## 1AC

Same Hostilities 1AC as Kentucky Round 1

## 2AC

### Framework

#### The role of the ballot is to judge the desirability of the 1ac plan—even if we have no direct power to enact it, simulating consequences and evaluating the nuances of our hypothetical is important to understand and navigate those complex processes

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Student Organizations and Journals Mirroring law schools’ growing institutional focus on national security law is increased student interest in the field, manifest through student organizations and student - run journals. Of the top 100 ranked law schools, nearly three dozen have student organizations relating to national security law. 94 Sixteen of these have military law societies. 95 In the law review realm, not only have mainstream journals increasingly published articles in this area, but eight journals have adopted a strong focus on this area, with three solely dedicated to nat ional security law: the Georgetown Law - Syracuse Law Journal of National Security Law and Policy , the annual William Mitchell College of Law Journal of the National Security Forum , and the Harvard Law’s National Security Journal (initiated in Spring 2010). 96 These institutional developments suggest that law schools, as a structural matter, are responding to the growing demand for well - trained students. Thus far, theapproach has been an organic process of responding on a case - by - case basis. **The problem is that**, for the most part, **these** programs and institutions **are situated within traditional models**, thus **reflecting** the **dominant divisions** and pedagogical aims of the broader institutions. Yet many of these approaches were adopted with a view towards the pra ctice of law generally, and not with specific focus on the challenges facing lawyers that want to move into national security law. III. L EGAL P EDAGOGY The practice of law , as suggested above, is deeply political in nature, with lawyers not merely providing a service to the community, but exercising government power and seeking to limit the same. This makes the profession susceptible to political shifts. It is thus perhaps unsurprising that the compromise forged between conflicting aims ( the practical realities of the practice of law, paired with the aspirations of critical distance and debate) r epeatedly surface s in the wake of military conflict. It was , after all, following the Civil War t hat Harvard confronted the outmoded, receptive nature of legal education. Subjected to recitation of treatises prepared years in advance, students had little to no agency in the classroom. 97 Harvard Law Dean Christopher Columbus Langdell sent shock waves through the system when he introduced three fundamental innovations, the aim of which was to inculcate academic achievement in students: he began sequencing courses, he created the case method of teaching, and he invented the (now infamous) issue - spotter examination, requiring students to respond in writing to complex hypothetical problems. 98 At the time, Oxford and Cambridge considered a liberal education to be sufficient preparation for the professions; the study of common law and other professional educ ation was left to the apprenticeship process. Students would be asked merely to present clients’ complaints in the appropriate legal form (i.e., the correct “writ” or “form of action”, as appropriate to the facts of the case) to gain access to the courts. Students would be asked merely to present c lients’ complaints in the appropriate legal form (i.e., the correct “writ” or “form of action”, as appropriate to the facts of the case) to gain access to the courts. Moskovitz explains, “Students listened to lectures (some by professors, but many by judge s and practicing lawyers) and read textbooks that distilled the rules from the cases. Both activities were essentially passive: the student absorbed information but did not interact much with the teacher.” innovations thus flew in the face of both U.S. norms and those adopted across the Atlantic. 99 They at once recognized the importance of the practice of law, while providing to the legal academy the distinction of critical scholarly analysis. The decision to expand into the practice of law subsequently created divisions within the research university. Scholars saw their role as ensuring that students obtained a certain distance from the law and, as s uch, could subject it to more rigorous critique. The goal of practitioners in many ways proved the opposite: to immerse students so directly in the law as to give them fluency in the practice of the same. In the ensuing years, new evaluations of legal pedagogy have accompanied the country’s engagement in military hostilities. World War I , for instance, gave way to the Reed Report, which considered how those returning from war would seek to re - shape the existing institutions. Jerome Frank’s work, calling for greater engagement of the academy in the practice of law, bookended World War II. The close of Vietnam witnessed the first ABA Task Force Report on the role of legal education. The Cramton Report was soon followed by the MacCrate Report — coinc ident with the ending of the Cold War. A crucial weakness in many of these studies is that they have assumed the practice of law writ large to be the object of the inquiry — obfuscating, in the process, the practice of law in discreet contexts. Simultaneo usly, much of the discussion assumes as a given the division between doctrinal and clinical education, missing in the process the potential for developing a new framework for legal education. Perhaps most importantly, these inquiries, like many that mark the current pedagogical debate, have failed to appreciate the importance of the goals most appropriate to national security law. A . Limitations of the Current Pedagogical Debate One problem with the current pedagogical debate in the legal academy is th at it is almost entirely grounded in a general understanding of the practice of law. There is very little new about this approach. In 1978, for instance, t he ABA’s Task Force on Lawyer Competency: The Role of Law Schools , chaired by Dean Roger Cramton, i dentified three competencies required for the practice of law writ large : (1) knowledge about law and legal institutions; (2) fundamental skills; and (3) professional attributes and values. 100 Instead of considering any of the sub - fields in depth, the repor t focused on general legal education. It identified fundamental skills as legal analysis, legal research, fact investigation, written and oral communication, interviewing, counseling, negotiation, and organization. 101 Professional values, in turn, centered on discipline, integrity, 99 A LFRED Z ANTZINGER R EED , T RAINING FOR THE P UBLIC P ROFESSION OF THE L AW (1921), p. 23 (“In accordance with this tradition of the ultimate responsibility of lawyers for their own educational qualifications, the English universities have not only been denied any control over the admission of a law student to practice. They have not even been made directly responsible for providing any portion of his education, in whi ch they participate only as volunteer agencies. In the field of general education they offer much more than the practitioners demand. [...]The conception...of institutional instruction in technical law as an essential part of a lawyer’s education, whether giv en in a university or whether given elsewhere, has never thoroughly reestablished itself in England sinc the decay of the original Inns of Courts. The pedagogical doctrine that this should constitute a distinct intermediate phase of his preparation, to be entered upon after he had completed his general education but before his practical training begins, is still more foreign to English thought. As a rule, an English student, having secured such general education as he thinks worth while or can afford, pro ceeds directly into a lawyer’s office.”) See also B RUCE A. K IMBALL , T HE I NCEPTION OF M ODERN P ROFESSIONAL E DUCATION : C. C. L ANGDELL , 1826 - 1906 (2009), p. 161. 100 A MERICAN B AR A SSOCIATION , S ECTION OF L EGAL E DUCATION AND A DMISSIONS TO THE B AR , R EPORT AND R EC OMMENDATIONS ON THE T ASK F ORCE ON L AWYER C OMPETENCY : THE R OLE OF L AW S CHOOLS (1979), at 9 - 10 [Hereinafter Cramton Report]. 101 Id. 21 conscientiousness, continued professional development, critical self - assessment, and hard work. 102 The report was not uncritical of the current state of play: w hile legal education did a r elatively good job of providing students with the knowledge of law, and legal analytical skills, as well as legal research and writing, it failed in three essential respects: (a) developing some of the fundamental skills underemphasized by traditional le gal education; (b) shaping attitudes, values, and work habits critical to the individual’s ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fi elds of lawyer practice. 103 The Report offered dozens of recommendations to address the gap. 104 Ten years later, following the end of the Cold War, the American Bar Association’s Section of Legal E ducation and Admissions to the Bar appointed yet another task force to look at the role of legal education in preparing attorneys for practice. Once again, it took a cookie - cutter approach to the subject, assuming legal education prepared students for a uniform fi eld. Chaired by Robert MacCrate, the resulting 414 - page report included within it a “Statement of Fundamental Lawyering Skills and Professional Values”, in which it highlighted ten fundamental skills and four values to guide those seeking to enter the pr ofession. 105 The goal of legal education was and ought to be developing students’ skills with regard to problem - solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and ADR, organiz ation and management of legal work, and recognizing and resolving legal dilemmas . 106 With the aim of legal education thus defined, the report went on to note the fundamental values of the profession: the provision of competent representation, striving to p romote justice, fairness, and morality, working to improve the profession, and professional development. 107 Cognizant of the critiques that would inevitably follow, the Report noted that the skills and values thus presented was not definitive; instead, the y provided a starting point for further discussion of different areas of the profession. The aim was not to lock schools into a specific curriculum, to create criteria for accreditation, or to cement bar examiners into one approach. In achieving these goa ls, the Report emphasized the importance of clinical education: Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. . . . clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility an d deepen their appreciation for their own values as well as those of the profession as a whole. 108 102 Id., at 10. 103 Id., at 14. 104 Id., at 3 - 7, recommendations 3 - 5. 105 A MERICAN B AR A SSOCIATION S ECTION OF L EGAL E DUCATION AND A DMI SSION TO THE B AR , L EGAL E DUCATION AND P ROFESSIONAL D EVELOPMENT : A N E DUCATIONAL C ONTINUUM , R EPORT OF THE T ASK F ORCE ON L AW S CHOOLS AND THE P ROFESSION : N ARROWING THE G AP (1992) [hereinafter, MacCrate Report]. 106 MacCrate Report, supra , at 121 - 22. 107 MacCrate Report, supra , at 140 - 41. 108 MacCrate Report, supra ,at 238. 25 la wyer. Not only must students understand these processes, Baker argues, but they must take into account the way in which processes unique to national security law influence lawyers’ ability to engage in traditional legal analysis and recommendation. The opportunity, for instance, for lawyers to engage in considered debate about legal interpretations or to have their work cross - checked by other attorneys, perhaps even more steeped in these fields, may be limited. Baker explains, Lawyers tend to focus on t he formal aspects of constitutional government – legislation, the oversight hearing, the Justice Department opinion, and presidential statements. For sure, these legal events dominate constitutional history and precedent. However, much of constitutional practice within each branch, and between each branch, is informal in nature, outside public view, and without documentation. 126 Beyond the informal nature of such processes is the classified context within which government attorneys operate. Two salient p oints here stand out: first is the difficulty of working collaboratively in a classified context when time is of the essence . That is, even where a number of legal experts may be privy to the information, the abbreviated timeline under which national security attorneys must work **limits** the extent to which collaboration may occur. The second point centers on limitations on the number of individuals with whom a lawyer can discuss the specific matter in question. There may be very few legal experts with whom an attorney can consult. Nevertheless, **decisions** reached **in these contexts** may have **significant implications**: they may shift the U.S. legal posture on domestic and international instruments, with formidable consequences for operations, U.S. policy, and safety and security. These characteristics of national security law mean that law schools must sharpen students’ analytical skills, as well as their substantive knowledge. That is, schools must not just teach students how to think about the law, but they must convey a significant amount of what the law actually is so that students have some idea of the current authorities and the framing and the groundwork on which future initiatives are built. Simultaneously, they must make students aware of the way in which formal and informal process influences the quality of their legal analysis and understanding, and help them to develop different tools to manage such processes to ensure better performance. With the black letter law in national security rapidly changing and growing, law schools must further look at what the emerging topics are and adjust existing courses and offer new top ics accordingly. This is a different model than the relative stasis marking much of the 20 th Century. Most schools have generally agreed over the course of decades that criminal law, criminal procedure, constitutional law, civil procedure, contracts, tor ts, and property, merit attention. Eventually schools began to offer courses in new areas, such as international law, and environmental law. But the sudden explosion in national security law here means two things: first, the re - evaluation of traditional classes to include new and emerging areas. Material support provisions, new surveillance authorities, and the difference between Title III orders and Foreign Intelligence Surveillance Court warrants may thus become an important part of Criminal Procedure . Regulatory courses, in turn, may need to expand to include new financial regulations unique to the national security world. Second, rapid changes suggest the construction of new courses, offering both novel combinations of subjects as well as new substa ntive areas, such as courses focused on international law and habeas corpus, pandemic disease and consequence management law, intelligence law, or cyber threats. 126 B AKER , supra note 5 , at 63. 26 As a pedagogical matter then, examination of new and emerging areas must be incorporated into the doctrinal study of legal authorities, even as the processes at work in the national security realm are featured. Active review of courses across the board wi ll further accomplish this aim — an approach somewhat antithetical to traditional approaches to teaching, where faculty members typically offer (relatively static) introductory courses, paired with upper level courses on matters of particular interest. New organization may therefore be required to bring national security law faculty and curriculum together, as an intellectual and structural enterprise, to consider the breadth and range of current course offerings. b. “ Washington Context ” While recognizing t he importance of legal authorities and processes, in the field of national security law, both may be overridden by considerations unique to what may be called the “ Washington context ” . The inherent political friction between the branches of government, the institutional frictions between Departments and Agencies, and the interpersonal components that accompany the exercise of power all influence the manner in which national security l aw evolves. To the extent that law schools ignore this aspect of the practice, they do students a great disservice. To take an example that arose in one of my course s , students may (correctly) read HSPD 5 and the Homeland Security Act of 2002 to mean th at the Secretary of Homeland Security has the authority to order an evacuation. To act on this authority, however, without direct communication with (and permission from) the White House, would be inappropriate. This type of Washington - based, p olitical a uthority is critical to the exercise of power. Herein lies the rub: national security instruments often incorporate power that has significant domestic and international political ramifications. The stakes are high. It is thus imperative that students **understand** the broader authorities and **processes** at work. Such processes extend beyond the executive branch to dealings with Congress — a branch often sidelined in law school curricula. Lawyers working in the field, from the executive branch and legislati ve branches to private industry, must understand the political processes in Congress in order to be more effective. The relative strength of different committees, the contours of legislative oversight, the range of policy documents applicable to the field (and required by Congress via statute), the formal and informal mechanisms to obtain information relating to executive branch national security matters, the role of party politics — all of this proves relevant. Understanding political authority extends to chain of command, as well as inter - agency processes. c. Policy Environment The “ Washington context” can be distinguished from a second way in which political considerations enter into national security law: namely, the broader policy environment. On e way to understand this is in terms of the push and pull of policymaking. In the former realm, law constitutes just one of many competing demands that policymakers take into account before deciding which actions to pursue. In the latter area, the impact of the actions taken is felt in both the domestic and international arena. Each constitutes an ex ante consideration for lawyers operating in this domain. Within government practice, in determining which course to set, the role that law plays may be just one of many competing demands on the policymaker’s decision - making strategy. In order to secure a place for legal considerations, lawyers must therefore be cognizant of the different pressures influencing the process. Part of this is 27 learning how to communicate clearly with those involved in making and implementing policy. It also entails developing a feel for when and how to initiate appropriate participa tion. That is, lawyers must insert themselves into the conversation, representing the interests of law itself. I n policy discussions, lawyers are often n ot seated at the table. T hey may be a “plus one” in the discussion, and, in this capacity, they mus t come to terms with the fact that the law is only one consideration at play. They may have to accept being relegated to a supporting role, with their recommendation overridden. In this context, they must grapple with not just personality management, but issues related to ego and subordination. They must then decide how to react to this situation, when and how to take the initiative, when to concede, and when to pr oceed through other channels. In brief, they must learn both how to insert legal considerations into what is essentially a policy debate , and how to treat the outcome of such efforts in the context of professional and personal goals . At the back end, legal recommendations carry with them strong policy implications. It is worth noting at the ou tset that t here is disagreement over whether national security lawyers need to take this into account. Professor John Yoo, for instance, argues that it is not the national security lawyer’s role to think about the policy impact of legal advice given — even when delivered at the highest levels of government . 