about a homogenous, specific public, but about the whole array of complex¶ networks of multiple and overlapping publics constituted through¶ the critical communication of individuals, groups, associations, social¶ movements, journalistic enterprises, and other civic institutions. By¶ the public sphere, Habermas is also referring to the universal public¶ appealed to in moral-practical claims about justice. Furthermore,¶ the public sphere refers to the idealized form of the conception as derived from the presuppositions of communicative rationality, as outlined¶ above.¶ However, difference democrats also question the democratic validity¶ of this notion of a communicatively constituted public sphere. They¶ argue that the promotion of a singular idealized form of the public¶ sphere as normative acts to promote particular voices while marginalizing¶ others.7 In this article, I explore three powerful and interlinked¶ aspects of that critique: the exclusion of aesthetic-affective modes of¶ communication and hence certain groups’ voices; the assumption that¶ power can be separated from public discourse, which masks exclusion¶ and domination; and the promotion of consensus as the purpose of deliberation,¶ which marginalizes voices that do not readily agree. In all¶ three cases the public sphere idealization is criticized for being ideological:¶ the claim that it stands as a norm of rational-critical discourse¶ obscures its bias towards the voices of particular groups. I examine¶ this three-pronged critique to determine the democratic validity of the¶ Habermasian public sphere in terms of accommodating difference. To¶ do this, I bracket the post-metaphysical yet critical status claimed for¶ the conception and its derivation through formal pragmatics, and instead¶ focus upon the way in which the public sphere criteria operate¶ in relation to including multiple voices in rational-critical discourse.¶ Although in places disagreeing with Habermas’ particular emphasis,¶ my argument develops a strong defense of the public sphere as conceived¶ through the theory of communicative rationality. I show how the¶ communicatively constituted public sphere can be read so as to offer¶ a conception sensitive to difference and appropriate as a standard for¶ informal democratic contestation of diverse positions.

#### ---Viewing all problems through the lens of gender is essentialist and counter-productive --- blocks crucial progressive action

Jarvis 00 (Daryl, Lecturer in Government and International Relations – University of Sydney, International Relations and the Challenge of Postmodernism: Defending the Discipline)

Celebrating and reifying difference as a political end in itself thus run the risk of creating increasingly divisive and incommensurate discourses where each group claims a knowledge or experienced based legitimacy but, in doing so, precluding the possibility of common understanding or intergroup political discourse. Instead, difference produces antithetical dis­cord and political-tribalism: only working class Hispanics living in South Central Los Angeles, for instance, can speak of, for, and about their com­munity, its concerns, interests and needs; only female African Americans living in the projects of Chicago can speak "legitimately" of the housing and social problems endemic to inner city living. Discourse becomes con­fined not to conversations between identity groups since this is impossible, but story telling of personal/group experiences where the "other" listens intently until their turn comes to tell their own stories and experiences. Appropriating the voice or pain of others by speaking, writing, or theoriz­ing on issues, perspectives, or events not indicative of one's group-identity becomes not only illegitimate but a medium of oppression and a means to silence others. The very activity of theory and political discourse as it has been understood traditionally in International Relations, and the social sciences more generally, is thus rendered inappropriate in the new milieu of identity politics. Politically, progressives obviously see a danger in this type of discourse and, from a social scientific perspective, understand it to be less than rig­orous. Generalizing, as with theorizing, for example, has fallen victim to postmodern feminist reactions against methodological essentialism and the adoption of what Jane Martin calls the instillation of false difference into identity discourse. By reacting against the assumption that "all indi­viduals in the world called `women' were exactly like us" (i.e. white, mid­dle class, educated, etc.), feminists now tend "a priori to give privileged status to a predetermined set of analytic categories and to affirm the exis**­**tence of nothing but difference." In avoiding the "pitfall of false unity," feminists have thus "walked straight into the trap of false difference. Club words now dominate the discourse. Essentialism, ahistoricism, uni­versalism, and androcentrism, for example, have become the "prime idiom[s] of intellectual terrorism and the privileged instrument[s] of polit­ical orthodoxy." While sympathetic to the cause, even feminists like Jane Martin are critical of the methods that have arisen to circumvent the evils of essentialism, characterizing contemporary feminist scholarship as imposing its own "chilly climate" on those who question the method­ological proclivity for difference and historicism. Postmodern feminists, she argues, have fallen victim to compulsory historicism, and by "rejecting one kind of essence talk but adopting another," have followed a course "whose logical conclusion all but precludes the use of language." For Martin, this approaches a "**dogmatism** on the methodological level that we do not countenance in other contexts.... It **rules out theories, categories, and research projects** in advance; prejudges the extent of difference and the nonexistence of similarity." In all, it speaks to a methodological trap that produces many of the same problems as before, but this time in a language otherwise viewed as progressive, sensitive to the particularities of identity and gender, and destructive of conventional boundaries in disci­plinary knowledge and theoretical endeavor.

#### Gender-centric approaches fail - reverses the bias error and doesn’t lead to transformational theory

Caprioli 4 (Mary, Professor of Political Science – University of Tennessee, “Feminist IR Theory and Quantitative Methodology: A Critical Analysis”, International Studies Review, 42(1), March, http://www.blackwell-synergy.com/links/doi/10.1111/0020-8833.00076)

If researchers cannot add gender to an analysis, then they must necessarily use a purely female-centered analysis, even though the utility of using a purely female centered analysis seems equally biased. Such research would merely be gendercentric based on women rather than men, and it would thereby provide an equally biased account of international relations as those that are male-centric. Although one might speculate that having research done from the two opposing worldviews might more fully explain international relations, surely an integrated approach would offer a more comprehensive analysis of world affairs. Beyond a female-centric analysis, some scholars (for example, Carver 2002) argue that feminist research must offer a critique of gender as a set of power relations. Gender categories, however, do exist and have very real implications for individuals, social relations, and international affairs. Critiquing the social construction of gender is important, but it fails to provide new theories of international relations or to address the implications of gender for what happens in the world.

#### No solvency - incorporation of gender can’t challenge underlying structures of oppression

Saloom 6 (Rachel, JD Univ of Georgia School of Law and M.A. in Middle Eastern Studies from U of Chicago, Fall , Rachel, A Feminist Inquiry into International Law and International Relations, 12 Roger Williams U. L. Rev. 159, lexis)

There is not much consensus between the gender theorists and those who adhere to current approaches to international law and international relations. The biggest obstacle for gender theorists is the application of their theories. It would be valuable to determine how international relations or international law would operate if gender were taken into account. Gender theorists themselves have trouble formulating ways to apply their theories. Most scholars believe that the "add women and stir" approach generally fails. [91](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n91#n91" \t "_self) The notion that "bringing in" more women to the areas of international law and international relations can transform existing practices has not been met with much optimism. [92](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n92#n92" \t "_self) Theorists argue that adding women into existing frameworks fails to address the larger androcentric biases that exist. Many theorists criticize this approach, supporting their criticisms with allegations that the issues that gender scholars and practitioners want to address cannot be neatly incorporated in the current framework. Smith argues that: The issues raised by feminism not only do not fit with the discipline, they disrupt the entire edifice of community and society upon which [international relations] and the other social sciences are built. Their foundations are so embedded in gendered identities, subjectivities, and therefore reified structures of common sense that they simply cannot be amended to take account of gender. [93](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n93#n93" \t "_self) Hooper also concurs with Smith's conclusions. She posits that "grafting the gender variable" onto a highly masculinized  [\*177]  framework is doomed for failure. [94](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n94#n94" \t "_self) She believes that adding gender to a checklist will not change the power dynamic that exists in international law and international relations. [95](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n95#n95" \t "_self) In the same manner, public international law is often preoccupied with issues of conflict, state sovereignty and use of force. [96](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n96#n96" \t "_self) When gender is discussed in international law, it is usually relegated to the human rights law sphere. [97](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53" \l "n97#n97" \t "_self) If the consensus of feminist theorists is that more radical approaches are necessary to change the gender bias that exists, then theorists must formulate other alternatives to make the change in gender bias a feasible option. However, if the proponents of the status quo are even partially correct, then the feminist criticisms become even more difficult to implement. The question then becomes whether it is even desirable to wholly reject state-centrism as a masculinist androcentric paradigm.

## Neg v. Wake – Block

### 2NC Overview Cards

#### Difficulty outweighs – process is more important that product– multiple philosophical perspectives conclude value is not gained by external goals

Hurka 6 – philosopher who serves as the Jackman Distinguished Chair in Philosophical Studies at the University of Toronto (Thomas, 2006, "Games and the Good," Proceedings of the Aristotelian Society, Supplementary Volume 80, http://homes.chass.utoronto.ca/~thurka/docs/pass\_games.pdf)

