# 1NC

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#### a. Interpretation and violation---the affirmative should defend the desirability of topical government action

#### Most predictable—the agent and verb indicate a debate about hypothetical government action

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

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

#### Restrictions are prohibitions on action

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

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

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

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

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

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

#### A general subject isn’t enough—debate requires a specific point of difference in order to promote effective exchange

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Debate is a means of settling differences, so there must be a controversy, a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a feet or value or policy, there is no need or opportunity for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four,” because there is simply no controversy about this state­ment. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions of issues, there is no debate. Controversy invites decisive choice between competing positions. Debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants live in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this “debate” is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies are best understood when seated clearly such that all parties to the debate share an understanding about the objec­tive of the debate. This enables focus on substantive and objectively identifiable issues facilitating comparison of competing argumentation leading to effective decisions. Vague understanding results in unfocused deliberation and poor deci­sions, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For exam­ple, claims are presented and supported within speeches, editorials, and advertise­ments even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audi­ence or judge to make a forced choice among competing claims. Informal dis­course occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, by definition, debate requires "reasoned judgment on a proposition. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumenta­tion calling upon their audience or adjudicator to decide. The proposition pro­vides focus for the discourse and guides the decision process. Even when a decision will be made through a process of compromise, it is important to iden­tify the beginning positions of competing advocates to begin negotiation and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates (“Vote for me!”); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be explicitly expressed (“the defendant is guilty!”). In aca­demic debate, the proposition provides essential guidance for the preparation of the debaters prior to the debate, the case building and discourse presented during the debate, and the decision to be made by the debate judge after the debate. Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, “Public schools are doing a terri­ble job! They' are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do some­thing about this” or, worse, “It’s too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as “What can be done to improve public education?”—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies, The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities” and “Resolved; That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. This focus contributes to better and more informed decision making with the potential for better results. In aca­demic debate, it provides better depth of argumentation and enhanced opportu­nity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about a topic, such as ‘"homeless­ness,” or “abortion,” Or “crime,” or “global warming,” we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet by itself fails to provide much basis for dear argumen­tation. If we take this statement to mean Iliad the written word is more effec­tive than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose, perhaps promoting positive social change. (Note that “loose” propositions, such as the example above, may be defined by their advocates in such a way as to facilitate a clear contrast of competing sides; through definitions and debate they “become” clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, web­site development, advertising, cyber-warfare, disinformation, or what? What does it mean to be “mightier" in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, “Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?” The basis for argument could be phrased in a debate proposition such as “Resolved: That the United States should enter into a mutual defense treaty with Laurania.” Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advo­cates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

#### b. Vote neg

#### 1. Preparation and clash—changing the topic post facto manipulates balance of prep, which structurally favors the aff because they speak last and permute alternatives—strategic fairness is key to engaging a well-prepared opponent

#### Topical fairness requirements are key to meaningful dialogue—monopolizing strategy and prep makes the discussion one-sided and subverts any meaningful neg role

Ryan Galloway 7, Samford Comm prof, Contemporary Argumentation and Debate, Vol. 28, 2007

Debate as a dialogue sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. The affirmative side is set by the topic and fairness requirements. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure.¶ Setting the affirmative reciprocally sets the negative. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table.¶ When one side takes more than its share, competitive equity suffers. However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it fundamentally denies the personhood of the other participant (Ehninger, 1970, p. 110). A pedagogy of debate as dialogue takes this respect as a fundamental component. A desire to be fair is a fundamental condition of a dialogue that takes the form of a demand for equality of voice. **Far from** being **a banal request for links** to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon **months of preparation**, research, and critical thinking not be silenced.¶ Affirmative cases that suspend basic fairness norms **operate to exclude** particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue. They are unable to “understand what ‘went on…’” and are left to the whims of time and power (Farrell, 1985, p. 114). Hugh Duncan furthers this line of reasoning:¶ Opponents not only tolerate but honor and respect each other because in doing so they enhance their own chances of thinking better and reaching sound decisions. Opposition is necessary because it sharpens thought in action. We assume that argument, discussion, and talk, among free an informed people who subordinate decisions of any kind, because it is only through such discussion that we reach agreement which binds us to a common cause…If we are to be equal…relationships among equals must find expression in many formal and informal institutions (Duncan, 1993, p. 196-197).¶ **Debate compensates for the exigencies of the world by offering a framework that maintains equality for the sake of the conversation** (Farrell, 1985, p. 114).¶ For example, an affirmative case on the 2007-2008 college topic might defend neither state nor international action in the Middle East, and yet claim to be germane to the topic in some way. The case essentially denies the arguments that state action is oppressive or that actions in the international arena are philosophically or pragmatically suspect. Instead of allowing for the dialogue to be modified by the interchange of the affirmative case and the negative response, the affirmative subverts any meaningful role to the negative team, preventing them from offering effective “counter-word” and undermining the value of a meaningful exchange of speech acts. **Germaneness and other substitutes for topical action do not accrue the dialogical benefits** of topical advocacy.