127 The logic behind this is that separating law from policy is essential to good lawyering , and that to combine policy considerations with strict legal analysis undermines the strength of the intellectual endeavor, as well as the integrity of the advisory system itself. As an ex ante consideration, taking into account either competing interests or the resulting policy impact thus runs counter to the purpose of obtaining strict legal advice. Instead, it is for policymakers to balance competing concerns and to determine the most approp riate course of action. There is much to commend this strict adherence to the distinction between law and policy. The problem with this approach, however, is that it results in a sort of false silo, where lawyers ostensibly operate in a manner completely insulated from policy concerns. In national security law, this is simply not the case. Law and policy — for reasons discussed in Part I of this Article — often overlap. The result of attempting to ignore the policy side of the eq uation, moreover, may sidel ine law at the front end: i.e., when lawyers present not just a particular legal analysis, but act to insert considerations of law qua law into the policymaker’s decisionmaking process . Here, identifying and thinking about competing policy concerns provi des lawyers with important knowledge about how and when to insert legal considerations. Failure to take account of policy concerns may further entail a breach of professional responsibility and ethical obligations at the back end . It may be, for instanc e, that there is no legal bar to acting in a certain manner. ( It is precisely for this reason that criminal law continues to evolve. ) But absence of prohibition does not automatically translate into permission for action. A strict legal analysis may thu s suggest legality, where the actual implications of such actions would run contrary to legal or ethical norms. The role of national security law is here of great importance: as an exercise of power — indeed, at one extreme, the most coercive powers available to the state — failure to take into account the implications of the legal analysis may suggest a failure of professional responsibility. d . Adaptation and Evolution 127 John Yoo, Remarks , Debate on Guantanamo Bay Detainees, Oct. 12, 2005, Stanford Law School, Co - sponsored by the Federalist Society and the American Constitution Society. 28 Not only must students learn about legal and authorities and processes, the Washington context, and policy concerns, but they must learn how to adapt and evolve to deal with new and emerging bureaucratic and administrative structures. Innovation is the hallmark of this skill, and it is one that requires a different kind of learning than dominates in doctrinal settings. 128 In the national security world, p olitical leadership rapidly changes, with constant movement of personnel. Institutions themselves are in flux: the creation of the Department of Homeland Security, as aforemen tioned, placed twenty - two executive branch agencies — some of which were major and complex organs of the government, such as the U.S. Customs Service, the U.S. Coast Guard, the U.S. Secret Service, the Transportation Security Administration, and the Federal Emergency Management Agency — under one umbrella, growing by 2012 to some 216,000 people. 129 DHS agencies continue to evolve and morph as the mission of the Department steadily expands. The Department of Defense’s creation of NORTHCOM similarly generated two new domestic intelligence institutions and a substantial infrastructure to support the command. Treasury, the Department of Health and Human Services, the Department of State, and others have had to adapt to the new environment, in the process shifting i nstitutional structures. Collectively, what these characteristics mean is that those who take up positions within these entities need to be able to quickly adapt to new and changing legal and political authorities and processes. So, too, must **those outside of government**, who **need to respond** to new initiatives and rapidly changing institutional arrangements. The sheer size of the infrastructure and the number of new initiatives requires the ability to work in a fluctuating environment and to quickly iden tify changing power structures. 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. This significantly differs from the traditional model of legal edu cation, which tends to provide students with a set of facts, which they must then analyze. In contrast, l awyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determin e which information is reliable and relevant, and proceed with analysis and recommendations. These 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 were to be altered. 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 128 For rel ated discussion of innovation in the context of self - learning for corporate law, see Karl S. Okamoto, Learning and Learning - to - Learn by Doing: Simulating Corporate Practice in Law School , 45 J. OF L EGAL E D ., 495 (1995). 129 The Department of Homeland Security, the Executive Branch, available at http://www.whitehouse.gov/our - government/executive - branch (accessed Jan. 6, 2012). 29 intelligence gathering and analysis in a manner that yielded an optimal result. 130 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. At the same time, t he number of s ources 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, Presidentia l Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean is that national security law itself is rapidly changing. What this means is that l awyers inside and outside of government must keep abreast of constantly e volving provisions. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G7/G8, and other countries introduce new instruments whose reach includes U.S. interests. Rapid geopoliti cal 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 increase the importance of keeping 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. 131 In sum, the sheer amount of information the national security l awyer needs to assimilate is significant. The basic skills required in the 1970s thus may be the same — 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., to both 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 appea rs particularly inapp osite 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 m anner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Part of staying ahead of the curve means 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 overloadNational security law proves an information - rich, factually - driven environment. The ability to deal with such chaos, however, may be further hampered by gaps in the information available and the difficulty of engaging i n 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 more careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawye rs 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 - leve l, 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 initiative s, 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 here is of great consequence. The key here is learning to ask intelligentquestions to a ccommodate for chaos and uncertainty 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. That is, it means that analysis must be given in a transparent manner, i.e., contingent on a set of facts as are then 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 and indicating how such analysis might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving Part of dealing with factu al uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admit t edly, m uch has been made in the academy about the importance of problem - based learning as a method in developing students’ critical thinking skills. 132 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, as problem - solving in a classro om 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 ends suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativit y 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 pr actices , the Washington context, and policy considerations . Similarly, l ike 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 op erate. Time may not be a commodity in surplus. This context means that legal education must not only develop students’ complex fact - finding skills and the ability provide contingent analysis, but it must teach them how to swiftly and efficiently engage i n 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. 133 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 const ructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails. 134 For purposes of our present discussion, I understand it as the meta - conversation in the law. Whereas legal analysis and substantive knowledge focus o n 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. Part of the reason for this is because of the unique conditions that tend to accompany the introduction of national security provisions: often **introduced in the midst of** an **emergency**, new powers frequently **have 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. 135 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. 136 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make such 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. 137 In order to be withdrawn, legislators must demonstrate either that the provisions are not effective or that by withdrawing them, no violence will ensue Alternatively, legislators woul d have to acknowledge that some level of violence may be tolerated — a step no politician is willing to take. This steady ratcheting effect means that new powers, introduced in the heat of the moment, may become a permanent part of the statutory and re gulato ry 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. For all of this, 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 such authorities outside of the contemporary regime. 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 ter m, κριτιχοσ , provides the basis for advancing the human condition through reason and intellectual engagement. There is yet another way in which critical thought presents in national security law which may seem somewhat antithetical to the legal enterprise: particularly 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 legal analysis. That is, it may be important not to put certain options on the table, with a legal justification behind them. Such concerns are bound up in considerations of policy, professional respons ibility, and ethics. They may also relate to questions as to who one’s client is in the wo rld of national security law. 138 I t 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. A lternatively, 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 far e. What is perhaps unique about the way communication skills present in the national security world is the importance of modes of communication not traditionally recognized via formal models, such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting injects, and communications built on swiftly evolving and uncertain information. For m any of these types of exchanges — and unlike the significant amounts of time that accompany preparation of leng thy legal documents (and the painstaking preparation for oral argument that marks moot court preparations) — speed may be of the essence. Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closes t to the issues have exceedingly short amounts 138 For a thoughtful discussion of who constitutes the client in national security law, see B AKER , supra note 5, chapter 10. 33 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 Sup reme Court oral argument and witness cross - examination — 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 anal ysis 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 na tional security process would become dysfunctional. The delay alone would cause the policymaker to avoid**,** and perhaps evade, legal review . 139 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 r e s p o n s e . ” 140 The lawye r 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 li ght 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 ma y 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 both provide an external check on the pressures that have been internalized, by allowing th e 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 s a y . ” 141 Written and oral communication, may occur at highly irregular moments — yet it is at these moments (in th e 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 natur e 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 J udgment National security law often takes place in a high s takes environment. There is tremendous pressure on attorneys operating in the field — not least because of the coercive 139 B AKER , supra note 5 , at 65. 140 Id. 141 B AKER , supra note 5 , at 66. 34 nature of the authorities in question . The classified environment also plays a key role: m any 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 attorneys are thus placed is of a different order of magnit ude than many other areas of the law. Overlaying 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 institut ional authorities compete . Policy concerns similarly dominate the landscape . It is not enough for national security attorneys to claim that they si mply deal in legal advice. T heir analyses carry consequences for those exercising power, for those who are the targets of such authorities , 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 important in considerations of leadership and good judgment is the classified nature of so much of what is d one 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. 142 N ational security information (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 U nited States and is classified in acco rdance with an Executive Order.” Nine primary Executive Orders and two subsidiary ones have been issued in this realm . 143 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 num bers are still high: in FY 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification d e c i s i o n s . 144 The classification realm , moreover, in which national security lawyers are most active , is e xpanding . Namely, d erivative classification decisions — i.e., 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 76 million such decisions made. 145 This number is tr ipple 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 w ithin 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 engag e in debate and discussion over the law . O nce 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 deci sions within certain ag encies. 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 d ecisions. They are prevented by classification authorities from revealing these decisions, resulting 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 opportunit ies 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 ju dicial review. Two elements are here at work: first, v ery few cases relating to the many national security concerns that arise 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 underway. Second , courts have historically proved particularly reluctant to intervene on national security matters. J udicially - created devices such as politica l 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 5 - 7 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 a c c e p t e d . 146 Many times judges did not even bother to look at the evidence in question, before blocking evidence and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted — even where it had not been formally invoked. 147 In light of t he pressure put on national security lawy ers in the performance of their duties, the profound consequences of m any national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review , the practice of national security law depends upon a particularly rigorous and committed adherence to ethical standards an d professional responsibility. In other words, this is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordan ce with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that may present to national security attorneys, and to address the types of questions related to professional respons ibility that will confront them in the course of their careers . Closely related to this area is the necessity of exercising good judgment and leadership. This skill, like many of those discussed, may also be relevant to other areas of the law; however, th e type of leadership called f or in the world described above may 146 See Laura K. Donohue, The Shadow of State Secrets , U. P ENN . L. R EV . (2009). 147 Id. 36 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, fo r instance, may be considerably different from the provision of legal advice to policymakers. Leadership , too , may mean something different in a field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, creating new bureaucratic structures to more effectively r espond to threats, resigning when faced by unethical situations, or 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 s ituations 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 a ble to engage in continuous self - learning in order to improve their performance. In other words, they must be able to generate frameworks for identifying new and emerging legal and political authorities and processes, systems for handling factual chaos an d 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 wherewithal to create conditions of learning. Some of this learning may be generated by interpersonal feedback. Supervisors, law partners, and formal and informal mentors have traditionally perfor med a similar function. But in a highly political environment, where personnel frequently change, individuals repeatedly cross agencies in the course of their career, and classification limits cross - pollination, such opportunities may be limited. Thus, w hile feedback and growth may involve students’ ability to create and inculcate mentoring relationships, it may equally depend upon creating peer - to - peer learning opportunities, gaining feedback from colleagues, developing ex ante markers for reaching certa in goals, and following through with ex post analysis of one’s performance. In addition to the foregoing, n ational security lawyers need to be able to perform the six goals in tandem. That is, they need to be able to integrate these different skills into one experience. It is thus incumbent on law schools not just to emphasize these skills, but to give students the opportunity to layer their experiences. Students must learn to perform on all these fronts at once. Recognizing the importance of integrativ e learning, of course, is not new; however, for reasons discussed below, the structures that have been more broadly adopted within the legal academy to accomplish this aim are, on the whole, ill - suited to the substantive nature of the skills students need to develop as well as the task of performing such skills in near - simultaneous manner