But a good that is not fundamental can nonetheless be paradigmatic, because it gives the clearest possible expression of a certain type of value. If difficult activities are as such good, they 14 must aim at a goal: it is achieving that which is challenging. But their value does not derive from properties of that goal considered in itself, depending instead on features of the process of achieving it. Yet this can be obscured if the goal is independently good, since then the activity, if successful, will be instrumentally good, and this can seem the most important thing about it. If the farmer who works by hand successfully harvests a crop, his work contributes to the vital good of feeding his family, and this can distract us from the value it has in itself. But there is no such danger if the goal is intrinsically valueless, as it most clearly is in games. Since a game’s prelusory goal – getting a ball into a hole in the ground or standing atop a mountain – is intrinsically trivial, the value of playing the game can depend only on facts about the process of achieving that goal. And this point is further emphasized by the lusory attitude, which chooses that process just as a process, since it willingly accepts rules that make achieving the goal harder. Game-playing must have some external goal one aims at, but the specific features of this goal are irrelevant to the activity’s value, which is entirely one of process rather than product, journey rather than destination. This is why playing in games gives the clearest expression of a modern as against an Aristotelian view of value: because modern values are precisely ones of process or journey rather than of the end-state they lead to. The contrary Aristotelian view, which denigrates these values, was expressed most clearly in Aristotle’s division of all activities into the two categories of kinesis and energeia and his subsequent judgements about them.13 An Aristotelian kinesis – often translated as “movement” – is an activity aimed at a goal external to it, as driving to Toronto is aimed at being in Toronto. It is therefore brought to an end by the achievement of that goal, which means that a kinesis can be identified by a grammatical test: if the fact that one has X-ed implies that one is no 15 longer X-ing, as the fact that one has driven to Toronto implies that one is no longer driving there, then X-ing is a kinesis. But the main point is that a kinesis aims at an end-state separate from it. By contrast, an energeia – translated variously as “actuality,” “activity,” or “action” – is not directed at an external goal but has its end internal to it. Contemplation is an energeia, because it does not aim to produce anything beyond itself, as is the state of feeling pleased. And energeiai do not pass the above grammatical test and therefore, unlike kineseis, can be carried on indefinitely: that one has contemplated does not imply that one is not contemplating now or will not continue to do so. Contemplation, like driving to Toronto, is an activity, but it does not aim to produce anything apart from itself. Now, Aristotle held that energeiai are more valuable than kineseis, so the best human activities must be ones that can be carried on continuously, such as contemplation. This is because he assumed that the value of a kinesis must derive from that of its goal, so its value is subordinate and even just instrumental to that of the goal. As he said at the start of the Nicomachean Ethics, “Where there are ends apart from the actions, it is the nature of the products to be better than the activities.”14 But it is characteristic of what I am calling modern values to deny this assumption, and to hold that there are activities that necessarily aim at an external goal but whose value is internal to them in the sense that it depends entirely on features of the process of achieving that goal. Suits cites expressions of this modern view by Kierkegaard, Kant, Schiller, and Georg Simmel,15 but for an especially clear one consider Marx’s view that a central human good is transforming nature through productive labour. This activity necessarily has an external goal – one cannot produce without producing some thing – and in conditions of scarcity this goal will be something vital for humans’ survival or comfort. But Marx held that 16 when scarcity is overcome and humans enter the “realm of freedom” they will still have work as their “prime want,” so they will engage in the process of production for its own sake without any interest in its goal as such. Or consider Nietzsche’s account of human greatness. In an early work he said the one thing “needful” is to “give style to one’s character,” so its elements are unified by “a single taste,” and that it matters less whether this taste is good or bad than whether it is a single taste.16 Later he said the will to power involves not the “multitude and disgregation” of one’s impulses but their coordination under a single predominant impulse.17 In both discussions he deemed activities good if they involve organizing one’s aims around a single goal whatever that goal is. So for both Marx and Nietzsche a central human good was activity that on the one side is necessarily directed to a goal but on the other derives its value entirely from aspects of the process of achieving it. This is why the type of value they affirm is paradigmatically illustrated by playing in games; when one’s goal is trivial, the only value can be that of process. Marx and Nietzsche would never put it this way, but what each valued is in effect playing in games, in Marx’s case the game of material production when there is no longer any instrumental need for it, in Nietzsche’s the game of exercising power just for the sake of doing so.

### 2nc Perm-ish

#### Having a stasis point for debate – consensually elaborated principles like the war powers topic – has emancipatory potential that are consistent with progressive approaches to gender

Johnson 1 (Pauline, Assoc Prof of Philosophy @ Macquarie Univ., "Distorted communications: Feminism’s dispute with Habermas," Philosophy and Social Criticism, p. 39-62)

According to Habermas’s double-sided account of the rationality¶ potentials of modernization, the imperatives of societal rationalization,¶ entrenched in the steering logics of bureaucratic capitalism, drive into¶ all domains of social interaction. Under this description, the lifeworld,¶ which stores the interpretative achievements of past generations in the¶ form of diffuse, background assumptions, finds itself invaded by alien¶ strategic imperatives that explode the power of tradition to provide¶ sanction for its contents. Yet, to Habermas the ‘rationalization of the¶ lifeworld’ does not merely describe the collapse of traditional forms of¶ legitimation under the ruthless advance of an instrumentalizing reason.¶ This concept also identifies that process whereby the released contents¶ of the lifeworld seek new forms of legitimation by attempting to attach¶ themselves to reasons through which they might seek intersubjective¶ validation.8 Habermas’s critical theory invests, then, in the democratizing¶ potentials of this process of a communicative or interactive rationality¶ in which legitimacy is generated via processes of argumentation a set of consensually elaborated principles.¶ On Habermas’s formulation, reification appears as those processes¶ that recognize rationality requirements only in the observance of functional¶ imperatives and that contrive, accordingly, to colonize the specific¶ rationality of communicatively achieved agreements. The critical burden¶ carried by this account of the colonizing tendencies of instrumentalizing¶ reason directs itself at those processes in which strategic imperatives¶ are seen to attempt to roll back the emergent claims of an interactive¶ rationality, stifling the rationality claims of evolving communicatively¶ achieved modes of integration.9 Where previous formulations of the¶ critical impulse behind the notion of reification had focused on social¶ labor as the real bearer of historical evolution, Habermas turns his¶ attention and gives explicit priority to the emancipatory potentials of¶ communicative interaction.¶ It seems that Habermas’s efforts to elaborate the idea of the emancipatory¶ power of reason in terms, not of a single dynamic or the attributes¶ of an idealized subject, but of the achievement of a double-sided¶ process of rationalization which illuminates the limits of a traditional¶ lifeworld might appear attractive to contemporary feminism. This¶ seeming potential notwithstanding, Fraser is persuaded that the dualistic¶ sociology of The Theory of Communicative Action cannot accommodate¶ some major insights of modern feminism. Habermas’s colonization¶ thesis does not, she maintains, finally overcome an appeal to essentializing¶ descriptions of a presumed normative subjectivity and she finds¶ that his formulation of the emancipatory power of reason continues to¶ be marked by a gendered ideology.10

### 2NC War Powers Module

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

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

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

#### Demanding limitations on war powers reverses power relations and encourages resistance to the state

**Campbell 98** (David, Professor of International Relations – University of Newcastle, Writing Security: United States Foreign Policy and the Politics of Identity, p. 203-205)

Recognizing the possibility of rearticulating danger leads us to a final question: what modes of being and forms of life could we or should we adopt? To be sure, a comprehensive attempt to answer such a question is beyond the ambit of this book. But it is important to note that asking the question in this way mistakenly implies that such possibilities exist only in the future. Indeed, the extensive and inten­sive nature of the relations of power associated with the society of security means that there has been and remains a not inconsiderable freedom to explore alternative possibilities. While traditional analy­ses of power are often economistic and negative, Foucault’s under­standing of power emphasizes its productive and enabling nature. Even more important, his understanding of power emphasizes the ontology of freedom presupposed by the existence of disciplinary and normalizing practices. Put simply, there cannot be relations of power unless subjects are in the first instance free: the need to institute negative and constraining power practices comes about only because without them freedom would abound. Were there no possibility of freedom, subjects would not act in ways that required containment so as to effect order.37 Freedom, though, is not the absence of power. On the contrary, because it is only through power that subjects exercise their agency, freedom and power cannot be separated. As Foucualt maintains: At the very heart of the power relationship, and constantly provok­ing it, are the recalcitrance of the will and the intransigence of free­dom. Rather than speaking of an essential freedom, it would be better to speak of an “agonism” — of a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confronta­tion which paralyzes both sides than a permanent provocation.38 The political possibilities enabled by this permanent provocation of power and freedom can be specified in more detail by thinking in terms of the predominance of the “bio-power” discussed above. In this sense, because the governmental practices of biopolitics in Western nations have been increasingly directed towards modes of being and forms of life—such that sexual conduct has become an object of concern, individual health has been figured as a domain of discipline, and the family has been transformed into an instrument of government—the ongoing agonism between those pratices and the freedom they seek to contain means that individuals have articulataed a series of counterdemands drawn from those new fields of concern. For example, as the state continues to prosecute people according to sexual orientation, human rights activists have proclaimed the right of gays to enter into formal marriages, adopt children, and receive the same health and insurance benefits granted to their straight coun­terparts. These claims are a consequence of the permanent provoca­tion of power and freedom in biopolitics, and stand as testament to the **“strategic reversibility”** **of power relations**: if the terms of governmental practices can be made into focal points for resistances, then the “history of government as the ‘conduct of conduct’ is interwoven with the history of dissenting ‘counterconducts,’” Indeed, the emergence of the state as the major articulation of “the political” has involved an **unceasing agonism** between those in office and those they rule. State intervention in everyday life has long incited popular collective action, **the result** of which **has been** both **resistance to the state** and new claims upon the state. In particular, “the core of what we now call ‘citizenship’ . . .consists of multiple bargains hammered out by rulers and ruled in the course of their struggles over the means of state action, especially the making of war.” **In** more **recent times, constituencies associated with** women’s, youth, ecological, and peace movements (among others) **have** also **issued claims on society**.