#### 2. Deliberative debate models impart skills vital to respond to existential threats

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

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

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

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

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

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

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

### 1NC---Detention DA

#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Reforms to ID result in catastrophic terrorism---releases terrorists and kills intel gathering

Jack Goldsmith 9, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Nuclear terrorism is feasible --- high risk of theft and attacks escalate

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Terrorism studies are epistemologically and methodologically valid --- our authors are self-reflexive

Michael J. Boyle 8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

 Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological problems.** In fact, **terrorism scholars are** not only well aware of these problems, but also have provided their own searchingcritiques of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars** most associated with the critique of empiricismimplied in ‘Orthodox Terrorism Studies’ **have also engaged in** deeply critical examinations **of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

#### Extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, **people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals**. At the same time, **advanced technology has designed nuclear explosives of such small size they can be easily transported in a car**, small plane or boat **to the heart of a city**. We demonstrate here that **a single detonation in the 15 kiloton range can produce urban fatalities approaching one million** in some cases, **and casualties** exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, **even a single surface nuclear explosion**, or an air burst in rainy conditions, **in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades** owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, **the economic consequences of even a localized nuclear catastrophe would most likely have severe national and** international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized **attack on the U.S. by a small nuclear state, or terrorists** supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the **estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives** could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### 1NC---Politics

#### Momentum for sanctions on Iran is stalled because of Obama’s perceived strength

Gary Rosenblatt 2-5, columnist, The Jewish Week, 2/5/14, “Israel Lobby And The White House: Who’ll Blink First?,” http://www.thejewishweek.com/editorial-opinion/gary-rosenblatt/israel-lobby-and-white-house-wholl-blink-first

A month from now more than 14,000 people will gather in Washington for the annual AIPAC conference, the largest turnout by far for an American Jewish event. For the last several years the program’s main agenda has been Iran, and the need to prevent its militant Islamic leaders from achieving the capability of producing a nuclear bomb.

There is a particular sense of urgency to the issue this year because the six-month interim agreement is in place, and the clock is ticking. At the moment AIPAC, along with the American Jewish Committee and other Jewish groups on the center and right, appear headed for a direct confrontation with the White House.

These Jewish groups support the prospective Senate bill, calling for tighter sanctions on Iran that would go into effect only if the current talks fail. At a time of intense party rivalry, the bill has the co-sponsorship of 59 senators, including 16 Democrats, all of whom insist that it is “an insurance policy” aimed at holding the Iranians’ feet to the fire.

The administration strongly opposes the bill, fearful that passage would result in the Iranians making good on their threat to walk away from the talks. Obama said in his State of the Union speech that he would veto such legislation if it passes. “For the sake of our national security we must give diplomacy a chance to succeed,” he said. Some administration supporters have described those who back the legislation as “war mongers.”

While the mainstream media describes the legislation as “stalled,” Jewish organizational officials I’ve spoken with say they are in no hurry to press the issue now.

“Everyone has gone to the brink and now we’re all looking down and stepping back,” one said. “No one is backing off but no one is pushing for a confrontation, either. No one wants to test the president.”

The strategy is to quietly persuade at least eight more senators to sign on to the bill, which would give it 67 votes and make it veto-proof. Then offer some ideas for how the administration could “climb down” and accept the bill, which calls for the U.S. to back Israel if it decides to take military action against Iran.

“We’re encouraging the administration to take ownership of the legislation and work out a congressional deal,” one insider said. “But they don’t want to do it.”