#### It’s not just abstract extinction scenarios—there's unique value to focused discussions on specific simulations—it helps bridge the gap between theory and practice by informing provisional conclusions based on complex information.

Donohue, 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

V . T OTAL I MMERSION S IMULATION S The concept of simulations as an aspect of higher education, or in the law school environment, is not new . 162 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 s ecurity course that takes advantage of the doctrinal and experiential comp onents of law school education, and integrating the experience through a multi - day simulation. In 2009 I taught the first module based on this design at Stanford Law, which I develo ped 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 Off icial (“TopOff”) exercises, used to train government officials to respond to domestic c r i s e s . 163 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 specifi c 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. U nlike 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, t he 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 an d simulation conti nues to evolve . It offers a one model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security l a w y e r s . 164 A . Course Design The central idea in structuring the course, which I refer to as National Security Law Simulation 2.0 (“ NSL Sim 2.0 ”) 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 c o n c e r n s . 165 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 (i.e., directed and focused on certain areas of the law and legal education) and flexible (i.e., responsive to student input and decision - making). P erhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will in evitably 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. 166 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 Si m 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 f ocuses 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 part of the course design is in retaining 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 kn owle dge, and (3 ) critical thought. To be sure, 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 evolut ion [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 mu lti - user virtual environment. The use of such technology is critical to creating more powerful, immersive s i m u l a t i o n s . 167 It also allow s for continual interaction between the players. Multi - user virtual environments have the further advantage in h elping 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 p r a c t i c e s . 168 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 students to 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, two attorneys in practice, a media expert, six to eight former simulation students, and 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 the shifting authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional 44 respo nsibility. The two attorneys fro m 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. T hroughout the simulation, the C ontrol T eam is constantly reacting to student choices . Where 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 l eaking information to the media ). Unlike the more limited experiential tools of hypotheticals or doctrinal problems, 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: i.e., factual chaos and information overload. The drivin g 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 injects relating to background noise. Thus, unlike hypotheticals , doct rinal 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 real - time response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to push on different areas of the law and the s tudents’ 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 — i.e., the types of situations in which national security lawyers will find themselves . Particular emphasis is placed on nontraditional modes of communication : e.g., 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 a s during the last class ses sion . This is paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applic ations for search warrants under Title III, and administrative subpoenas such as National Securi ty Letters. In addition, students are required to prepare a paper prior to the simulation, outlining their legal authorities – and following the session, to deliver a 90 second oral briefing. 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 officials, nongovernmental organizations, and the media. This req uires 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 considerati ons that decisionmakers take into account in the national security domain. Scenarios are then selected with high consequence events in mind , to ensure that students recognize both the domestic and international dimensions of national security law . Further injects into 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 prom inent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast me dia, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercis e, in the course of which players may at times be required to appear before the camera. This media component thus helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decision s 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 injects from both the Control Team and the participants in the sim ulation itself. As aforementioned, one professor on the Control Team , and a practicing attorney who has previously gone through a simulation , focus on raising decision points that encourage students to consider ethical and professional considerations. Th roughout the Frameworkjudgment and leadership play a key role , directly impacting the players’ effectiveness , with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedb ack that players receive prior to, during, and following the simulation to help t hem to gauge their effectiveness. T he 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 Contr ol 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 insufficientThe 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 si mulation, 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 mento ring, 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 interaction s and provide additional debriefing . The simulation, moreover, is recorded through both the cyber portal and throu gh VNN, allowing students to go back and 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 issues that ar ose in the course of the simulation and with an aim towards developing frameworks for how to analyze 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 cour se. It is particularly helpful here to think about national security authorities on a continuum, as a way to press students on shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between c rime, drugs, terrorism and war. Another might push on the intersection of pandemic disease and biological weapons. A third could turn to cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal port ion 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 what 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 , emine nt 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 into the dominant constitutional authority, statut ory 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 aut horities, 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 resp onsibility 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 storyl ines that push on the interstices between different areas of the law. The storylines are used to present a coherent, non - linear scenario that can adapt to student injects. Each scenario is mapped out in a three to seven page document, which is then check ed 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, potentia l connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to push on 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 ( e.g., by someone who has traveled from overseas), but then for the storyline to move into the second realm (i.e., 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 pushing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and T itle 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, with 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 prove 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 upda tes, private communications, and the like. The five to six storylines, prep ared by the Control Team in consultation with experts, becomes the basis for the preparation of scenario “injects”: i.e., newspaper articles, VNN 47 broadcasts, reports from NGOs, private communications between officials, classified information, government l eaks, 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 p laced 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 do not occur at convenient times and may well involve limited sleep and competing d e m a n d s . 169 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Student s at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team th e 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 A rchives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the cour se 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), 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, all owing 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 m eetings, 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 d ifferent 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 assi gned 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 POTUS, the Vice President, the President’s Chief of Staff, the Governor of a state, and public health officials. 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 occurre d 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 simulat ion 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 t hat arose in regard to their grasp of the law, the types of decision - making processes that occurred , and the effectiveness or their — and other students’ — performance s . 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 c o n c l u d e s . 17V I .