### AT Inequality / Exclusion

#### 2. Competitive game model would reform the state to help resolve inequality – only maintained by rules clearly defined by the judge

Carter 8 – prof @ The Colorado College, research support from the Rockefeller Foundation and the staff of the Villa Serbelloni, Bellagio, Italy, the Institute of Governmental Studies at the University of California, Berkeley, and the Benezet Foundation at The Colorado College (Lief H, 2008, "LAW AND POLITICS AS PLAY," Chicago-Kent Law Review, 83(3), http://www.cklawreview.com/wp-content/uploads/vol83no3/Carter.pdf)

If the United States approached domestic politics the way sports league commissioners, team owners, and rules committees work to equalize competition, Americans would, for the same self-interested motives, seek to level the political and social playing fields. They would insure that less-advantaged children received the same quality of education and health care as do otherwise more-advantaged children. They would no more perpetuate the tax policies and social programs that profoundly skew wealth distribu-tion toward the rich than sports leagues would allow winning teams to face only weak opponents on their schedules.141 A society that aspired to noth-ing more than good competitive legal and political games among its people would not question the propriety of taxing large wealth transfers by those whose wealth greatly exceeds the average.142 In international trade, wealthy nations, for their own self-interest, would treat developing nations as the Marshall Plan sought to bring the economies of Europe, devastated after World War II, effectively into the competitive economic game.143 A community that sought no more than to promote good economic competi-tion among producing nations would not at the same time prevent develop-ing countries from competing to sell their agricultural products at lower costs in world markets by wastefully subsidizing the more costly produc-tion of the same commodities at home. Precision of rules and unquestioned authority of judges: Substantive legal rules can seem notoriously ambiguous when compared to the codified rules of organized sports, but this is misleading.144 By the principle that “you can’t play the game without agreeing on the rules,” Roberts’ Rules of Order and the sometimes arcane accumulation of rules of procedure in legislative chambers precisely structure legislative tactics and debate just as The Bluebook: A Uniform System of Citation structures formal written legal advocacy and the rules of evidence and procedure govern formal litigation. More significantly, political and social play, like organized sports, requires regulatory and judicial independence from the “democratic game” itself. Fareed Zakaria recently reviewed for a general audience the horror sto-ries—the election of Hitler, for example—produced by popular democracy and suggests that other dynamics, and particularly “the rule of law,” con-tribute more to progressive government than does popular democracy it-self.145 Just as umpires, referees, and rules committees act outside competitive play, so a good political game depends on popular trust in the impartiality of judicial and regulatory decision making. The Federal Re-serve Board, the independent regulatory commissions, and ideally the judi-ciary itself, play the critical role of political and economic rules committees effectively only if they do not operate democratically but rather off the playing field altogether. Indeed, given the indeterminacy of substantive principles of morality and justice, rules committees—a category that includes courts of law in common law legal systems—can only be said to act sensibly when they rule (using the good-game criteria noted above) so as to make the game a better game, and not by “seeking justice.” Good political games, hence, require something like the wrongly ma-ligned practice of “judicial activism,” where judges, like calls of umpires and referees, make the rules of the game clear in the moment of play. South Dakotan voters presumably sensed the importance of independent judicial authority when they rejected, by a ratio of nearly nine to one, the proposal on their 2006 ballots to allow a person to sue judges for rendering decisions that he or she didn’t like.146 When the United States Supreme Court issued its deeply flawed result in Bush v. Gore,147 the loser, Gore, and most Americans, accepted the result and moved on.148 The Bush administra-tion’s attempt to justify a “unitary executive” power to operate independent of legal checks from the other political branches is the equivalent of a bat-ter insisting that he, having the power to define the strike zone and dis-agreeing with the umpire’s called third strike on a 3–2 count, trots to first base. The administration’s unitary executive claim, and its patterned disre-gard of legality more generally, ignores an unbroken line of precedents balancing Article I’s legislative powers with those of the executive in Arti-cle II going back to 1804.149

#### 3. Good games create curiosity that merge competitors to solve inequality through competition

Carter 8 – prof @ The Colorado College, research support from the Rockefeller Foundation and the staff of the Villa Serbelloni, Bellagio, Italy, the Institute of Governmental Studies at the University of California, Berkeley, and the Benezet Foundation at The Colorado College (Lief H, 2008, "LAW AND POLITICS AS PLAY," Chicago-Kent Law Review, 83(3), http://www.cklawreview.com/wp-content/uploads/vol83no3/Carter.pdf)

Good games neutralize turf and, by legitimizing losing, reduce or eliminate the irrational and often self-defeating effects of Kahneman’s loss aversion, specifically the urge to double down and send good money after bad.127 Like legal education and legal practice, and like Vico’s rhetorical debating games, competitive games over time construct for players and fans a continuing civic education. The desire to win a competition moti-vates players to become keenly curious about the rules of the game, the conditions on the field of play, the skills of the opponent, and so on. In games people return to and practice the “thought of sense.”128 In games, players must base their calculations on what is real, not on what they imag-ine or hope for. Games thus rewire the remarkably plastic human brain in the direction of the classical rationality of “economic man” like no other social context. People come to belie Franklin’s belief that men only use reason to justify everything they have a mind to do. Through the behavior of playing, people reconfigure their brains to be more conventionally ra-tional. In play people create the sense that Faulkner thought they lacked.129 Curiosity necessarily humanizes opponents instead of “despeciating” them, as so often happens in the brutality cycle.130 Kahneman observes that each opponent in a conventional conflict believes that the other side acts out of malice and hostile motives,131 but just the opposite happens in games. Competitors merge identities. Each knows that the other experi-ences the same world, “thinks the way I think,” “wants what I want,” and “needs to know me as much as I need to know her.” Opponents do not “take it personally.”132 Competitive games, without any help from post-modern philosophers, convert believers into pragmatists. In games people delight in the particulars of concrete situations. Good play helps realize Whitman’s wise urging to turn from curiosity about God to curiosity about each other.133 The curiosity that players must develop to play well dis-places ethnocentrism, xenophobia, moral superiority, and the other brutaliz-ing tendencies of the human mind described by Hood, Milgram, Zimbardo, Pinker, Damasio, and Frith, and noted in Part I. Curiosity overcomes, or very much reduces, the impulse to hate.134 Good play has the same effect on players as does the naming of a doll or an animal. It creates a kind of love.

### AT DSRB

#### 2. Righteousness and fundamentalism are the best historical explanation for race and discrimination – your attempts at justice backfire

Carter 8 – prof @ The Colorado College, research support from the Rockefeller Foundation and the staff of the Villa Serbelloni, Bellagio, Italy, the Institute of Governmental Studies at the University of California, Berkeley, and the Benezet Foundation at The Colorado College (Lief H, 2008, "LAW AND POLITICS AS PLAY," Chicago-Kent Law Review, 83(3), http://www.cklawreview.com/wp-content/uploads/vol83no3/Carter.pdf)

Fundamentalism includes not only religious righteousness (e.g., Is-lamic and Christian fundamentalists) and secular ideological righteousness (e.g., Leninist/Stalinist or Maoist Communism), it includes beliefs in the physical and biological superiority of one’s “race”: Hitler’s Aryan suprem-acy, which generated the Holocaust, for example, or the racism of many white Americans, which generated so much lynching. A belief in the abso-lute correctness of group belief systems and ways of life, including identi-fication with the cultural and linguistic patterns associated with “race” and ethnicity, necessarily entails a belief in physical purity, which is an objecti-fied form of righteousness. “Others” are, by definition, impure. Tribal, cultural, and ethnic differences do not, in and of themselves, automatically trigger inter-group violence.91 Fundamentalists who believe those differences indicate supremacy, however, behave like Soviet dictators, Hitler, or al Qaeda. American exceptionalists who believe that the United States is “the promised land” may not be far behind.92 Barrington Moore tersely describes instances in which the belief in “our” group’s purity had brutal consequences. His retelling of the August 24, 1572, St. Bartholomew Massacre of the Parisian Huguenots describes how the mutual invective on both sides dehumanized the other by employ-ing metaphors of impurity such as “vermin,” “poison,” and “lepers.”93 The witch trials in Europe between 1450 and 1700, tortured into confessing, burned, and hanged about 100,000 people, the vast majority of them women, in some instances by pulling the accused’s arms from their sockets, or forcing her to sit in a heated metal “witch’s chair.” Among the many elements of this phenomenon, which was deliberately coordinated and en-dorsed by the moral and intellectual leaders of the time, fifteenth century law required that conviction for witchcraft include proof that the accused had been rendered impure by having physical sexual intercourse with a demon.94 Socio-biologists call Moore’s observation “pseudo-speciation” or “despeciation.” Humans “despeciate” the other, i.e., define human victims as not of the species homo sapiens, before slaughtering them. In the Rwan-dan genocide of 1994, Hutus called their Tutsi victims “cockroaches.” Na-zis and Stalinists regularly referred to Jews and Kulaks as “vermin.” Ordinary American members of the U.S. armed forces made Iraqi prisoners at the Abu Ghraib prison act like dogs. Conversely, psychologists have found that when people give a pet animal, even a cockroach or a flea, a human name, they have a difficult time seeing the animal die or putting it down. Hence, Moore also speculates, those groups that give God a name and imagine God as a human-like figure whom they should obey, as pri-mates should obey a silverback leader, in a dominance hierarchy, thereby show a greater historical incidence of group violence than do polytheistic or non-theist cultures. These traditions often tell stories of encounters—that of Saul of Tarsus—with God that are “blinding.” We might say that people are blinded by righteousness.95 Thus the Crusades may have been inevitable. If “my God” has a name and a story that gives a life its meaning, all the psychological factors—disputed sacred turf, belief in one’s own purity, the affection for things we name, and ultimately the fear of death—point toward despeciating and killing those who threaten to tear that world apart.96 Moore does not claim that religious or ideological fundamentalist beliefs cause brutality in any simple linear way. Most fundamentalists behave peacefully most of the time. But fundamentalist beliefs do seem to act as “purity boosters,” en-ablers of moralistic group violence that make brutality against the other seem “right.”97 D. The Trouble with Justice“Justice” cannot have any objectively correct substantive content in a socially constructed world. As Kahneman, noted above, and other psy-chologists have found, people on all sides of a conflict believe they are “right.” When justice takes on substantive meaning, that meaning tends inevitably toward the absolutist and righteous; justice itself becomes a trig-ger of brutality. In the context of competitive play, “justice” and “rights” merely describe the prizes political and legal contestants strive to win.98 In psychodynamic terms, justice often describes a rationalization of the ex- perience of injustice, i.e., of outrage triggered by insults to power, turf, and purity. Perceived violations of the expectation of fairness and of equal treatment of equals often trigger anger and potential violence.99 Frans de Waal has demonstrated that non-human primates similarly react to perceived unfairness and inequality. After discovering experimentally that capuchin monkeys would angrily reject food, in this case a piece of cucumber, that they had once accepted after seeing their partners getting more valued food (a grape), de Waal concluded: The fairness issue is closely related to the interests of economists, who have classically assumed that human beings are rational optimizers of the costs and benefits of their choices. Some economists, however, believe that we are guided by emotions and passions that sometimes lead to irrational behaviors, at least in the short run, such as in the case of a monkey refusing food. . . . Some economists have become interested in such irrational human actions and have developed very interesting evolutionary explanations for it. The results of this study are aligned with that thinking, in the sense that monkeys behave in a similar manner, rejecting acceptable food when the rational strategy would be always to exchange. They exhibit emotions similar to humans, becoming very unhappy when someone else receives a better deal than they. 100 De Waal has termed this primate pattern “moralistic aggression,” and the term aptly describes the common human brutality syndrome. Timothy McVeigh bombed the Oklahoma City Federal Building on the anniversary of the deaths of the Branch Davidians at Waco because the injustice of the government’s murder of innocent believers in Waco outraged him.