#### It’s a war powers issue that Obama will win now---failure commits us to Israeli strikes

Merry 1/1Robert W., political editor of the National Interest, is the author of books on American history and foreign policy “Obama may buck the Israel lobby on Iran” Washington Times, http://www.washingtontimes.com/news/2013/dec/31/merry-obama-may-buck-the-israel-lobby-on-iran/

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “**an appalling new low in the Israeli government’s grip on the U.S. Congress**.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

#### Obama fights restrictions on authority --- losers lose --- that drains political capital

Loomis 7 – Department of Government at Georgetown

(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>)

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, ¶ In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. ¶ Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. ¶ The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.¶ This brief review of the literature suggests how legitimacy norms enhance presidential influence in ways that structural powers cannot explain. Correspondingly, increased executive power improves the prospects for policy success. As a variety of cases indicate—from Woodrow Wilson’s failure to generate domestic support for the League of Nations to public pressure that is changing the current course of U.S. involvement in Iraq—the effective execution of foreign policy depends on public support. Public support turns on perceptions of policy legitimacy. As a result, policymakers—starting with the president—pay close attention to the receptivity that U.S. policy has with the domestic public. In this way, normative influences infiltrate policy-making processes and affect the character of policy decisions.

#### Causes Israel strikes

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As 2013 draws to close, the negotiations over the Iranian nuclear program have entered a delicate stage. But in 2014, the tensions will escalate dramatically as a bipartisan group of Senators brings a new Iran sanctions bill to the floor for a vote. As many others have warned, that promise of new measures against Tehran will almost certainly blow up the interim deal reached by the Obama administration and its UN/EU partners in Geneva. But Congress' highly unusual intervention into the President's domain of foreign policy doesn't just make the prospect of an American conflict with Iran more likely. As it turns out, the Nuclear Weapon Free Iran Act essentially empowers Israel to decide whether the United States will go to war against Tehran.¶ On their own, the tough new sanctions imposed automatically if a final deal isn't completed in six months pose a daunting enough challenge for President Obama and Secretary of State Kerry. But it is the legislation's commitment to support an Israeli preventive strike against Iranian nuclear facilities that almost ensures the U.S. and Iran will come to blows. As Section 2b, part 5 of the draft mandates:¶ If the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.¶ Now, the legislation being pushed by Senators Mark Kirk (R-IL), Chuck Schumer (D-NY) and Robert Menendez (D-NJ) does not automatically give the President an authorization to use force should Israel attack the Iranians. (The draft language above explicitly states that the U.S. government must act "in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force.") But there should be little doubt that an AUMF would be forthcoming from Congressmen on both sides of the aisle. As Lindsey Graham, who with Menendez co-sponsored a similar, non-binding "stand with Israel" resolution in March told a Christians United for Israel (CUFI) conference in July:¶ "If nothing changes in Iran, come September, October, I will present a resolution that will authorize the use of military force to prevent Iran from developing a nuclear bomb."¶ Graham would have plenty of company from the hardest of hard liners in his party. In August 2012, Romney national security adviser and pardoned Iran-Contra architect Elliott Abrams called for a war authorization in the pages of the Weekly Standard. And just two weeks ago, Norman Podhoretz used his Wall Street Journal op-ed to urge the Obama administration to "strike Iran now" to avoid "the nuclear war sure to come."¶ But at the end of the day, the lack of an explicit AUMF in the Nuclear Weapon Free Iran Act doesn't mean its supporters aren't giving Prime Minister Benjamin Netanyahu de facto carte blanche to hit Iranian nuclear facilities. The ensuing Iranian retaliation against to Israeli and American interests would almost certainly trigger the commitment of U.S. forces anyway.¶ Even if the Israelis alone launched a strike against Iran's atomic sites, Tehran will almost certainly hit back against U.S. targets in the Straits of Hormuz, in the region, possibly in Europe and even potentially in the American homeland. Israel would face certain retaliation from Hezbollah rockets launched from Lebanon and Hamas missiles raining down from Gaza.¶ That's why former Bush Defense Secretary Bob Gates and CIA head Michael Hayden raising the alarms about the "disastrous" impact of the supposedly surgical strikes against the Ayatollah's nuclear infrastructure. As the New York Times reported in March 2012, "A classified war simulation held this month to assess the repercussions of an Israeli attack on Iran forecasts that the strike would lead to a wider regional war, which could draw in the United States and leave hundreds of Americans dead, according to American officials." And that September, a bipartisan group of U.S. foreign policy leaders including Brent Scowcroft, retired Admiral William Fallon, former Republican Senator (now Obama Pentagon chief) Chuck Hagel, retired General Anthony Zinni and former Ambassador Thomas Pickering concluded that American attacks with the objective of "ensuring that Iran never acquires a nuclear bomb" would "need to conduct a significantly expanded air and sea war over a prolonged period of time, likely several years." (Accomplishing regime change, the authors noted, would mean an occupation of Iran requiring a "commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.") The anticipated blowback?¶ Serious costs to U.S. interests would also be felt over the longer term, we believe, with problematic consequences for global and regional stability, including economic stability. A dynamic of escalation, action, and counteraction could produce serious unintended consequences that would significantly increase all of these costs and lead, potentially, to all-out regional war.