#### It’s not a passive endeavor—tying knowledge to a specific recommendation creates a conduit for testing that research in a competitive space—that's a useful starting point

Farrar-Myers, 07 [Victoria A. Farrar-Myers, professor University of Texas at Arlington, PROMOTING ACTIVE LEARNING THROUGH SIMULATIONS IN PRESIDENCY CLASSES, <http://cstl-cla.semo.edu/Renka/PRG/PRG_Reports/Fall_2007.pdf>]

Lao-Tse’s insight captures the essence of an active learning based approach to education. Such an approach calls for students to have a role and responsibility in developing their own knowledge; in the words of John Dewey, learning is “something that an individual does when he studies. It is an **active**, personally conducted **affair**” (1924). Unlike more traditional teaching styles where the instructor simply transfers information to the student, who is required to do little more than act as a depository for such information (Freire, 1970) or as a sponge soaking it up (Keeley, Ali & Gebing, 1998; Fox-Cardamone & Rue, 2003), an active learning approach places an emphasis on students’ independent inquiry, restructuring of their knowledge, and other constructivist qualities (Niemi, 2002). Employing active learning strategies in political science classes not only has been shown to work (Brock & Cameron, 1999), but more importantly would seem to be a natural fit. “Learning is not a spectator sport” (Chickering and Gamson, 1987), and neither is the world of politics. As a result, one way to enhance students’ learning about the political world is for them to “talk about what they are learning, write about it, relate it to past experiences and apply it to their daily lives. They must make what they learn part of themselves” (Chickering and Gamson, 1987). Further, active learning techniques – particularly if tied to learning outcomes designed to promote higher order thinking skills such as analysis, application, synthesis, and evaluation (Bloom, 1956) – can help students prepare “to tackle a multitude of challenges that they are likely to face in their personal lives, careers, and duties as responsible citizens” (Tsui, 2002). As political scientists, we may be in the best position in the academy to promote a sense of civic engagement in our students, and the use of intentionally designed active learning techniques tied to specific learning outcomes can greatly assist us in helping to instill this sense. The use of active learning encompasses a wide array of teaching techniques that can be used in large classes as well as small ones; techniques such as: using guided lectures and answering open-ended, student-generated questions (Bonwell & Eison, 1991); using primary sources in the classroom (May, 1986); cooperative learning (Smith, 1986); and simulations and role-playing games (Shannon, 1986; for a general discussion on active learning strategies, see Bonwell & Eison, 1991; Astin et al., 1984; and Schomberg, 1986). However, finding a technique that works successfully can be influenced by: •Institutional variables: e.g., size of class, physical arrangement of classrooms, and lack of incentives for professors to undertake new active learning strategies (see generally Bonwell & Eison, 1991); •The professor: e.g., the professor’s comfort level with student interaction and the amount of control in the classroom the professor desires (see generally Bonwell & Sutherland, 1996); and •The students: e.g., prior exposure and experiences (Hoover, 2006), students’ different learning styles (Kolb, 1981; Cross, 1998), and student motivation (Gross Davis, 1993) or indifference (Warren, 1997) to participate in active learning activities. The POTUS and PASS projects were two semester-long, in-class simulations employing active learning techniques and designed to achieve desired course learning outcomes. Despite some initial reluctance by the students, these simulations helped them achieve the course outcomes, but more significantly generated a high level of efficacy, engagement, and understanding. Although the specific model employed may not work in every context (the variables noted above will create a different dynamic in each class), the process by which these projects were developed and employed may provide those who teach presidency-related classes with insights on how to best employ active learning techniques in their own setting. The 2008 presidential election marks the first time since 1952 that a sitting president or vice president will not be a candidate for nomination in either major party. As I was developing my general survey course on the U.S. Presidency in the fall of 2005, I contemplated how to make this factoid become more relevant to my students, especially since encouraging civic engagement and voter participation in the 18-24 year-old age group has been a focus in recent presidential races. I wanted a way to bring to life the usual discussion of presidential elections and encourage my students to become active participants in the process of identifying, evaluating, and promoting various candidates. Out of these thoughts germinated The POTUS Project – short for The President Of The United States Project. In this simulation, my students took on the role of political consultants responsible for developing a plan to guide their candidate to the Oval Office. Each student started by assessing the viability of a chosen candidate and then developing a strategy for winning that candidate’s party nomination. At mid-semester, the class divided into two groups – the two major parties – to hold a nomination convention where each party chose its own presidential-vice presidential ticket. Students had to caucus and advocate for their own candidate much like the Iowa caucus. From there, each team developed a “Vision Statement” for its candidate to let the voters know their candidate’s strategy for winning the general election, transitioning into power, and governing as president once in office. Each group presented its “Vision Statement” to the full class and to two real-world politiFall 2007 11 cal consultants. The students were not alone in their learning endeavor. I took the liberty of writing to each of our selected candidates, telling them about the project and asking them to write my students. Two of the candidates did and in sharing these letters with the class, my students and I became acutely aware that what we were learning has meaning outside the four walls of our classroom; the very lesson I hope to impart in each of my classes. In the end, The POTUS Project allowed the students to combine the course material with real life events and possibilities, and to work with their classmates to create a comprehensive electoral plan for someone who might become the next President of the United States. In doing so, the students were able to reinforce their learning through individual and group-effort written analysis and oral presentation. Further, the Project achieved the desired outcome of fostering collaborative action after individual analysis. Since most political enterprises take place within working groups or teams, these simulations allowed the students to gain experience with, as well as a direct appreciation for, this important political enterprise. Most significantly, through both a formal student evaluation of The POTUS Project and informal discussions with individual students, I found that they applied their knowledge in more sophisticated ways than in my more traditional course offering as well as reported **more ownership and comfort with the core concepts** of the class. They also reported a greater sense of efficacy and understanding of the presidential selection process; even two years later, I received an email from a student indicating how she is using the knowledge and insights gained from her class experience to be more engaged with this year’s actual presidential primaries. With the lessons I learned from The POTUS Project, I decided to employ a similar model in an upper-division course entitled Presidency and Foreign Policy. In The PASS Project (Presidential Advisory Strategy Simulation), the students played the role of foreign policy analysts and advisors. Each student selected his or her country of expertise, completed an assessment of the U.S. foreign relations with that country, and prepared a briefing paper for a current presidential candidate based upon a vision statement outlined by their candidate in the journal Foreign Affairs. Students then teamed-up with classmates who selected the same candidate and developed a comprehensive foreign policy/ national security strategy for that candidate. The students worked with their teams during the semester, and then shared their collective insights with their classmates in a final presentation during an “Advisory Summit.” The PASS Project required the students to play different roles throughout the simulation and, as a result, develop and employ different cognitive skills. In becoming a country expert, the students served as foreign policy analysts responsible for obtaining knowledge and being able to critically analyze it in meaningful ways. In fact, I was able to have a foreign policy analyst from the Department of State as a guest speaker by means of teleconferencing, and he showed the students how the skills they were using in class were the same ones that the speaker used in his job. The next portion of the simulation, where the students prepared a briefing paper, required them to apply their knowledge in a specific context of a presidential candidate’s general statements on foreign affairs. Finally, the group project required the students to synthesize their collective knowledge into a coherent plan for their presidential candidate and evaluate the effectiveness of their proposals. From the POTUS and PASS projects, a number of lessons emerged for effectively employing simulations in presidency classes, including: •Intentionality of design: Although the rewards in successfully employing an active-learning simulation are well worth it for both student and teacher, doing so requires that the instructor put substantial thought up front into the design of the program. Certainly, this lesson speaks to understanding the desired learning outcomes of the simulation, but also extends to such matters as evaluation and simulation mechanics. For example, students tend to be wary of group projects and free-riders who might bring a student’s grade down. To address this concern, I structured the evaluative aspects of the simulations so that most of the items for which the students were graded upon were based solely on their own work (e.g., individual assignments that were then later used in the group project or reflection papers on the group project process). In a few instances, though, where a student received the same grade as other group members for their collective effort, I limited both the number of people within each working subgroup, and also limited the percentage of the student’s overall grade attributed to the group effort. As far as design mechanics, the instructor needs to identify as many potential glitches as possible and develop prevention methods. For example, to ensure a proper balance of students working for either party in The POTUS Project or for any candidate in The PASS Project, I reserved the right to require students to switch to a different party or candidate as needed. •Assessing achievement of learning outcomes: Active learning techniques have been shown to have a powerful impact on students’ learning, for example on “measures of transfer of knowledge to new situations or measures of problem-solving, thinking, attitude change, or motivation for further learning” (McKeachie et al., 1986; for other studies measuring the impact of active learning techniques, see Kuh et al., 1997; Springer, 1997; Cabrera et al., 1998; McCarthy and Anderson, 2000; and Pascarella and Terenzini, 2005). Therefore, any simulation design should incorporate assessment tools that allow the instructor to measure the impact of the learning technique. For example, a pre- and post-test was administered to ascertain students’ base level of understanding of course material being covered by the simulation. Students also completed self-assessment and group assessments of their and their classmates’ participation in the simulation. Further, a reflection session was held to provide the students with the ability to discuss the strengths and weaknesses of the simulation. The insights culled from all of these various Fall 2007 12 assessments were later employed to refine implementation of similar models in future classes. •Obtaining student buy-in: As one scholar noted, “many active learning techniques fail simply because teachers do not take time to explain them” (Warren, 1997). Perhaps the best way to obtain the necessary student buy-in, therefore, appears to be communication and guidance from the professor (Felder & Brent, 2006). To this end, I included a detailed addendum to my syllabus in each class outlining every step of the simulation process and then discussed the simulation in the first day of class. Doing so put the students on notice of what was expected of them and giving them the opportunity to drop the class if they were not willing to put forth the necessary effort. Further, I sought input and feedback from the students throughout the semester – something that has been known to mitigate students’ concern related to the simulation (Sutherland, 1996) – and found ways to act on the feed back. For example, based on discussions with students, I decided to provide an additional incentive for students to do well on their oral presentation in The PASS Project by giving the winning team, as voted on by the students themselves, two extra questions to chose from in the short-answer portion of their final exam (i.e., instead of answering all eight short answer questions I gave them, the winning team had to answer eight of ten questions with each student choosing which eight she would answer). •Surrendering control: Ultimately, if the simulation is going to be a “personally conducted affair” of learning, to use John Dewey’s words, the students at some point have to control the process for themselves. Certainly, as the instructor, I established the framework of the simulations, the minimum requirements that needed to be satisfied, and the desired outcomes. In the context of oral presentations, the students showed great initiative in their presentations – from complex slide shows, to informative and eye-catching displays, to even doing their presentation in the form of a game show (Foreign Policy Jeopardy). By my surrendering some of the control over the process to the students, they made it their own and, in doing so, learned greater lessons for themselves than I simply could have told them. Of all the ways to evaluate and document the success of these simulations, the best way to do so is in the words of the students themselves. At the end of The POTUS Project, I asked the students to evaluate the Project, their contributions, and the contributions of others. Many pointed to the nominating convention as an astonishing experience – one where they were using the course material to persuade others. They noted how one student, who was alone in backing his candidate, used his knowledge to lobby others to place the candidate on the party’s ticket as the vice presidential candidate. As one student indicated, “the power of one armed with knowledge can really rule the world of poli tics!” This is the lesson of civic engagement that I wanted my students to learn – that one person, with commitment, informa tion, and passion, can influence and better the world around them – and it is a lesson that the use of active learning simulations can help them achieve.