#### 3. Good games create curiosity that replaces the human tendency to brutality – encompasses a broad range of violence

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Good games neutralize turf and, by legitimizing losing, reduce or eliminate the irrational and often self-defeating effects of Kahneman’s loss aversion, specifically the urge to double down and send good money after bad.127 Like legal education and legal practice, and like Vico’s rhetorical debating games, competitive games over time construct for players and fans a continuing civic education. The desire to win a competition moti-vates players to become keenly curious about the rules of the game, the conditions on the field of play, the skills of the opponent, and so on. In games people return to and practice the “thought of sense.”128 In games, players must base their calculations on what is real, not on what they imag-ine or hope for. Games thus rewire the remarkably plastic human brain in the direction of the classical rationality of “economic man” like no other social context. People come to belie Franklin’s belief that men only use reason to justify everything they have a mind to do. Through the behavior of playing, people reconfigure their brains to be more conventionally ra-tional. In play people create the sense that Faulkner thought they lacked.129 Curiosity necessarily humanizes opponents instead of “despeciating” them, as so often happens in the brutality cycle.130 Kahneman observes that each opponent in a conventional conflict believes that the other side acts out of malice and hostile motives,131 but just the opposite happens in games. Competitors merge identities. Each knows that the other experi-ences the same world, “thinks the way I think,” “wants what I want,” and “needs to know me as much as I need to know her.” Opponents do not “take it personally.”132 Competitive games, without any help from post-modern philosophers, convert believers into pragmatists. In games people delight in the particulars of concrete situations. Good play helps realize Whitman’s wise urging to turn from curiosity about God to curiosity about each other.133 The curiosity that players must develop to play well dis-places ethnocentrism, xenophobia, moral superiority, and the other brutaliz-ing tendencies of the human mind described by Hood, Milgram, Zimbardo, Pinker, Damasio, and Frith, and noted in Part I. Curiosity overcomes, or very much reduces, the impulse to hate.134 Good play has the same effect on players as does the naming of a doll or an animal. It creates a kind of love.

### A2 Deliberation Excludes Women

#### Deliberation isn’t inherently sexist – empirics BOLSTER the claim that deliberation is an equalizing discursive space

Hickerson and Gastil 8 (Andrea and John, Department of Communication @ Univ. of Washington, "Assessing the Difference Critique of Deliberation: Gender, Emotion, and the Jury Experience," http://www.la1.psu.edu/cas/jurydem/DifferenceCritique.pdf)

This study set out to advance the conversation about deliberation and difference by¶ empirically testing key assumptions of deliberative and difference theorists. Our¶ findings suggest that concerns that deliberation inherently privileges men over¶ women and reason at the expense of emotion are likely incorrect, at least in the¶ context of one’s subjective experience of jury deliberation. Arguments of proponents¶ of deliberation who hail the process as an equalizing discursive space were bolstered,¶ though we found some evidence that on the most difficult cases, citizens may be¶ more likely to become frustrated with the deliberative process and its outcomes.¶ These findings shift the burden of evidence somewhat by challenging deliberation’s critics to find compelling examples of difference effects in well-structured and¶ consequential deliberative spaces. Based on our data, we expect that such examples¶ will arise through careful investigation, though the effects may be relatively modest in¶ size. We expect that difference effects will arise under speciﬁc circumstances, likely¶ involving the composition of the group and the nature of the issue under discussion.¶ Such findings would sensitize deliberative theorists to especially problematic situations and challenge them, in turn, to devise means of mitigating these problems. ¶ In this way, deliberative theory and practice may ultimately beneﬁt from a reﬁned¶ difference critique.

#### Rational forms of deliberation aren’t sexist – empirical findings disprove the claim that deliberation and inclusion are at odds

Caluwaerts 12 (Didier, Postdoc fellow Research Foundation Flanders @ Vrije Universiteit Brussel, "Is there a gender gap in democratic deliberation?" <http://www.ecpg-barcelona.com/sites/default/files/ECPG-Didier%20Caluwaerts.pdf>)

However, these conclusions do have to be qualified. After all, we also found that women ¶ are not silenced more often than men, as the second hypothesis stated, and that what women say ¶ is nearly always as deliberative as what men say. Contrary to the third hypothesis, women thus ¶ have no problem living up to the masculine standard that the Habermasian ideal-type engenders. ¶ This is a very interesting finding, contradicting the basic assumptions made by difference ¶ democrats that women and other low status groups would feel less at ease with the overly ¶ rationalistic premises of deliberation in its pure form. This is not to say, however, that there is no ¶ difference in the way men and women deliberate: in accordance with the fourth hypothesis, we ¶ found after all that women more often appeal to personal stories when justifying a position, but ¶ they mostly do so in addition to giving more “rational” arguments. ¶ Another finding is that the level of conflict in the discussion setting had only very limited ¶ influence on the deliberation. The effect of this contextual factor was very weak, and only ¶ manifested itself with regard to storytelling: in homogeneous settings, women tell more stories ¶ than men, but in mixed company, this effect is even stronger. All in all, however, we found very ¶ little evidence that it matters very little to men and women whether they discuss in a low or high ¶ conflict setting. ¶ This finding has important normative implications because it reveals there is no trade-off ¶ between two of deliberative theory’s core assumptions, namely inclusion and publicity. It is ¶ generally assumed that the higher the confrontation between opposing ideas and arguments, the ¶ more the inclusion of all citizens is jeopardized, but we found no evidence for that. We did not ¶ find any evidence either that inclusion and rationality are in a trade-off: there is no gender gap in ¶ the DQI scores, so rationality and inclusion are not at odds.

### State Key to Gender Equality

#### Instrumental engagement of the state is key to gender equality – decades of legislative history proves the exercise of public power CAN serve female interests

Higgins 00 (Tracy, Prof of Law @ Fordham, "REVIVING THE PUBLIC/PRIVATE DISTINCTION IN¶ FEMINIST THEORIZING," Chicago-Kent Law Review, Vol. 75, Iss. 3 [2000], Art. 11, http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3216&context=cklawreview)

Finally, there are practical reasons for maintaining the¶ public/private distinction in feminist theorizing. Michelman¶ articulates the view of a "confirmed optimist" about the democratic¶ process. 79 I suggest that his view of public power might also be¶ appealing to the confirmed feminist, not only for theoretical but also¶ for instrumental reasons. I suggest as much simply because there are¶ good reasons to believe that women may have greater access to public¶ power than to private power. Because women are a majority of the¶ population, in a well-functioning democracy one would expect that¶ women's interests would be well reflected in the legislative process.¶ Yet, owing to the exclusion of women from the political realm, both¶ de jure and de facto, women have never exercised as much political¶ power as is their due. Nevertheless, even before women were entitled¶ to vote, they were often successful at influencing legislative bodies.¶ For example, married women gained property rights through¶ legislative change before women could vote.8¶ 0 Later, women achieved¶ income support for widows and workplace protections through¶ legislative means.8' More recently, women have won changes in rape¶ statutes,82 child support standards, and child support enforcement. 83¶ During the last decade, Congress has passed two important pieces of¶ legislation protecting women's rights: the Family and Medical Leave¶ Act84 and the Violence Against Women Act.85¶ On the other hand, the democratic process has also generated¶ legislation that is profoundly harmful to women's interests.¶ Nineteenth-century statutes criminalizing abortion are one example. 86¶ Today, states continue to restrict access to abortion in a variety of¶ ways. On the federal level, welfare reform legislation passed during¶ the Clinton Administration has had devastating effects on poor¶ women.s7 Nevertheless, even acknowledging that women's power in¶ the public sphere is limited, one might argue that, to the extent that¶ women are more equal participants in the public than in the private¶ sphere, their interests are served in general by the broader exercise of¶ public power. Roe v. Wade notwithstanding, the most important¶ advances in women's rights have come through the exercise of¶ legislative power rather than the exercise of judicial review in the¶ name of privacy. Moreover, judicial review exercised in the name of¶ individual liberty, equality, or, more recently, federalism has become¶ an increasingly potent weapon in the hands of those who also wield¶ private power. The challenge for feminists is therefore to develop¶ and deploy arguments that will, at a minimum, help to balance this¶ private power through democratic means.