#### Israeli strikes cause global great power war

Rafael Reuveny 10, PhD, Professor in the School of Public and Environmental Affairs at Indiana University, "Unilateral Strike on Iran could trigger world Depression", Op-ed distributed through McClatchy Newspaper Co, <http://www.indiana.edu/~spea/news/speaking_out/reuveny_on_unilateral_strike_Iran.shtml>

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash. For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force. Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground. All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces. Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond. A regional war Unlike Iraq, whose nuclear program Israel destroyed in 1981**,** Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war. During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat. In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973. An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean. Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony. Replaying Nixon’s nightmare Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario. Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted. If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons, but would probably not risk using force.

¶ While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

## Case

#### Their Islamophobia claims are too sweeping --- our authors are epistemologically sound and the West isn’t inevitably tainted

Joppke 9, professor of politics – American University of Paris, PhD Sociology – Berkeley

(Christian, “Limits of Integration Policy: Britain and Her Muslims,” Journal of Ethnic and Migration Studies, Volume 35, Issue 3)

The Runnymede report defines Islamophobia as certain ‘closed’ views of Islam, which are distinguished from ‘open views’ in terms of eight binary oppositions, such as ‘monolithic/diverse’, ‘separate/interacting’, or ‘inferior/different’ (the first adjective always marking a ‘closed’, the second an ‘open’ view). This makes for an elastic definition of Islamophobia, with little that could not be packed into it. Consider the eighth binary opposition, ‘Criticism of West rejected/considered’. If ‘criticisms made by Islam of “The West” (are) rejected out of hand’, there is an instance of Islamophobia, the non-biased attitude being that ‘criticisms of “the West” and other cultures are considered and debated’. Is it reasonable to assume that people enter debate by putting their point of view to disposition? Under such demanding standards, only an advocate of Habermasian communicative rationality would go free of the charge of Islamophobia. However, the real problem is to leave unquestioned the exit position, ‘criticism of the West’. In being sweeping and undifferentiated, such a stance seems to be no less phobic than the incriminated opposite. If the point of the Runnymede report is to ‘counter Islamophobic assumptions that Islam is a single monolithic system’, it seems inconsistent to take for granted a similarly monolithic ‘criticism of “the West”’, which the ‘West’ is asked to ‘consider and debate’. There is a double standard here, in that ‘the West’ is asked to swallow what on the other side would qualify as phobia.

#### Islamophobia has zero causal explanatory power as a method and can’t solve it because it’s so nebulous

Bleich 11, professor of political science – Middlebury (Erik, “What Is Islamophobia and How Much Is There? Theorizing and Measuring an Emerging Comparative Concept,” American Behavioral Scientist, 55(12) p. 1581-1600)

Islamophobia is a widely used concept in public and scholarly circles. It was originally developed in the late 1990s and early 2000s by political activists, nongovernmental organizations (NGOs), public commentators, and international organizations to draw attention to harmful rhetoric and actions directed at Islam and Muslims in Western liberal democracies. For actors like these, the term not only identifies anti- Islamic and anti-Muslim sentiments, it also provides a language for denouncing them. In recent years, Islamophobia has evolved from a primarily political concept toward one increasingly deployed for analytical purposes. Researchers have begun using the term to identify the history, presence, dimensions, intensity, causes, and consequences of anti-Islamic and anti-Muslim sentiments. In short, Islamophobia is an emerging comparative concept in the social sciences. Yet, there is no widely accepted definition of the term. As a result, it is extremely difficult to compare levels of Islamophobia across time, location, or social group, or to levels of analogous categories such as racism, anti-Semitism, or xenophobia. Without a concept that applies across these comparative dimensions, it is also virtually impossible to identify the causes and consequences of Islamophobia with any precision.