#### Only interrogating the nuances of specific ideas captures the benefits of an open dialogue without sacrificing the importance of the topic

Mucher, 12 [“Malaise in the Classroom: Teaching Secondary Students about the Presidency” [Stephen Mucher](http://www.bard.edu/academics/faculty/faculty.php?action=details&id=1969) is assistant professor of history education in the Master of Arts in Teaching Program at Bard College, <http://www.hannaharendtcenter.org/?p=7741>]

Contemporary observers of secondary education have appropriately decried the startling lack of understanding most students possess of the American presidency. This critique should not be surprising. In textbooks and classrooms across the country, curriculum writers and teachers offer an abundance of disconnected facts about the nation’s distinct presidencies—the personalities, idiosyncrasies, and unique time-bound crises that give character and a simple narrative arc to each individual president. Some of these descriptions contain vital historical knowledge. Students should learn, for example, how a conflicted Lyndon Johnson pushed Congress for sweeping domestic programs against the backdrop of Vietnam or how a charismatic and effective communicator like Ronald Reagan found Cold War collaboration with Margaret Thatcher and Mikhail Gorbachev. But what might it mean to ask high school students to look across these and other presidencies to encourage more sophisticated forms of historical thinking? More specifically, what might teachers begin to do to promote thoughtful writing and reflection that goes beyond the respective presidencies and questions the nature of the executive office itself? And how might one teach the presidency, in Arendtian fashion, encouraging open dialogue around common texts, acknowledging the necessary uncertainty in any evolving classroom interpretation of the past, and encouraging flexibility of thought for an unpredictable future? By provocatively asking whether the president “matters,” the [2012 Hannah Arendt Conference](http://www.bard.edu/hannaharendtcenter/conference9-12/) provided an ideal setting for New York secondary teachers to explore this central pedagogical challenge in teaching the presidency. Participants in this special writing workshop, scheduled concurrently with the conference, attended conference panels and also retreated to consider innovative and focused approaches to teaching the presidency. Conference panels promoted a broader examination of the presidency than typically found in secondary curricula. A diverse and notable group of scholars urged us to consider the events and historical trends, across multiple presidencies, constraining or empowering any particular chief executive. These ideas, explored more thoroughly in the intervening writing workshops, provoked productive argument on what characteristics might define the modern American presidency. In ways both explicit and implicit, sessions pointed participants to numerous and complicated ways Congress, the judiciary, mass media, U.S. citizens, and the president relate to one another. This sweeping view of the presidency contains pedagogical potency **and has a place in** secondary **classrooms**. Thoughtful history educators should ask big questions, encourage open student inquiry, and promote civic discourse around the nature of power and the purposes of human institutions. But as educators, we also know that the aim and value of our discipline resides in place-and time-bound particulars that beg for our interpretation and ultimately build an evolving understanding of the past. Good history teaching combines big ambitious questions with careful attention to events, people, and specific contingencies. Such specifics are the building blocks of storytelling and shape the analogies students need to think through an uncertain future. Jimmy Carter’s oval office speech on July 15, 1979, describing a national “crisis of confidence” presented a unique case study for thinking about the interaction between American presidents and the populations the office is constitutionally obliged to serve. Workshop participants prepared for the conference by watching the [video footage](http://www.youtube.com/watch?v=KCOd-qWZB_g) from this address and reading parts of Kevin Mattson’s [history of the speech](http://www.nytimes.com/2009/07/15/books/excerpt-what-the-heck-mr-president.html). In what quickly became known as the “Malaise Speech,” Carter attempted a more direct and personal appeal to the American people, calling for personal sacrifice and soul searching, while warning of dire consequences if the nation did not own up to its energy dependencies. After Vietnam and Watergate, Carter believed, America needed a revival that went beyond policy recommendations. His television address, after a mysterious 10-day sequestration at Camp David, took viewers through Carter’s own spiritual journey and promoted the conclsions he drew from it. Today, the Malaise Speech has come to symbolize a failed Carter presidency. He has been lampooned, for example, on The Simpsons as our most sympathetically honest and humorously ineffectual former president. In one [episode](http://www.youtube.com/watch?v=D91IlKLtIH8), residents of Springfield cheer the unveiling of his presidential statue, emblazoned with “Malaise Forever” on the pedestal. Schools give the historical Carter even less respect. Standardized tests such as the NY Regents exam ask little if anything about his presidency. The Malaise speech is rarely mentioned in classrooms—at either the secondary or post-secondary levels. Similarly, few historians identify Carter as particularly influential, especially when compared to the leaders elected before and after him. Observers who mention his 1979 speeches are most likely footnoting a transitional narrative for an America still recovering from a turbulent Sixties and heading into a decisive conservative reaction. Indeed, workshop participants used writing to question and debate Carter’s place in history and the limited impact of the speech. But we also identified, through [primary sources](http://www.livingroomcandidate.org/commercials/1976) on the 1976 election and documents around the speech, ways for students to think expansively about the evolving relationship between a president and the people. A quick analysis of the [electoral map](http://en.wikipedia.org/wiki/File%3A1976prescountymap2.PNG) that brought Carter into office reminded us that Carter was attempting to convince a nation that looks and behaves quite differently than today. The vast swaths of blue throughout the South and red coastal counties in New York and California are striking. Carter’s victory map can resemble an electoral photo negative to what has now become a familiar and predictable image of specific [regional alignments](http://www.washingtonpost.com/wp-srv/politics/interactives/campaign08/election/uscounties.html) in the Bush/Obama era. The president who was elected in 1976, thanks in large part to an electorate still largely undefined by the later rise of the Christian Right, remains an historical enigma. As an Evangelical Democrat from Georgia, with roots in both farming and nuclear physics, comfortable admitting his sins in both Sunday School and Playboy, and neither energized by or defensive about abortion or school prayer, Carter is as difficult to image today as the audience he addressed in 1979. It is similarly difficult for us to imagine the Malaise Speech ever finding a positive reception. However, this is precisely what [Mattson](http://www.nytimes.com/2009/08/02/books/review/Bai-t.html) argues. Post-speech weekend polls gave Carter’s modest popularity rating a surprisingly respectable 11-point bump. Similarly, in a year when most of the president’s earlier speeches were ignored, the White House found itself flooded with phone calls and letters, almost universally positive. The national press was mixed and several prominent columnists praised the speech. This reaction to such an unconventional address, Mattson goes on to argue, suggests that the presidency can matter. Workshop participants who attended later sessions heard Walter Russell Mead reference the ways presidents can be seen as either transformative or transactional. In many ways, the “malaise moment” could be viewed as a late term attempt by a transactional president to forge a transformational presidency. In the days leading up to the speech, Carter went into self-imposed exile, summoning spiritual advisors to his side, and encouraging administration-wide soul searching. Such an approach to leadership, admirable to some and an act of desperation to others, defies conventions and presents an odd image of presidential behavior (an idea elaborated on by conference presenter Wyatt Mason). “Malaise” was never mentioned in Carter’s speech. But his transformational aspirations are hard to miss. In a nation that was proud of hard work, strong families, close-knit communities, and our faith in God, too many of us now tend to worship self-indulgence and consumption. Human identity is no longer defined by what one does, but by what one owns. But we've discovered that owning things and consuming things does not satisfy our longing for meaning. We've learned that piling up material goods cannot fill the emptiness of lives which have no confidence or purpose. It is this process—the intellectual act of interpreting Carter and his [in]famous speech as aberrant presidential behavior—that allows teachers and their students to explore together the larger question of defining the modern presidency. And it is precisely this purposeful use of a small number of primary sources that forces students to rethink, through writing and reflection, the parameters that shape how presidents relate to their electorate. In our workshop we saw how case studies, in-depth explorations of the particulars of history, precede productive debate on whether the presidency matters. The forgotten Carter presidency can play a disproportionately impactful pedagogical role for teachers interested in exploring the modern presidency. As any high school teacher knows, students rarely bring an open interpretive lens to Clinton, Bush, or Obama. Ronald Reagan, as the first political memory for many of their parents, remains a polarizing a figure. However, few students or their parents hold strong politically consequential opinions about Carter. Most Americans, at best, continue to view him as a likable, honest, ethical man who is much more effective as an ex-president than he was as president. Workshop participants learned that the initial support Carter received after the Malaise Speech faded quickly. Mattson and some members of the administration now argue that the President lacked a plan to follow up on the goodwill he received from a nation desiring leadership. Reading [Ezra Klein](http://m.newyorker.com/reporting/2012/03/19/120319fa_fact_klein), we also considered the possibility that, despite all the attention educators give to presidential speeches (as primary sources that quickly encapsulate presidential visions), there is little empirical evidence that any public address really makes much of a difference. In either case, Carter’s loss 16 months later suggests that his failures of leadership both transformational and transactional. Did Carter’s speech matter? The teachers in the workshop concluded their participation by attempting to answer this question, working collaboratively to draft a brief historical account contextualizing the 1979 malaise moment. In doing so, we engaged in precisely the type of activity missing in too many secondary school classrooms today: interrogating sources, corroborating evidence, debating conflicting interpretations, paying close attention to language, and doing our best to examine our underlying assumptions about the human condition. These efforts produced some clarity, but also added complexity to our understanding of the past and led to many additional questions, both pedagogical and historical. In short, our writing and thinking during the Arendt Conference produced greater uncertainty. And **that reality alone suggests that study of the presidency does indeed matter.**

#### The AFF’s approach to the topic is a method for dispute resolution – normative policy prescriptions are educationally valuable and don’t deny agency

Ellis, et al, 09 [Richard, Ph.D. University of California, Berkeley, degree completed December 1989, M.A. University of California, Berkeley, Political Science, 1984, B.A. University of California, Santa Cruz, Politics, 1982, Debating the Presidency: Conflicting Perspectives on the American Executive, p. google books,]