### A2 Framework Excludes Gender

#### If their framework args are true, then voting Aff inevitably fails – “adding” gender into existing frameworks doesn’t change underlying power dynamics

Saloom 6 (Rachel, JD Univ of Georgia School of Law and M.A. in Middle Eastern Studies from U of Chicago, Fall , Rachel, A Feminist Inquiry into International Law and International Relations, 12 Roger Williams U. L. Rev. 159, lexis)

There is not much consensus between the gender theorists and those who adhere to current approaches to international law and international relations. The biggest obstacle for gender theorists is the application of their theories. It would be valuable to determine how international relations or international law would operate if gender were taken into account. Gender theorists themselves have trouble formulating ways to apply their theories. Most scholars believe that the "add women and stir" approach generally fails. [91](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n91#n91) The notion that "bringing in" more women to the areas of international law and international relations can transform existing practices has not been met with much optimism. [92](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n92#n92) Theorists argue that adding women into existing frameworks fails to address the larger androcentric biases that exist. Many theorists criticize this approach, supporting their criticisms with allegations that the issues that gender scholars and practitioners want to address cannot be neatly incorporated in the current framework. Smith argues that: The issues raised by feminism not only do not fit with the discipline, they disrupt the entire edifice of community and society upon which [international relations] and the other social sciences are built. Their foundations are so embedded in gendered identities, subjectivities, and therefore reified structures of common sense that they simply cannot be amended to take account of gender. [93](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n93#n93) Hooper also concurs with Smith's conclusions. She posits that "grafting the gender variable" onto a highly masculinized  [\*177]  framework is doomed for failure. [94](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n94#n94) She believes that adding gender to a checklist will not change the power dynamic that exists in international law and international relations. [95](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n95#n95) In the same manner, public international law is often preoccupied with issues of conflict, state sovereignty and use of force. [96](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n96#n96) When gender is discussed in international law, it is usually relegated to the human rights law sphere. [97](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n97#n97) If the consensus of feminist theorists is that more radical approaches are necessary to change the gender bias that exists, then theorists must formulate other alternatives to make the change in gender bias a feasible option. However, if the proponents of the status quo are even partially correct, then the feminist criticisms become even more difficult to implement. The question then becomes whether it is even desirable to wholly reject state-centrism as a masculinist androcentric paradigm.

### Case Ext

#### Gender-centric approaches fail - reverses the bias error and doesn’t lead to transformational theory

Caprioli 4 (Mary, Professor of Political Science – University of Tennessee, “Feminist IR Theory and Quantitative Methodology: A Critical Analysis”, International Studies Review, 42(1), March, http://www.blackwell-synergy.com/links/doi/10.1111/0020-8833.00076)

If researchers cannot add gender to an analysis, then they must necessarily use a purely female-centered analysis, even though the utility of using a purely female centered analysis seems equally biased. Such research would merely be gendercentric based on women rather than men, and it would thereby provide an equally biased account of international relations as those that are male-centric. Although one might speculate that having research done from the two opposing worldviews might more fully explain international relations, surely an integrated approach would offer a more comprehensive analysis of world affairs. Beyond a female-centric analysis, some scholars (for example, Carver 2002) argue that feminist research must offer a critique of gender as a set of power relations. Gender categories, however, do exist and have very real implications for individuals, social relations, and international affairs. Critiquing the social construction of gender is important, but it fails to provide new theories of international relations or to address the implications of gender for what happens in the world.

#### No solvency - incorporation of gender can’t challenge underlying structures of oppression

Saloom 6 (Rachel, JD Univ of Georgia School of Law and M.A. in Middle Eastern Studies from U of Chicago, Fall , Rachel, A Feminist Inquiry into International Law and International Relations, 12 Roger Williams U. L. Rev. 159, lexis)

There is not much consensus between the gender theorists and those who adhere to current approaches to international law and international relations. The biggest obstacle for gender theorists is the application of their theories. It would be valuable to determine how international relations or international law would operate if gender were taken into account. Gender theorists themselves have trouble formulating ways to apply their theories. Most scholars believe that the "add women and stir" approach generally fails. [91](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n91#n91) The notion that "bringing in" more women to the areas of international law and international relations can transform existing practices has not been met with much optimism. [92](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n92#n92) Theorists argue that adding women into existing frameworks fails to address the larger androcentric biases that exist. Many theorists criticize this approach, supporting their criticisms with allegations that the issues that gender scholars and practitioners want to address cannot be neatly incorporated in the current framework. Smith argues that: The issues raised by feminism not only do not fit with the discipline, they disrupt the entire edifice of community and society upon which [international relations] and the other social sciences are built. Their foundations are so embedded in gendered identities, subjectivities, and therefore reified structures of common sense that they simply cannot be amended to take account of gender. [93](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n93#n93) Hooper also concurs with Smith's conclusions. She posits that "grafting the gender variable" onto a highly masculinized  [\*177]  framework is doomed for failure. [94](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n94#n94) She believes that adding gender to a checklist will not change the power dynamic that exists in international law and international relations. [95](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n95#n95) In the same manner, public international law is often preoccupied with issues of conflict, state sovereignty and use of force. [96](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n96#n96) When gender is discussed in international law, it is usually relegated to the human rights law sphere. [97](http://web.lexis-nexis.com/scholastic/document?_m=a2ac53a45e1fe17371cdbaa2cf370390&_docnum=3&wchp=dGLbVzW-zSkVk&_md5=2c8e9aab339ea5ca4d4f4fae4578bb53#n97#n97) If the consensus of feminist theorists is that more radical approaches are necessary to change the gender bias that exists, then theorists must formulate other alternatives to make the change in gender bias a feasible option. However, if the proponents of the status quo are even partially correct, then the feminist criticisms become even more difficult to implement. The question then becomes whether it is even desirable to wholly reject state-centrism as a masculinist androcentric paradigm.

### OV – K

#### It turns the case and is the root cause of their impacts--- The language of victimhood undermines the capacity for choice and action and suppresses structural dimensions of oppression

Minow 93 (Martha, Prof of Law @ Harvard, August, 40 UCLA L. Rev. 1411, lexis)

The recovery movement risks replacing hope for everyone with victimization for everyone. Finding intimate violence everywhere trivializes it and obscures important distinctions in gradations of harm. People who invoke victim language may do so to obtain sympathy and avoid personal responsibility. In the process, though, **this language also suppresses societal and structural dimensions of oppression and harm**. The language of victimhood, as a result, seems to produce a dilemma, which is explored by Professor Collins in her book on Black feminist thought. She treats issues of violence and abuse in the broader contexts of racism and sexism. The book concludes that African-American women have been victimized by race, gender, and class oppression. But portraying Black women solely as passive, unfortunate recipients of racial and sexual abuse **stifles notions that Black women can actively work to change our circumstances and bring about changes in our lives**. Similarly, presenting African-American women solely as heroic figures who easily engage in resisting oppression on all fronts minimizes the very real costs of oppression and can foster the perception that Black women need no help because we can "take it." n71 **Focusing on victimization undermines capacity for choice and action**; however, focusing on capacity for choice and action may minimize real facts of victimization. **The passive and helpless connotations of victimization lie at the heart of this dilemma.**

### Role of Ballot Link

#### Their ballot arugments are a link

#### We must problematize the power and allure of victimhood—short-term “successes” like winning the ballot only fulfill a cathartic outlet of guilt while simultaneously cementing long-term oppression

Robertson 97 (Cherie, Member of the graduating class of Osgoode Hall Law School, York University, Fall/Winter, 35 Osgoode Hall L.J. 637, lexis)

When the poor come before decisionmakers in courts or administrative bodies, they often do so as individuals who are weak, down on their luck, even helpless and vulnerable. This posture is adopted by the poor for several reasons. By enlisting the services of a lawyer, by relinquishing control to a lawyer -- someone reputed to be smart, familiar with the system, and combative -- the client is able to withdraw and become a passive player in the outcome of his or her situation. Playing the role of victim often allows the client to "relieve a burdensome sense of responsibility or self-blame. Victim status can support a sense of solidarity with others who have suffered in similar ways." n24 Furthermore, decisionmakers have shown themselves to be [\*649] quite receptive to the helpless, the enfeebled, the victimized. The paternalist and protectionist premise upon which law functions gives victimhood its power**.** It fulfils a cathartic outlet for society's collective sense of guilt when adjudicators are provided with the opportunity to make magnanimous gestures of charity **which cost them very little and require no long-term commitment.¶** n24 M. Minow, "Surviving Victim Talk" (1993) 40 UCLA L. Rev. 1411 at 1413-14, citing S. Wendell, "Oppression & Victimization: Choice and Responsibility" in D. Shogan, ed., A Reader in Feminist Ethics (Toronto: Canadian Scholars Press, 1993) 277 at 287. This is not to say, however, that poor people always seek to relinquish responsibility for their situations. It is acknowledged that in many instances, those living in poverty blame themselves for their circumstances and are entirely encouraged to do so by the dominant ideology of the liberal democratic capitalist state which overemphasizes the agency that individuals have to affect the outcome of their lives. It is my assertion, however, that the poor are neither entirely responsible nor completely blameless for their situations. While recognizing the magnitude of systemic inequities, I would still maintain that relationships between individuals and the state are negotiable and interactive, albeit to varying degrees. It is imperative to be critical of the discourses which shape the poor as either completely blameless or entirely responsible for their situations. The view which one has of the power of individuals directly correlates to the power one attributes to the state. For example, from an orthodox Marxist, or instrumentalist perspective, individuals are acted upon by economic relationships mediated through the State. From a liberal point of view, individuals have nearly unlimited power to determine their situations. I am of the view that both of these perspectives are reductive and fail to describe adequately the complexity and inconstancy of power, and the negotiations which take place daily between individuals and those institutions commonly identified as "The State."¶ My point in this part is twofold: first, images of victimhood in the courtroom and other legal fora are powerful and as a result alluring; second**, the power and allure of victimhood** need to be problematizedbecause what may be a "successful" litigation strategy for an individual in the short-term may have undesirable consequences for the larger collective in the long-term.