#### Secular policymaking is compatible with Islamic doctrine and doesn’t link to their offense --- doesn’t require one to discard religion entirely

Asghar Ali Engineer 2k, Indian reformer-writer and social activist internationally known for his work on liberation theory in Islam, “Islam and Secularism,” October 15, http://andromeda.rutgers.edu/~rtavakol/engineer/secular.htm

We would examine here whether these assertions are true and whether Islam is really incompatible with secularism. Firstly, we should make a distinction between what is theological and what is historical. The concept that religion and politics cannot be separated is more historical than theological. In fact the Holy Qur'an, as we have pointed out elsewhere too, does not give any concept of the State; it only gives the concept of the society. The Qur'an is concerned with morality rather than polity. An upright conduct, justice, truth, benevolence, compassion and human dignity are very basic to the Holy Scripture. It repeatedly asserts these values. Thus it clearly means that these values are very fundamental to an Islamic society rather than to a State.¶ The view that religion cannot be separated from politics in Islam is due this primary concern with these Islamic values. It was thought by early Islamic `Ulama and jurists that if religion was separated from politics, the rulers would totally neglect these fundamental Islamic values and would behave in a manner which would only satisfy their greed for power. In fact in those days there was no concept of secularism as a philosophy of humanism. The `Ulama were afraid that if religion and politics were separated there would be absolutely no check on the conduct of the rulers. In fact, one does not find clear articulation to this effect (that religion cannot be separated from politics in Islam) in any early Islamic source. This formulation itself is of nineteenth century origin when colonial powers began to impose secular laws in Islamic countries i.e. the laws which were not basically derived from Shari`ah.¶ In the early Islamic period there were no other laws than the Shari`ah laws. And since there was no such concept of the State in Qur'an, the Islamic State itself is a historical construct. The structure of Islamic State evolved over a period of time. The Qur'an and Hadith were the primary sources for the new State. It is important to note that before Islam there was no State in Mecca or Medina. There was only a senate of tribal chiefs who took collective decisions and it was tribal chiefs who enforced those decisions in their respective tribal jurisdiction. There were obviously no written laws but only tribal customs and traditions. Any decision had to be taken within the framework of these customs. There was no other source of law.¶ However after Islam appeared on the social horizon of Mecca, the scenario began to change. In Medina the Prophet (PBUH) laid the framework of governance through what is known as Mithaq-e-Madina (Covenant of Medina). This Covenant also basically respects tribal customs to which adherents of Judaism, Islam and pre-Islamic idol worshippers belonged. Each tribe, along with the religious tradition it belonged to, was treated as an autonomous unit in the Covenant, which has been described in full details by Ibn Ishaque, the first biographer of the Holy Prophet. Thus the Covenant of Medina respected both the tribal as well as religious autonomy of the inhabitants of the town. It can also be said to be the first constitution of the state in making. The Covenant laid down certain principles which are valid even today in a secular state. When the covenant was drawn up by the Prophet of Islam, Shari`ah as a body of law had not evolved. In this important Medinan document what is most important is that the Prophet (PBUH) did not compel the different tribes of Jews and idol worshippers to follow the Islamic law.¶ A state structure began to evolve only after the death of the Holy Prophet when vast areas of other territories were conquered and new problems began to arise. During the Prophet's time the governance was limited to almost a city. He did not live long after the conquest of Mecca. But after his death the jurisdiction of the state expanded much beyond the frontiers of Arabia. During the Prophet's time people were more concerned with day today problems of marriage, divorce, inheritance etc. on one hand, and those of problems like theft, robbery, murder and some similar problems for which the Qur'an and the Prophet were inerrant source of guidance. The people asked the Prophet for guidance and followed his pronouncements or the Qur'anic injunctions voluntarily. There was no state machinery to enforce it. There was neither any police force nor any regular military. There was no separate judiciary either. As far as the Prophet was concerned he was legislator, an enforcer of laws (executive) and also a judge (representing judiciary). He combined all three functions.