In 1969 the political scientist Aaron Wildavsky published a hefty reader on the American presidency. He prefaced it with the observation that “the presidency is the most important political institution in American life” and then noted the paradox that an institution of such overwhelming importance had been studied so little. “The eminence of the institution,” Wildavsky wrote, “is matched only by the extraordinary neglect shown to it by political scientists. Compared to the hordes of researchers who regularly descend on Congress, local communities, and the most remote foreign principalities, there is an extraordinary dearth of students of the presidency, although scholars ritually swear that the presidency is where the action is before they go somewhere else to do their research.”1 Political scientists have come a long way since 1969. The presidency remains as central to national life as it was then, and perhaps even more so. The state of scholarly research on the presidency today is unrecognizable compared with what it was forty years ago. A rich array of new studies has reshaped our understanding of presidential history, presidential character, the executive office, and the presidency’s relationship with the public, interest groups, parties, Congress, and the executive branch. Neglect is no longer a problem in the study of the presidency. In addition, those who teach about the presidency no longer lack for good textbooks on the subject. A number of terrific books explain how the office has developed and how it works. Although students gain a great deal from reading these texts, even the best of them can inadvertently **promote a passive learning experience.** Textbooks convey what political scientists know, but the balance and impartiality that mark a good text can **obscure the contentious nature** of the scholarly enterprise. Sharp disagreements **are often smoothed over** in the writing. The primary purpose of Debating the Presidency **is to allow students to** participate **directly in the ongoing real-world controversies swirling around the presidency and to judge for themselves which side is right.** It is premised philosophically on our view of students as active learners to be engaged rather than as passive receptacles to be filled. The book is designed to promote a classroom experience in which students debate and discuss issues rather than simply listen to lectures. Some issues, of course, lend themselves more readily to this kind of classroom debate. In our judgment, questions of a normative nature —**asking** not just what is, **but what ought to be**—are likely to foster the most interesting and engaging classroom discussions. So in selecting topics for debate, we generally eschewed narrow but important empirical questions of political science—such as whether the president receives greater support from Congress on foreign policy than on domestic issues—for broader questions that include empirical as well as normative components—such as **whether the president has usurped the war power** that rightfully belongs to Congress. We aim not only to teach students to think like political scientists, **but also to encourage them to think like democratic citizens**. Each of the thirteen issues selected for debate in this book’s second edition poses questions on which thoughtful people differ. These include whether the president should be elected directly by the people, whether the media are too hard on presidents, and whether the president has too much power in the selection of judges. Scholars are trained to see both sides of an argument, but we invited our contributors to choose one side and defend it vigorously. Rather than provide balanced scholarly essays impartially presenting the strengths and weaknesses of each position, Debating the Presidency leaves the balancing and weighing of arguments and evidence to the reader. The essays contained in the first edition of this book were written near the end of President George W. Bush’s fifth year in office; this second edition was assembled during and after Barack Obama’s first loo days as president. The new edition includes four new debate resolutions that should spark spirited classroom discussion about the legitimacy of signing statements, the war on terror, the role of the vice presidency, and the Twenty-second Amendment. Nine debate resolutions have been retained from the first edition and, wherever appropriate, the essays have been revised to reflect recent scholarship or events. For this edition we welcome David Karol, Tom Cronin, John Yoo, Lou Fisher, Peter Shane, Nelson Lund, Doug Kriner, and Joel Goldstein, as well as Fred Greenstein, who joins the debate with Stephen Skowronek over the importance of individual attributes in accounting for presidential success. In deciding which debate resolutions to retain from the first edition and which ones to add, we were greatly assisted by advice we received from many professors who adopted the first edition of this book. Particularly helpful were the reviewers commissioned by CQ Press: Craig Goodman of Texas Tech University, Delbert J. Ringquist of Central Michigan University, Brooks D. Simpson of Arizona State University, and Ronald W. Vardy of the University of Houston. We are also deeply grateful to chief acquisitions editor Charisse Kiino for her continuing encouragement and guidance in developing this volume. Among the others who helped make the project a success were editorial assistants Jason McMann and Christina Mueller, copy editor Mary Marik, and the book’s production editor, Gwenda Larsen. Our deepest thanks go to the contributors, not just for their essays, but also for their excellent scholarship on the presidency.

### Util

#### Case outweighs – They haven’t denied any specific truth claims of the 1AC – Unchecked executive authority damages credibility and makes sustaining multilateral institutions impossible – also Presidents are prone to miscalculation – ensures conflicts escalate – err aff

#### Util is best

David Cummiskey, Associate Professor of Philosophy @ Bates College & a Ph.D. from UM, 1996, Kantian Consequentialism, Pg. 145-146

In the next section, I will defend this interpretation of the duty of beneficence. For the sake of argument, however, let us first simply assume that beneficence does not require significant self-sacrifice and see what follows. Although Kant is unclear on this point, we will assume that significant self-sacrifices are supererogatory. Thus, if I must harm one in order to save many, the individual whom I will harm by my action is not morally required to affirm the action. On the other hand, I have a duty to do all that I can for those in need. As a consequence **I am faced with a dilemma: If I act, I harm a person in a way that a rational being need not consent to; if I fail to act, then I do not do my duty to those in need and thereby fail to promote an objective end.** Faced with such a choice, which horn of the dilemma is more consistent with the formula of the end-in-itself? **We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract “social entity.” It is not a question of some persons having to bear the cost for some elusive “overall social good.”** Instead, **the question is whether some persons must bear the inescapable cost for the sake of other persons.** Robert Nozick, for example, argues that “**to use a person in this way does not sufficiently respect and take account of the fact that he [or she] is a separate person, that** ~~his~~ **is the only life he [or she] has.” But why is this not equally true of all those whom we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, we fail to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction.** In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? **A morally good agent recognizes that the basis of all particular duties is the principle that “rational nature exists as an end in itself.”** Rational nature as such is the supreme objective end of all conduct. **If one truly believes that all** rational beings **have an equal value then the rational solution to such a dilemma involves maximally promoting the lives and liberties of as many** rational beings **as possible**. **In order to avoid this** conclusion, **the non-consequentialist** Kantian **needs to justify agent-centered constraints.** As we saw in chapter 1, however, even most Kantian **deontologists recognize that agent-centered constraints require a non-value based rationale.** But we have seen that Kant’s normative theory is based on an unconditionally valuable end. How can a concern for the value of rational beings lead to a refusal to sacrifice rational beings even when this would prevent other more extensive losses of rational beings? If the moral law is based on the value of rational beings and their ends, then what is the rationale for prohibiting a moral agent from maximally promoting these two tiers of value? **If I sacrifice some for the sake of others, I do not use them arbitrarily, and I do not deny the unconditional value of rational beings. Persons may have “dignity,** that is, **an unconditional and incomparable worth” that transcends any market value, but persons also have a fundamental equality that dictates that some must sometimes give way for the sake of others. The concept of the end-in-itself does not support the view that we may never force another to bear some cost in order to benefit others**. If on focuses on the equal value of all rational beings, then **equal consideration suggests that one may have to sacrifice some to save many**.

#### Prior questions fail and empirics are enough to justify action

Owen 2 [David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7]

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### **Broad indicts of epistemology don’t take out our impacts – you should weigh specific evidence to get closer to the truth**

Kratochwil, professor of international relations – European University Institute, ‘8 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

In what follows, I claim that the shift in focus from “demonstration” to science as practice provides strong prima facie reasons to choose pragmatic rather than traditional epistemological criteria in social analysis. Irrespective of its various forms, the epistemological project includes an argument that all warranted knowledge has to satisfy certain field- independent criteria that are specified by philosophy (a “theory of know- ledge”). The real issue of how our concepts and the world relate to each other, and on which non-idiosyncratic grounds we are justified to hold on to our beliefs about the world, is “answered” by two metaphors. The first is that of an inconvertible ground, be it the nature of things, certain intuitions (Des- cartes’ “clear and distinct ideas”) or methods and inferences; the second is that of a “mirror” that shows what is the case. There is no need to rehearse the arguments demonstrating that these under- lying beliefs and metaphors could not sustain the weight placed upon them. A “method” à la Descartes could not make good on its claims, as it depended ultimately on the guarantee of God that concepts and things in the outer world match. On the other hand, the empiricist belief in direct observation forgot that “facts” which become “data” are – as the term suggests – “made”. They are based on the judgements of the observer using cultural criteria, even if they appear to be based on direct perception, as is the case with colours.4 Besides, there had always been a sneaking suspicion that the epistemo- logical ideal of certainty and rigour did not quite fit the social world, an objection voiced first by humanists such as Vico, and later rehearsed in the continuing controversies about erklären and verstehen (Weber 1991; for a more recent treatment see Hollis 1994). In short, both the constitutive nature of our concepts, and the value interest in which they are embedded, raise peculiar issues of meaning and contestation that are quite different from those of description. As Vico (1947) suggested, we “understand” the social world because we have “made it”, a point raised again by Searle concerning both the crucial role played by ascriptions of meaning (x counts for y) in the social world and the distinction between institutional “facts” from “brute” or natural facts (Searle 1995). Similarly, since values are constitutive for our “interests”, the concepts we use always portray an action from a certain point of view; this involves appraisals and prevents us from accepting allegedly “neutral” descriptions that would be meaningless. Thus, when we say that someone “abandoned” another person and hence communicate a (contestable) appraisal, we want to call attention to certain important moral implica- tions of an act. Attempting to eliminate the value-tinge in the description and insisting that everything has to be cast in neutral, “objective”, observational language – such as “he opened the door and went through it” – would indeed make the statement “pointless”, even if it is (trivially) “true” (for a powerful statement of this point, see Connolly 1983). The most devastating attack on the epistemological project, however, came from the history of science itself. It not only corrected the naive view of knowledge generation as mere accumulation of data, but it also cast increasing doubt on the viability of various field-independent “demarcation criteria”. This was, for the most part, derived from the old Humean argument that only sentences with empirical content were “meaningful”, while value statements had to be taken either as statements about individual preferences or as meaningless, since de gustibus non est disputandum. As the later dis- cussion in the Vienna circle showed, this distinction was utterly unhelpful (Popper 1965: ch. 2). It did not solve the problem of induction, and failed to acknowledge that not all meaningful theoretical sentences must correspond with natural facts. Karl Popper’s ingenious solution of making “refutability” the logical cri- terion and interpreting empirical “tests” as a special mode of deduction (rather than as a way of increasing supporting evidence) seemed to respond to this epistemological quandary for a while. An “historical reconstruction” of science as a progressive development thus seemed possible, as did the specification of a pragmatic criterion for conducting research. Yet again, studies in the history of science undermined both hopes. The different stages in Popper’s own intellectual development are, in fact, rather telling. He started out with a version of conjectures and refutations that was based on the notion of a more or less self-correcting demonstration. Con- fronted with the findings that scientists did not use the refutation criterion in their research, he emphasised then the role of the scientific community on which the task of “refutation” devolved. Since the individual scientist might not be ready to bite the bullet and admit that she or he might have been wrong, colleagues had to keep him or her honest. Finally, towards the end of his life, Popper began to rely less and less on the stock of knowledge or on the scientists’ shared theoretical understandings – simply devalued as the “myth of the framework” – and emphasised instead the processes of communica- tion and of “translation” among different schools of thought within a scien- tific community (Popper 1994). He still argued that these processes follow the pattern of “conjecture and refutation”, but the model was clearly no longer that of logic or of scientific demonstration, but one that he derived from his social theory – from his advocacy of an “open society” (Popper 1966). Thus a near total reversal of the ideal of knowledge had occurred. While formerly everything was measured in terms of the epistemological ideal derived from logic and physics, “knowledge” was now the result of deliberation and of certain procedural notions for assessing competing knowledge claims. Politics and law, rather than physics, now provided the template. Thus the history of science has gradually moved away from the epistemo- logical ideal to focus increasingly on the actual practices of various scientific communities engaged in knowledge production, particularly on how they handle problems of scientific disagreement.5 This reorientation implied a move away from field-independent criteria and from the demonstrative ideal to one in which “arguments” and the “weight” of evidence had to be appraised. This, in turn, not only generated a bourgeoning field of “science studies” and their “social” epistemologies (see Fuller 1991), but also suggested more generally that the traditional understandings of knowledge production based on the model of “theory” were in need of revision. If the history of science therefore provides strong reasons for a pragmatic turn, as the discussion above illustrates, what remains to be shown is how this turn relates to the historical, linguistic and constructivist turns that preceded it. To start with, from the above it should be clear that, in the social world, we are not dealing with natural kinds that exist and are awaiting, so to speak, prepackaged, their placement in the appropriate box. The objects we investi- gate are rather conceptual creations and they are intrinsically linked to the language through which the social world is constituted. Here “constructivists”, particularly those influenced by Wittgenstein and language philosophy, easily link up with “pragmatists” such as Rorty, who emphasises the product- ive and pragmatic role of “vocabularies” rather than conceiving of language as a “mirror of nature” (Rorty 1979). Furthermore, precisely because social facts are not natural, but have to be reproduced through the actions of agents, any attempt to treat them like “brute” facts becomes doubly problematic. For one, even “natural” facts are not simply “there”; they are interpretations based on our theories. Secondly, different from the observation of natural facts, in which perceptions address a “thing” through a conceptually mediated form, social reality is entirely “arti- ficial” in the sense that it is dependent on the beliefs and practices of the actors themselves. This reproductive process, directed by norms, always engenders change either interstitially, when change is small-scale or adaptive – or more dramatically, when it becomes “transformative” – for instance when it produces a new system configuration, as after the advent of national- ism (Lapid and Kratochwil 1995) or after the demise of the Soviet Union (Koslowski and Kratochwil 1994). Consequently, any examination of the social world has to become in a way “historical” even if some “structuralist” theories attempt to minimise this dimension. [. . .] Therefore a pragmatic approach to social science and IR seems both necessary and promising. On the one hand, it is substantiated by the failure of the epistemological project that has long dominated the field. On the other, it offers a different positive heuristics that challenges IR’s traditional disciplin- ary boundaries and methodological assumptions. Interest in pragmatism therefore does not seem to be just a passing fad – even if such an interpre- tation cannot entirely be discounted, given the incentives of academia to find, just like advertising agencies, “new and improved” versions of familiar products.