#### Portraying women as victims in need of “benefits” like the ballot replicates the logic victimization and encourages passivity—this cripples individual agency

Elias 04 (Robert, Professor of Politics and Chair, Legal Studies Program; University of San Francisco, Winter, 52 Buffalo L. Rev. 225, lexis)

Since victimhood and offenderhood, and victim and offender **labels, are inconsistent with a capacity for autonomy**, they should be viewed only as temporary descriptions. Claiming rights for victims as victims is detrimental to victims, according to Dubber. And **tying benefits to victimhood only prolongs one's victimization and passivity**. Victimological essentialism (that victims are born victims and share common characteristics) is the flip side of criminal essentialism. These assumptions are detrimental to both victims and offenders, and ignore the evidence that victims and offenders are often very much alike.¶ Historically, the victim's role in criminal law has been challenged the most by notions that crime is an offense against the state instead of against individuals. But the state's preoccupation with victimless (rather than "victimful" crimes) has done the most damage. The host of victims' rights provisions (such as the pending Victims' Rights Amendment) are typically toothless, and promoted largely for symbolic purposes. n33 Victims now enjoy rights long held by criminal defendants, but they are as useless to victims as they have been to defendants. Most of the rights supposedly gained are unenforceable and denied in practice. Much attention has been given to victim impact statements. But aside from their questionable legitimacy, they have had only a minimal effect. n34¶ Dubber takes particular aim at the victims' rights movement. While he credits it for some accomplishments, he views the movement as primarily counterproductive for [\*244] victims. The victims' movement gets us to identify with victims, **but as victims rather than as persons**. It has helped the state use the criminal law as nuisance control and helped it conduct a war on (purported) criminals (but not on crime). The victims' movement has been successful largely because it has associated itself (and been co-opted by) the war on crime. But the success has been largely symbolic. The interests of real victims have rarely been served, and often have been further harmed.¶ According to Dubber, the image of victims in the victims' movement is one of helpless and vengeful individuals. n35 This plays nicely into the war on crime, exploiting victims for state interests. n36 Active and strong victims are an impediment to officials while helpless victims are malleable and grateful. The victims' movement, Dubber argues, **prefers cries for help and simplistic solutions** (such as extreme punishment) instead of confident explorations by victims of the meaning of their victimization and the healthiest response. **The victims' movement thereby helps preserve victimhood, thus undermining the victim's personhood**. In a criminal process designed to vindicate autonomy, a helpless victim has no place. A state response should come only if a genuine victim requires it. Unless there is a harm to a person's autonomy, there is no need to fix it. But criminal law under the war on crime does everything but respect the victim's autonomy. n37

### A2: Victimized Now

#### The plan reinforces that victimhood----The intervention of liberal, legal discourse reinforces the bonds of victimhood

Crain 93 (Marion, Professor of Law, University of Toledo, January, 61 Geo. Wash. L. Rev. 556, lexis)

Many feminists today argue that the state should take an active role in intervening in civil society to further sex equality; n153 indeed, the notion that the state has the option not to intervene is "not only mythical but meaningless" given the state's role in constructing behavior in the family and in the market. n154 In view of the state's historical participation in women's economic subordination, however, one might wonder whether the patriarchal state can be trusted to intervene on behalf of subordinated groups. Furthermore, the limitations of liberal legalism - including the male-centered character of our equality law and its insistence on a sameness/difference analysis - suggest that **state regulation is an unlikely route to effect structural change**. n155 Individual-rights models such as Title VII have proved to be painfully slow, costly, and ineffective means of attacking institutionalized economic oppression. They have left occupational sex segregation, a major cause of women's economic subordination, n156 virtually untouched. Finally, contemporary antidiscrimination law is based on a model of legal protection that poorly translates the social reality of victims of discrimination into law; **the intervention of legal discourse risks reinforcing the bonds of victimhood**. n157

### A2 Permutation

#### Only defining political communities devoid of “victim” identities can avoid the cycles of violence identity struggles perpetuate

Enns 7 (Diane, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition, at McMaster University, Canada, "Identity and Victimhood," http://www.berghof-conflictresearch.org/documents/publications/boc28e.pdf)

While recent conflict transformation literature attests to dramatic changes to ¶ the face of violent conflict in the world, due to the post-Cold War increase in ¶ ethnopolitical conflict, there is much work to be done both in understanding identity ¶ formation and in pointing the way out of the cycles of violence which identity ¶ struggles can perpetuate. Much of the literature seems to take for granted that ¶ human attachment to an ethnic identity category is natural and therefore stops short ¶ of sufficiently interrogating the difference between an identity that is experienced as ¶ cultural, and one that becomes politicized, pitted in stark relief against another or ¶ several other identity categories.5 That is, ethnicity or race is naturalized, assumed to ¶ be fundamental to one’s selfhood or subjectivity, and the process of racialization or ¶ ethnicization—in other words, the politicization of race or ethnicity—is not taken into ¶ account. The social and political construction of identity—the fact that we are invited ¶ to identify with this or that category, that we identify ourselves as belonging to this or ¶ that group, and that this identification can be used as a powerful political tool, ¶ including the justification of extreme acts of violence—should factor into the ¶ discussion of ethnopolitical conflicts. More importantly, I want to argue that we need ¶ to look for ways to create political communities that resist this politicization of ¶ identity. Conflict transformation or management practices have an extremely ¶ important role to play in this task.

#### Perm still links – victim rhetoric must be rejected

Enns 7 (Diane, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition, at McMaster University, Canada, "Identity and Victimhood," http://www.berghof-conflictresearch.org/documents/publications/boc28e.pdf)

Victim empowerment is a crucial aspect of any reconciliation process, and it ¶ would be problematic to suggest that this work always leads to a dangerous ¶ identification with victimhood that sabotages the agency and political future of the ¶ victim. What is necessary is to find ways to empower victims that do not lead to the ¶ “exaltation of victimhood” as Paul Gilroy puts it;59 that do not strip victims of ¶ responsibility for the future. This means recognizing that there are different degrees ¶ of victimization and that the historical context of an individual’s victimization cannot ¶ be forgotten.60 Mourning a death perpetrated by a Palestinian suicide bomber is no ¶ different from mourning a death perpetrated by an Israeli soldier—they are mourned ¶ as any human death—but the historical circumstances surrounding these deaths are ¶ not the same. Personally, all victims are equal in the sense that they are equally ¶ reduced to suffering or grieving bodies;61 politically, historically, they are not, and it ¶ is here, on the collective level, that we could argue the greater responsibility belongs ¶ to the Israelis, as it does to all those of us whose governments support the Israeli ¶ occupation of Palestine.62¶ As Mamdani argues, the prerequisite for survivor’s justice may be victory, for it ¶ presents alternatives to the victor which it does not to the vanquished: “Only the ¶ victor has the choice of reaching out to the vanquished on terms that have the ¶ potential of transcending an earlier opposition between the two, by defining both as ¶ survivors of the civil war.”63 When the power is as severely imbalanced as it is in the ¶ case of Palestine and Israel, we need to find an appropriate way to distinguish ¶ between victims and victims-turned-perpetrators, and methods for healing that do ¶ not pit the psychological against the political. Like the Tutsi, whom Mamdani argues ¶ must consider that the prerequisite to coexistence and reconciliation is to give up the ¶ monopoly of power, hence become vulnerable to their Hutu others, the Israelis too ¶ have something to give up. While the experience of the Nazi death camps will remain ¶ as permanent wounds or scars on its victims, the world’s acknowledgment of the Nazi ¶ holocaust, the reparations, the memorials and Holocaust education, have done the ¶ work—however imperfect and incomplete—of healing. We are perhaps more ¶ responsible for the victims of the present, not because they are any more innocent ¶ than previous victims, but because they present us with all the immediacy and ¶ emergency of a crisis. The operative question then is perhaps not who is a victim, but ¶ who is a victim today, and under what historical circumstances? The recognition of a ¶ victim’s victimization is a crucial factor in reconciliation, but yesterday’s victims must ¶ let go of their status. “What victims need most is not to remain mere victims.”64

### A2 Victim Rhetoric Key to Action

#### Victim rhetoric creates a self-fulfilling prophecy—it discourages people who are victimized from developing their own strengths or working to resist limitations

Minow 93 (Martha, Prof of Law @ Harvard, August, 40 UCLA L. Rev. 1411, lexis)

Victim talk tends to invite more victim talk. It has a rebounding quality we see in discussions of crime victims and offenders, in claims of reverse discrimination, in arguments that political correctness silences students in the majority, in arguments that responses to family violence victimize men or adults, and in assertions that the litigation explosion hurts America. In each instance, the claim that "I'm a victim, and I'm not responsible" triggers a rejoinder, "I'm a victim, and I'm not responsible," and perhaps, "You're the one to blame." n80 It reminds me of the ritually exchanged statements of personal hurt that epitomized the honor-oriented culture of the Southern duel. n81 In that culture, the sensation of victimization triggered duels and deaths.Yet unlike the traditional Southern culture of honor and duels, which supported a sense of agency and power even for offended parties, contemporary victim talk tends to suppress the strengths and capacities of people who are victims. n82 Victim talk can have a kind of self-fulfilling quality, discouraging people who are victimized from developing their own strengths or working to resist the limitations they encounter. And if they assert or demonstrate those strengths or capacities, they risk being blamed for their victimhood or their failures to transcend or end it.

#### Trades off with political transformation – excludes discussion of who is a victim in differing instances

Enns 7 (Diane, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition, at McMaster University, Canada, "Identity and Victimhood," http://www.berghof-conflictresearch.org/documents/publications/boc28e.pdf)

This issue is particularly salient today because along with the increase in ¶ conflict that is purportedly rooted in identity groups hostile to one another, in recent ¶ decades we are witnessing an increasing focus on the suffering and injury of the ¶ victim, in a range of discourses and practices from human rights scholarship, political ¶ theory and psychology, to peace and conflict studies and conflict resolution practice. ¶ Scholars and practitioners have been calling attention to this, although it is not clear ¶ to me whether actual conflict management practices have taken this trend into ¶ account. Luc Huyse states that there has been “a shift from the cult of the hero to the ¶ cult of the victim. Suffering instead of heroism now attracts public and political consideration” and adds that “victim empowerment is not a blessing in all ¶ circumstances. It can become an obstacle to peaceful coexistence and mutual trust.”6 Dialogue or encounter groups in regions that have experienced ongoing ¶ ethnopolitical conflict have burgeoned in recent years, and here especially, we find ¶ that the emphasis on how to heal the psychic pain of victims traumatized by political ¶ violence often trumps attention to strategies for political change. An effect of this ¶ focus is that the victim has assumed the status of an identity, and in the same way as ¶ all other identities, is susceptible to politicization and abuse. But victims obviously ¶ need to be identified, acknowledged as victims and empowered, for justice and ¶ reconciliation to take place. How then do we account for the injury and suffering of ¶ victims without locking them forever into a binary logic of victim and perpetrator—¶ the world of the cat and the rat? What happens when the victimized continue to ¶ identify as victims in ways that sabotage their own political agency? ¶ In a discussion of collective guilt as it was assigned to the German people and ¶ its collective past, Hannah Arendt wrote that “where all are guilty, no one is.”7 ¶ Similarly, we might say that where all are victims no one is a victim. When thinking ¶ about the slippage between victim and perpetrator in cases of violent conflict in ¶ which one’s belonging to this or that identity category is essential to how one will be ¶ treated—even whether one will live or die—the question of who is a victim appears ¶ to be paramount. Can we regard all victims, including victims who become ¶ perpetrators, in the same light ethically, politically or legally? This question becomes ¶ critical when thinking, for example, of the protracted struggles of the Palestinians ¶ against the occupation by Israel, a state founded in order to provide a home for ¶ surviving victims of genocide, or of the reconciliation processes in Rwanda where ¶ victims-turned-perpetrators-turned-victims poses a seemingly insurmountable ¶ obstacle to justice and reconciliation. ¶ In this paper I will address these issues in order to pose some probing ¶ questions for conflict management practitioners. This is a theoretical discussion ¶ drawing from a diverse body of literature from political theory, philosophy, and the ¶ social sciences, to the work of peace and conflict studies and practitioners of ¶ reconciliation and conflict management. Sweeping perhaps, but I believe it is important to bring into dialogue these various perspectives. While this discussion ¶ does not go far enough in describing or recommending specific practices, it is my ¶ hope that it will be useful theoretical background for those thinking in concrete terms ¶ about reconciliation strategies. At any rate, given the particularities of the historical, ¶ cultural, social and political contexts in which conflict develops, the recommendation ¶ of specific practices may not always be the most effective approach. Therefore, I do ¶ not focus on a specific case in this paper (although Israel and Palestine figure more ¶ prominently) which always risks over-generalizing, but at the same time reveals ¶ important macro or global issues that can be overlooked when exploring in detail one ¶ particular site of conflict.

Victim/perpetrator binary prevents political transformation – it doesn’t enable it

Enns 7 (Diane, Assistant Professor of Philosophy and Associate Director of the Institute on Globalization and the Human Condition, at McMaster University, Canada, "Identity and Victimhood," http://www.berghof-conflictresearch.org/documents/publications/boc28e.pdf)

Continuing to act in the name of an identity once an economy of violence has ¶ sprung out of the binary logic of victim and perpetrator, does not enable political ¶ transformation, but prevents it. This is Mamdani’s argument when he makes the ¶ radical claim that the great crime of colonialism went beyond the expropriation of the ¶ native, “the greater crime was to politicize indigeneity in the first place.”29 It is a ¶ controversial argument when viewed in light of the important status which North ¶ American proponents of identity politics want to ascribe to identity in the name of ¶ liberation. Mamdani includes in this politicization both the negative libeling of the ¶ native by the settler, as well as the positive self-assertion of the native response to this libel. The genocide was a natives’ genocide, a victim’s genocide; a struggle by ¶ the majority, the Hutu, to cleanse the country of a threatening “alien” presence, the ¶ minority Tutsi, a group with a privileged relation to power before colonialism. This ¶ was a violence not against neighbours therefore, as it is generally portrayed, but ¶ against a population viewed as foreigners; a violence that thus sought to eliminate a ¶ foreign presence from home soil. Rather than focusing on the origin of a racial or ¶ ethnic difference, the crucial task according to Mamdani is to ask when and how Hutu ¶ was made into a native identity and Tutsi into a settler identity, and to understand ¶ how violence is the key to sustaining the relationship between them.30 ¶ Significantly, one of the effects of this politicization of identity is what ¶ Mamdani calls a “victim psychology”: ¶ Ever since the colonial period, the cycle of violence has been fed by a victim ¶ psychology on both sides. Every round of perpetrators has justified the use ¶ of violence as the only effective guarantee against being victimized yet ¶ again. For the unreconciled victim of yesterday’s violence, the struggle ¶ continues. The continuing tragedy of Rwanda is that each round of violence ¶ gives us yet another set of victims-turned-perpetrators.31 ¶ Ultimately, according to Mamdani, the failure of Hutu power consisted in the inability ¶ to transform the political legacy of colonialism, choosing instead to build on the very ¶ racialized political identities generated by colonial rule. Hutu power had the potential ¶ “of liberating the rat from the terror of the cat” but also the risk of “locking the rat ¶ forever in a world driven by fear of the cat,” blind to larger possibilities, and it chose ¶ the latter.32 Instead of transforming the world of colonialism, they simply confirmed ¶ it. The lesson of Rwanda, therefore, is to recognize that group identities are ¶ institutionally, politically and legally produced, and thus of limited historical ¶ significance. Without acknowledging the limits of these identity categories, ¶ questioning the historical context of their instigation and reification, a “native” or ¶ victim identity “is likely to generate no more than an aspiration for trading places, for ¶ hegemonic aspirations” and “every pursuit of justice will tend toward revenge, and ¶ every reconciliation toward an embrace of institutional evil.”33

### Oppressor/Victim Link

#### The Affirmatives language of victimhood depends upon and reinforces faulty, reductionist views of identity and replicate the victim/victimizer dichotomy

Minow 93 (Martha, Prof of Law @ Harvard, August, 40 UCLA L. Rev. 1411, lexis)

Let us start with identity. As contemporary talk about victimization suggests, we tend to treat identity too often as if it were fixed and reducible to a single trait. Victimhood is a cramped identity, **depending upon and reinforcing the faulty idea that a person can be reduced to a trait**. The victim is helpless, decimated, pathetic, weak, and ignorant. Departing from this script may mean losing whatever entitlements and compassion victim status may afford. n92¶ Victims' descriptions of their victimization tend to draw on stock stories n93 rather than revealing individuals in their particularity. Professor Angela Harris makes this point in her analysis of victim impact statements used in death penalty cases. She notes that the statements persuade, when they do, because they invoke widely shared images of goodness, Christian piety, sportsmanship, the "little guy," and American patriotism, all of which are talismans of the deserving person. n94 Some degree of simplification is inevitable, and no one should be surprised to find that victim impact statements do not reveal the uniqueness of the human being victimized by crime. But the statements may also draw impermissibly on images entwined with racism. n95 Professor Stephen Carter developed a similar argument in his analysis of Bernard Goetz's self-defense claims; he showed how Goetz's narrative drew on racist images of the heroic individual defending against animal-like aggressors. n96¶ Racism is perhaps the most vivid example of the defective view of identity - the view that a person's worth, qualities, and very being can be reduced to one trait, a trait that trumps all others and [\*1433] tells us how to rank the individual. n97 Preoccupation with victimization works the same way, even when victim status is claimed by an individual in an effort to obtain sympathy or recompense. Here too, a limited slice of the individual becomes the focal point. Any richer sense of the person undermines the claim of victimhood, **because victimhood depends on a reductive view of identity**. **Moreover, the language of victimization invites people to treat victimhood as the** primary source of identity. n98 **Talk of victims seems to divide the world into only two categories: victims and victimizers**. n99 No one wants to be a victimizer, so potential victimizers try to recast themselves as victims. It becomes a world of only two identities, which essentially reduce to one characteristic, that of the helpless victim. n100

### Coalitions

#### Coalitions unified around an ethic of love can effectively challenge gender hierarchies as well as recognizing differences

Nienhuis 09 (Nancy, Senior Vice President for Operations, Dean of Students, and Professor (Non-Tenured) of Theology and Social Justice at Andover Newton Theological School, "Revolutionary Interdependence," Critical Perspectives on bell hooks, p. 200)

From her earliest work bell hooks has argued that ultimately the only way to overcome "white-supremacist capitalist patriarchy" is to build carefully coalitions across the chasms that divide us from each other. Only by doing so can we truly begin to transform society so that all of its members are treated with justice and respect. Such a task is fraught with pitfalls, however, not the least of which is that from the outset a myriad of systemic factors collude to prevent us from recognizing the "other" across boundaries of difference such as race, class, and gender. The feminist systematic analysis hooks has developed over the decades of her writing creates a path across that borderland. By engaging in an assessment of the current state in which we find ourselves, and by carefully analyzing how we got here and how we remain stuck, hooks lays the groundwork for a different way of being, for a revolutionary interdependence that is profoundly spiritual and has the potential to change us from the inside out, and thus to transform the world. Moreover, her work provides a powerful basis for feminist liberation theologies.

### A2 Not Mut Exc

#### The Affirmative’s deployment of anger and fear is ANTITHETICAL to an ethic of love

Nienhuis 09 (Nancy, Senior Vice President for Operations, Dean of Students, and Professor (Non-Tenured) of Theology and Social Justice at Andover Newton Theological School, "Revolutionary Interdependence," Critical Perspectives on bell hooks, p. 206)

This love ethic is also "essentially spiritual work." For hooks, showing solidarity with the poor has always been a way to "dismantle hierarchy and difference." By fostering recognition across boundaries of difference, love enables us to understand that we are all interconnected, to realize that there is something beyond our being that unites us. For hooks it is a "transcendant reality" that enables us to understand that as we struggle for justice we are all always more than our race, class, sexual orientation, and so forth. Moreover, love, by definition, requires relinquishing aspirations of domination and power. It requires a different set of values, and it requires courage. hooks refers to a passage in the Christian scriptures that reads, "Perfect love casts out fear" (1 John 4:18). For hooks, cultures of domination thrive on fear; they cultivate it, they promote a "desire for separation, the desire not to be known" in order to remain safe. Therefore, "When we choose love we choose to move against fear - against alienation and separation. The choice to love is a choice to connect - to find ourselves in the other." Thus, "All awakening to love is spiritual awakening."