### Perm

#### Perm do the plan and vote aff to demystify the black male

#### If they win the State’s uniformly racist in current form, still vote Aff. Ignores reconstructive liberalism, and what the State \*could yet become\*. Contextualizes to plan and perm

Ward ‘99

Cynthia V. Ward – Professor of Law, College of William and Mary. WILLIAM AND MARY LAW REVIEW Vol. 40:719 – http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1554andcontext=wmlr

However bruised by the continuous attacks of its radical critics, "liberal legalism" has so far survived the critical onslaught. But like all battles between powerful opponents the fight has produced casualties on both sides. Liberal theorists have responded to radical attacks by re-examining certain facile assumptions about the priority of individual autonomy, the nature of rationality, and the possibility of state neutrality, and replacing them with a rich and provocative literature that affirmatively defends liberal values and celebrates liberal legal institutions as the best-perhaps the only-way of respecting and encouraging human "difference" while also maximizing freedom and equality. On the other side, the work of radical critics of liberalism has begun to reflect the idea that liberal values-appropriately modified-are worth examining in a reconstructive light. Without losing sight of the injustices that have been inflicted on vulnerable groups under the liberal American Constitution, at least some radical theorists seem willing to concede that something precious, perhaps even irreplaceable, would be lost were liberal rights and institutions, with their vision of respect for individual dignity and their desire to maximize individual freedom, to be rejected wholesale along with the scourges of racism and sexism that have always shadowed them. It is tempting to oversimplify. One should take seriously the declared motivations and concerns of one's opponents, and be careful not to discover casually that they have been on one's side all along, although somehow without realizing it. Let me therefore emphasize that I think there are important and irreconcilable differences, at many levels, between liberal visions of the person, of politics, and of the law, and the visions articulated by liberalism's communitarian, critical race, feminist, and postmodern critics. What I find most fascinating in recent legal theory, though, is the increasingly apparent intuition that amid such basic differences there is also a growing area of common ground. Ironically, it may be that the reconstruction of liberal legalism, in some recognizable form, will become the single most dramatic result of radical legal theory.

#### Your idealist rejection of democracy is irrelevant – those channels of power are key to effective resistance and reform

Ramirez 2004 [Steven A., Professor ofLaw, Washburn University School ofLaw; Director, Washburn Business & Transactional Law Center Games CEOs Play and Interest Convergence Theory: Why Diversity Lags in America's Boardrooms and What To Do About **It,** *61 WASH* & *LEE L. REV* 1583 *(2004)*

The United States is a capitalist democracy. Consequently, the law in the United States responds to political and economic power. The American legal system is also a highly diffused system. Therefore, reformers must orchestrate political and economic power to bring pressure to bear upon the specific legal actors vested with responsibility over a particular issue if they wish to achieve durable reform. Interest convergence theory is the key to reform and progress in any area of law from race to corporate governance. As Derrick Bell has correctly stated: "Further progress to fulfill the mandate of*Brown* is possible to the extent that the divergence of racial interests can be avoided or minimized. ,,162 The converse of Bell's observation is equally true: To the extent interest convergence is maximized, reform opportunities are maximized. This Article seeks to extend interest convergence theory to its logical endsspecifically, to include the possibility that interests can be aligned to further the goal ofreform, racial or otherwise. This possibility can come to fruition when individuals seeking specific reforms can convince specific individuals with economic or political power over that specific issue. This is essentially what the NAACP achieved in the *Brown* decision. This alignment of interests was achieved in the *Grutter* opinion fifty years later, where it succeeded in securing qualified support for affirmative action from a fundamentally conservative Court. It also explains Richard Painter's efforts to relandscape professional responsibility for attorneys representing publicly held companies. In each case, economic and political power was brought to bear on lawmakers vested with specific power over a specific issue.

#### Our Framework arguments just outline the benefits of normative debate --- they aren’t exclusive their argument complements ours rather than supplementing it

Donohue, 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

I. I NTRODUC TION Much has been made as of late about the impact of the retracting economy on law students. 1 The loss of big firm jobs and the breakdown of the traditional apprenticeship 2 structure has reverberated in law schools, as they struggle to address the consequences, not least of which has been a renewed public debate about the value of legal education. 2 The uneasy compromise forged in the 1870s by Harvard President Eliot and law school Dean Christopher Columbus Langdell now stands in question. 3 On the one hand, the practice of law itself, for which judgment, public responsibility, and e xercise of legal doctrine prove paramount, define the profession — skills taught in some form through the Socratic and case - based method. On the other hand, the research strand of the modern university emphasizes critical thought and scholarly independence, essentially driving the engine of normative debate. The public discourse of late has eschewed the latter as unnecessary, superfluous in the context of the making of lawyers, suggesting that law schools should instead narrowly emphasize lawyering skills i n new, more efficient ways, so as to reduce the costs of legal education and more adequately prepare students to become members of the trade. 4 **There is much to lament about the current state of affairs**. P erhaps the most unfortunate aspect of the current d ebate is the anti - intellectual nature of the Sirens’ song, which calls for the academy to abandon the pursuit of scholarship in § Marked 07:38 § favor of the assembly line model. But e qually regrettable is the assumption that one size fits all when it comes to different a reas of the law. T he demands placed on lawyers in specialized fields cry out for more careful consideration. Three points here with respect to national security law deserve notice. First, the generalizations made about diminishing job prospects for stude nts following graduation generally do not apply. 5 To the contrary, job opportunities in the field are expanding. There is a demand for talented and well - trained national security lawyers in the federal government, law firms, private industry, consultanci es, think tanks, advocacy groups, special interest organizations, journalism, international organizations, state and local government, and the legal academy. Second, while an important part of the picture, economic considerations may be only partially rele vant to understanding what is driving this debate. I t is remarkable how frequently , throughout U.S. history, major conflicts have been followed by legal ref orm movements. The present may be no different. Perhaps the reason that war gives rise to such de bate stems in part from the deeply political and policy - oriented role that lawyers serve. Law is a public function and lawyering not merely a service rendered, but an action that at once both reflects and shapes government power. It is thus sensitive to the political environment and forced to conform to the changing conditions occasioned by war. It is worth noting here that t he War of 1812 and the U.S. Civil War were both followed by periods of innovation in legal education. 6 World War I gave birth to new ideas, as a generation of soldiers returned. Little disposed to blindly accept inherited formulas, they critically scrutinized legal education, adjusting it to suit an altered worldview. 7 It was with this in mind that the 1921 Reed Report issued — an effort to consider the function of lawyers, in light of rapidly changing circumstances. Jerome Frank’s widely cited article on the importance of clinical education came in the wake of World War II, 8 while the ABA at the close o f the conflict in Vietnam commissioned a report to consider the appropriate role of law schools. 9 T his point is not to be over - emphasized, as numerous other factors contribute to the need for the legal profession to re - evaluate its position. But it is wo rth recognizing that t he end of the Cold War saw a 4 similar phenomenon, with the release of the ABA’s now famous MacCrate Report. 10 And s ince 9/11 the country has been engaged in military conflict. Domestic and international threats faced by the country ha ve morphed and federal institutions and powers have radically altered. The question that now faces law schools is how to conform legal education to changing realities. Economic downturn thus may be an important consideration, but it is not the only driv ing force. With this in mind, it is particularly important to look carefully at national security law, which is playing such a pivotal role in the formation of new institutions, new social arrangements, and the evolution of U.S. Constitutional, statutory, and regulatory law. Third, looking more carefully at national security law in the contemporary context, there are features unique to its practice that sit uneasily in the traditional pedagogical approach. It is one thing to question the function of legal education writ large, within society, in light of swiftly changing social, political, and economic conditions. It is another thing entirely to look specifically at one sub - field — indeed, an area that has profound influence on the broader dialogue — and to question how this particular area should adapt. New and innovative thinking is required. This does not mean that law schools should abandon the enterprise embraced by Eliot and Langdell in the wake of the Civil War — that of critical distance and thoughtfu l scholarly debate. 11 If ever such a conversation were needed, it is now. Yet it does raise the question of whether law schools could do a better job of preparing students for the types of challenges they will be facing in the years to come, specifically in relation to national security. This Article challenges the dominant pedagogical assumptions in the legal academy. It begins by briefly considering the state of the field of national security , noting the rapid expansion in employment and the breadth o f related positions that have been created post - 9/11. It considers , in the process, how the legal academy has, as an institutional matter, responded to the demand. Part III examines traditional legal pedagogy, grounding the discussion in studies initiat ed by the American Bar Association, the Carnegie Foundation, and others. It suggests that using the law - writ - large as a starting point for those interested in nation al security law is a mistake. Instead, it makes more sense to work backwards from the ski lls most essential in this area of the law. The Article then proposes six pedagogical goals that serve to distinguish national security law : (1) understanding the law as applied , (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance — including, inter alia , when not to give legal advice, (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. Equally important to the exercise of each of these skills is the ability to integrate them in the course of performance. These goals , and the su bsidiary points they cover, are neither conclusive nor exclusive . Many of them incorporate skills that all lawyers should have — such as the ability to handle pressure, knowing how to modulate the mode and content of communications depending upon the circum stances, and managing ego, personality, and subordination. T o the extent that they are overlooked by mainstream legal education, 5 however, and present in a unique manner in national security law, they underscore the importance of more careful consideration of the skills required in this particular field. Having proposed a pedagogical approach, the Article turns in Part IV to the question of how effective traditional law school teaching is in helping to students reach these goals. Doctrinal and experiential courses both prove important. T he problem is that in national security law, the way in which these have become manifest often falls short of accomplishing the six pedagogical aim s . G aps left in doctrinal course are not adequately covered by devices typically adopted in the experiential realm , even as c linics, externships, and moot court competitions are in many ways ill - suited to national security. The Article thus proposes in Part V a new model for national security legal education, based on innovat ions currently underway at Georgetown Law. NSL Sim 2.0 adapts a doctrinal course to the special needs of national security. Course design is preceded by careful regulatory, statutory, and Constitutional analysis, paired with policy considerations. The c ourse takes advantage of new and emerging technologies to immerse students in a multi - day, real - world exercise, which forces students to deal with an information - rich environment, rapidly changing facts, and abbreviated timelines. It points to a new model of legal education that advances students in the pedagogical goals identified above, while complementing, rather than supplanting, the critical intellectual discourse that underlies the value of higher legal education.