#### Violence is emblematic of the culture of domination – inconsistent with the ethic of love

hooks 94 (bell, Distinguished Professor in Residence @ Berea College, "Love as the Practice of Freedom," http://www.clas.ufl.edu/users/dreznik/Love%20as%20the%20Practice%20of%20Freedom%20by%20bell%20hooks.pdf)

A culture of domination is anti-love. It requires violence to sustain ¶ itself. To choose love is to go against the prevailing values of the culture. ¶ Many people feel unable to love either themselves or others because they ¶ do not know what love is. Contemporary songs like Tina Turner's ¶ "What's Love Got To Do With It" advocate a system of exchange around ¶ desire, mirroring the economics of capitalism: the idea that love is ¶ important is mocked. In his essay "Love and Need: Is Love a Package or a ¶ Message?" Thomas Merton argues that we are taught within the frame- ¶ work of competitive consumer capitalism to see love as a business deal: ¶ "This concept of love assumes that the machinery of buying and selling ¶ of needs is what makes everything run. It regards life as a market and love ¶ as a variation on free enterprise." Though many folks recognize and critique the commercialization of love, they see no alternative. Not knowing ¶ how to love or even what love is, many people feel emotionally lost; Others search for definitions, for ways to sustain a love ethic in a culture that ¶ negates human value and valorizes materialism.

#### The Aff’s insular struggle against gender inequality undermines coalitional politics – a broad-based, political vision is vital

Best and Kellner 1 (Steven, Associate Professor of Philosophy and Humanities – University of Texas and Douglas, Philosophy of Education Chair – UCLA, “Postmodern Politics and the Battle for the Future,” Illuminations, http://www.uta.edu/huma/illuminations/kell28.htm)

The emphasis on local struggles and micropower, cultural politics which redefine the political, and attempts to develop political forms relevant to the problems and developments of the contemporary age is extremely valuable, but there are also certain limitations to the dominant forms of postmodern politics. While an emphasis on micropolitics and local struggles can be a healthy substitute for excessively utopian and ambitious political projects, one should not lose sight that key sources of political power and oppression are precisely the big targets aimed at by modern theory, including capital, the state, imperialism, and patriarchy. Taking on such major targets involves coalitions and multi-front struggle, often requiring a politics of alliance and solidarity that cuts across group identifications to mobilize sufficient power to struggle against, say, the evils of capitalism or the state. Thus, while today we need the expansion of localized cultural practices, they attain their real significance only within the struggle for the transformation of society as a whole. Without this systemic emphasis, cultural and identity politics remain confined to the margins of society and are in danger of degenerating into narcissism, hedonism, aestheticism, or personal therapy, where they pose no danger and are immediately coopted by the culture industries. In such cases, the political is merely the personal, and the original intentions of the 1960s goal to broaden the political field are inverted and perverted. Just as economic and political demands have their referent in subjectivity in everyday life, so these cultural and existential issues find their ultimate meaning in the demand for a new society and mode of production. Yet we would insist that it is not a question of micro vs macropolitics, as if it were an either/or proposition, but rather both dimensions are important for the struggles of the present and future.[15] Likewise, we would argue that we need to combine the most affirmative and negative perspectives, embodying Marcuse's declaration that critical social theory should be both more negative and utopian in reference to the status quo.[16] There are certainly many things to be depressed about is in the negative and cynical postmodernism of a Baudrillard, yet without a positive political vision merely citing the negative might lead to apathy and depression that only benefits the existing order. For a dialectical politics, however, positive vision of what could be is articulated in conjunction with critical analysis of what is in a multioptic perspective that focuses on the forces of domination as well as possibilities of emancipation.

#### Radical approaches to gender produce insular and fragmented politics – dooms their activism and weakens alliance politics

Best and Kellner 1 (Steven, Associate Professor of Philosophy and Humanities – University of Texas and Douglas, Philosophy of Education Chair – UCLA, “Postmodern Politics and the Battle for the Future,” Illuminations, http://www.uta.edu/huma/illuminations/kell28.htm)

But it is also a mistake, we believe, to ground one's politics in either modern or postmodern theory alone. Against one-sided positions, we advocate a version of reconstructive postmodernism that we call a politics of alliance and solidarity that builds on both modern and postmodern traditions. Unlike Laclau and Mouffe who believe that postmodern theory basically provides a basis for a new politics, and who tend to reject the Enlightenment per se, we believe that the Enlightenment continues to provide resources for political struggle today and are skeptical whether postmodern theory alone can provide sufficient assets for an emancipatory new politics. Yet the Enlightenment has its blindspots and dark sides (such as its relentless pursuit of the domination of nature, and naive belief in "progress," so we believe that aspects of the postmodern critique of Enlightenment are valid and force us to rethink and reconstruct Enlightenment philosophy for the present age. And while we agree with Habermas that a reconstruction of the Enlightenment and modernity are in order, unlike Habermas we believe that postmodern theory has important contributions to make to this project. Various forms of postmodern politics have been liberatory in breaking away from the abstract and ideological universalism of the Enlightenment and the reductionist class politics of Marxism, but they tend to be insular and fragmenting, focusing solely on the experiences and political issues of a given group, even splintering further into distinct subgroups such as divide the feminist community. Identity politics are often structured around simplistic binary oppositions such as Us vs. Them and Good vs. Bad that pit people against one another, making alliances, consensus, and compromise difficult or impossible. This has been the case, for example, with tendencies within radical feminism and ecofeminism which reproduce essentialism by stigmatizing men and "male rationality" while exalting women as the bearers of peaceful and loving value and as being "closer to nature."[18] Elements in the black nationalist liberation movement in the 1960s and the early politics of Malcolm X were exclusionist and racist, literally demonizing white people as an evil and inferior race. Similarly, the sexual politics of some gay and lesbian groups tend to exclusively focus on their own interests, while the mainstream environmental movement is notorious for resisting alliances with people of color and grass roots movements.[19] Even though each group needs to assert their identity as aggressively as possible, postmodern identity politics should avoid falling into seriality and sheer fragmentation. These struggles, though independent of one another, should be articulated within counterhegemonic alliances, and attack power formations on both the micro- and macro-levels. Not all universalistic appeals are ideological in the sense criticized by Marx; there are common grounds of experience, common concerns, and common forms of oppression that different groups share which should be articulated -- concerns such as the degradation of the environment and common forms of oppression that stem from capitalist exploitation and alienated labor.

### A2 Rage Key to Liberation

#### Only our evidence is comparative Aggressive forms of resistance fail – MLK proves the ethic of love is key to progressive social change

hooks 94 (bell, Distinguished Professor in Residence @ Berea College, "Love as the Practice of Freedom," http://www.clas.ufl.edu/users/dreznik/Love%20as%20the%20Practice%20of%20Freedom%20by%20bell%20hooks.pdf)

The ability to acknowledge blind spots can emerge only as we expand our concern about politics of domination and our capacity to care ¶ about the oppression and exploitation of others. A love ethic makes this ¶ expansion possible. Civil rights movement transformed society in the ¶ United States because it was fundamentally rooted in a love ethic. No ¶ leader has emphasized this ethic more than Martin Luther King, Jr. He ¶ had the prophetic insight to recognize that a revolution built on any ¶ other foundation would fail. Again and again, King testified that he had ¶ "decided to love" because he believed deeply that if we are "seeking the ¶ highest good" we "find it through love" because this is "the key that ¶ unlocks the door to the meaning of ultimate reality." And the point of ¶ being in touch with a transcendent reality is that we struggle for justice, ¶ all the while realizing that we are always more than our race, class, or sex. ¶ When I look back at the civil rights movement which was in many ways ¶ limited because it was a reformist effort, I see that it had the power to ¶ move masses of people to act in the interest of racial justice-and be- ¶ cause it was profoundly rooted in a love ethic.¶ The sixties Black Power movement shifted away from that love ethic. ¶ The emphasis was now more on power. And it is not surprising that the ¶ sexism that had always undermined the black liberation struggle intensi-fied, that a misogynist approach to women became central as the equation of freedom with patriarchal manhood became a norm among black ¶ political leaders, almost all of whom were male. Indeed, the new militancy of masculinist black power equated love with weakness, announcing that the quintessential expression of freedom would be the ¶ willingness to coerce, do violence, terrorize, indeed utilize the weapons ¶ of domination. This was the crudest embodiment of Malcolm X's bold ¶ credo "by any means necessary."

### A2 Bender

#### It’s all or nothing – must focus on ALL forms of oppression simultaneously

Nienhuis 09 (Nancy, Senior Vice President for Operations, Dean of Students, and Professor (Non-Tenured) of Theology and Social Justice at Andover Newton Theological School, "Revolutionary Interdependence," Critical Perspectives on bell hooks, p. 205)

Solidarity under such circumstances is difficult to attain. As hooks points out, "To maintain this commitment to solidarity we must be ever vigilant, living as we do in a society where internalized racism and sexism make it a norm for us to treaty one another with disrespect." Solidarity requires that we understand how we both benefit from and are hurt by systems of power, and that systems of power shift, impacting us one way in one situation and another way in another. hooks provides numerous examples of this phenomenon throughout her work. In Feminist Theory, she takes to task "privileged women who live at the center, whose perspectives on reality rarely include knowledge or awareness of the lives of women and men who live in the margin." Elsewhere she points out that black men have to acknowledge "that sexism empowers them despite the impact of racism in their lives." What's more, power systems encourage both blacks and whites to focus on race rather than class. For blacks in particular, recognizing class differences destabilizes the idea that racism affects all blacks equally. Yet unless we focus on all forms of oppression simultaneously, we cannot build true coalitions for change. Either we all work together for a transformed world or none of us will get there.