## 1AR

### Three Tier

#### The neg’s methodology is mistaken in assuming that their emphasis on local experience can translate into political change. The neg merely establishes political redistributions onto others, thus maintaining the system.

Adam Katz, English Instructor at Onodaga Community College. 2000. *Postmodernism and the Politics of “Culture.”* Pg. 146-147 ]-AC

Habermas’s understanding of undistorted communication is situated within the same problematic as the postmodernism of Lyotard in a much more fundamental sense than would be indicated by the apparent opposi­tion between them. Both locate emancipatory knowledges and politics in the liberation of language from technocratic imperatives. And the political consequences are the same as well. In both cases, local transformations (the deconstruction and reconstruction of distorted modes of communica­tion) that create more democratic or rational sites of intersubjectivity are all that is seen as possible, “with the goal,” as Brantlinger says, “of at least local emancipations from the structure of economic, political and cultural domination” (1990, 191—192, emphasis added). The addition of “at least” to the kinds of changes sought suggests a broader, potentially global role for critique, such as showing “how lines of force in society can be transformed into authentic modes of participatory decision making” (19711. However, the transition from one mode of transformation to an­other—what should be the fundamental task of cultural studies—is left unconceptualized and is implicitly understood as a kind of additive or cu­mulative spread of local democratic sites until society as a whole is trans­formed. What this overlooks, of course, is the way in which, as long as global economic and political structures remain unchanged and unchal­lenged, local emancipations can only be redistributions—redistributions that actually support existing social relations by merely shifting the greater burdens onto others who are less capable of achieving their own local emancipation. This implicit alliance between the defenders of modernity and their postmodern critics (at least on the fundamental ques­tion) also suggests that we need to look for the roots and consequences of this alliance in the contradictions of the formation of the cultural studies public intellectual.

#### Their specific intellectual’s arguments are a ruse. Talking about privilege only allows the confessor to become a mediating force in the marketplace of identities this supercharges dominant structures.

Adam Katz, English Instructor at Onodaga Community College. 2000. *Postmodernism and the Politics of “Culture.”* Pg.176 ]-AC

Specific modes of knowledge and technique begin to appear fundamen­tally violent and illegitimate in relation to a different mode of sovereignty. Consequently, the primary responsibility of the specific intellectual, the self-reflexive inquiry into the modes of power/knowledge that have formed one, i.e., “unlearning privilege,” is nothing but a transfer of alle­giance to new modes of marketized sovereignty emerging around knowl­edge production. The counterpublics, meanwhile, and their border-cross­ing diplomats are simply negotiating points, playing one form of marketized sovereignty off against another. Such conditions complicate politics, of course—no one gets to choose which mode of marketized sov­ereignty they come into direct confrontation with—but this doesn’t liqui­date the universalizing political principles. The very fragmentation of the “common” is at stake in the multiplication of sovereign forms, since the legitimacy of any sovereignty is in the space it provides for theory, ac­countability, and power to be articulated before an outside. To put it dif­ferently, how wide a scope does a given mode of sovereignty provide for each to be “outside of the outside of the other,” on a global scale? In this way, we can also account for the hierarchy arranging different modes of sovereignty, in terms of where the antagonism between privatized modes of sovereignty and transnational modes of accountability are most con­centrated.

### Epistemology

#### Situated impartial knowledge is not a view from nowhere OR privileged insight to reality based on your own experience—it’s the claim to look at claims on face for their merits, irrespective of the power relations we diagnose

**DISCH ‘93** (Lisa J.; Professor of Political Theory – University of Minnesota, “More Truth Than Fact: Storytelling as Critical Understanding in the Writings of Hannah Arendt,” Political Theory 21:4, November)

What Hannah Arendt called “my old fashioned storytelling”7 is at once the most elusive and the most provocative aspect of her political philosophy. The apologies she sometimes made for it are well known, but few scholars have attempted to discern from these “scattered remarks” as statement of epistemology or method.8 Though Arendt alluded to its importance throughout her writings in comments like the one that prefaces this essay, this offhandedness left an important question about storytelling unanswered: how can thought that is “bound” to experience as its only “guidepost” possibly be critical? I discern an answer to this question in Arendt’s conception of storytelling, which implicitly redefines conventional understandings of objectivity and impartiality. Arendt failed to explain what she herself termed a “rather unusual approach”9 to political theory because she considered methodological discussions to be self-indulgent and irrelevant to real political problems.10 This reticence did her a disservice because by failing to explain how storytelling creates a vantage point that is both critical and experiential she left herself open to charges of subjectivism.11 As Richard Bernstein has argued, however, what makes Hannah Arendt distinctive is that she is neither a subjectivist nor a foundationalist but, rather, attempts to move “beyond objectivism and relativism.”12 I argue that Arendt’s apologies for her storytelling were disingenuous; she regarded it not as an anachronistic or nostalgic way of thinking but as an innovative approach to critical understanding. Arendt’s storytelling proposes an alternative to the model of impartiality defined as detached reasoning. In Arendt’s terms, impartiality involves telling oneself the story of an event or situation form the plurality of perspectives that constitute it as a public phenomenon. This critical vantage point, not from outside but from within a plurality of contesting standpoints, is what I term “situated impartiality.” Situated impartial knowledge is neither objective disinterested nor explicitly identified with a single particularistic interest. Consequently, its validity does not turn on what Donna Haraway calls the “god trick,” the claim to an omnipotent, disembodied vision that is capable of “seeing everything from nowhere.”13 But neither does it turn on a claim to insight premised on the experience of subjugation, which purportedly gives oppressed peoples a privileged understanding of structures of domination and exonerates them of using power to oppress. The two versions of standpoint claims – the privileged claim to disembodied vision and the embodied claim to “antiprivilege” from oppression – are equally suspect because they are simply antithetical. Both define knowledge positionally, in terms of proximity to power; they differ only in that they assign the privilege of “objective” understanding to opposite poles of the knowledge/power axis. Haraway argues that standpoint claims are insufficient as critical theory because they ignore the complex of social relations that mediate the connection between knowledge and power. She counters that any claim to knowledge, whether advanced by the oppressed or their oppressors, is partial. No one can justifiably lay claim to abstract truth, Haraway argues, but only to “embodied objectivity,” which she argues “means quite simply situated knowledges.”14 There is a connection between Arendt’s defense of storytelling and Haraway’s project, in that both define theory as a critical enterprise whose purpose is not to defend abstract principles or objective facts but to tell provocative stories that invite contestation form rival perspectives.15

### Perm Ev

#### A. We need concrete state action and civic engagement to oppose white supremacy, otherwise the movement fails.

Flood 1997 (Christopher Flood, University of Surrey, “Pierre-André Taguieff and the Dilemmas of Antiracism”, L'Esprit Createur, Volume 37, Number 2, Summer 1997, pp. 68-78, muse)

Taguieff's own response to the problem has several strands. He maintains that racism and social exclusionism cannot be fought directly or by one single technique. Equally, integration cannot be seen as a single process, but one which crosses a whole range of fields. Part of the answer is to refute the FN's arguments in a far more detailed, systematic way than has been done hitherto. In place of ritualized ideological denunciations which have little purchase on the FN's audience, a strategy of factual demonstration and rational persuasion must be pursued at the national and local levels, addressing all classes of people in a non-patronizing way. But words are not enough. There is a desperate need to confront the basic social, economic and cultural problems and fears which lead people to turn to the FN by feeding xenophobia and anxiety. That means attacking structural unemployment, casualization, and the ever-increasing wealth gap, for example. It would seek to reinforce institutions and practices of social and cultural integration. Attacking racism or promoting integration must be pursued through the cumulative effects of many concrete acts. This would not be by the agency of the state alone: integration could also be promoted through grass-roots civic action. However, Taguieff is concerned that civic action should itself be protected from being turned into spectacle by the media (and by the associations themselves in competition to assert their importance).