¶ Thus it will be seen that there was no regular state structure during the Prophet's own time as he was a unique personality who could combine all these functions for judicious governance, in addition to being a source of law. However, the death of the Prophet (PBUH) created a vacuum and no other person could fill it. Also, as pointed out above, the conquest of other territories created more complex problems. Now there was need for enforcement of laws as people in far off places with no commitment to Islam would not follow the laws voluntarily as they did in Medina in the Prophet's time. Thus a police force was needed to enforce the laws. Also, during the Prophet's time people volunteered for fighting against enemies of Islam and there was no need for a paid regular army. Now after his death need was felt for paid regular army. The border areas had to be guarded constantly. There were no such borders before.¶ The corpus of Shari`ah was being evolved and for new situations guidance could no more be had from the Prophet. One either had to look for verses in the Qur'an or in Hadith which Prophet's companions remembered or one had to resort to analogy keeping analogous situations in mind. That was how the corpus of the Shari`ah law evolved slowly. The primitive Islamic state was democratic in spirit and the Caliphs often consulted their colleagues and companions of the Prophet while making any decision so as to conform to the Qur'anic values. Thus Qur'an and Hadith then were the main sources of law. But in secular matters like building up institutions like army or police or bureaucracy, they did not hesitate to borrow concepts from other sources like Roman or Persian. Thus Hazrat Umar borrowed the concept of Diwan (i.e. maintaining records of salaries to a paid army and bureaucracy). Similarly the Caliphs were called upon to legislate on matters like land ownership, suspension of certain punishments during times of emergency like famine etc.¶ The conquests, internal strife among the Muslims, struggle for power among different tribes, groups and personalities and many other factors created strong pressures so much so that the institution of Caliphate itself did not survive. It was ultimately replaced by monarchy and dynastic rule. This was totally against the spirit of the Qur'an. These changes became inevitable under the fast developing situation. The Islamic jurists had to come to terms with these new developments and to legitimise them somehow. Once the institution of Caliphate was replaced by dynastic rule, it could never be restored throughout Islamic history. The monarchy and dynastic rule persisted until the Western colonial rule took over.¶ It was under colonial rule that Muslims began to discover the virtues of democracy and saw in the Caliphate a 'golden period of Islamic democracy.' It is true that during the dynastic rule Shari`ah law could not be ignored and the rulers had to keep the `Ulama in good humour. However, they often found ways to go around and violate the spirit of the Shari`ah law. But they never ceased to pay obeisance to it. But the situation changed drastically with the onset of colonial rule during the nineteenth century in the Islamic world. Many laws were enforced by the colonial rulers which were secular in origin. The Western countries themselves were once governed by the Church and it was the Church law which was supreme. But the reformation changed all that and the struggle against the Church gave rise to the concept of secularism. Thus there was intense fight between the Church and the ruling princes who desired independence from the hegemony of the Church. The emerging bourgeois class too wanted to be free of the sacred rule and saw immense benefits in secularisation of politics and society. Thus it took more than three centuries in the West for secularisation of society and marginalisation of religion and religious institution. When the colonial rule was established in Asian and African countries many of which happened to be Islamic countries, the process of secularisation had traversed a great distance in the metropolitan countries.¶ Thus the colonial countries posed a great challenge to Islam in the colonised countries through their technological supremacy. The religious leaders and intellectuals in these countries found refuge in the 'glory of the past' and some were overwhelmed by the supremacy of the West and began to advocate secular modernisation. Many reform movements thus were born in Islamic countries. Jamaluddin Afghani and Muhammad Abduh of Egypt were among them. Some others, however, totally rejected secularism of the West and launched intense efforts to revive the past. Revivalist and reformist movements jostled with each other for social and political space. Among those who faced the Western challenge there were those who rejected religion altogether and adopted secular humanism of the West. However, they remained in small minority.¶ Islamic societies, however, found it more challenging to adopt change and adjust to it smoothly. Many sociologists ascribe this resistance to change inherent to the teachings of Islam. This, however, is not true. No religion including Islam is prone or opposed to change. The causes of resistance to change lie in the society, not in religion. In fact most of the Muslim societies were led by feudal lords and failed to produce modern bourgeois class. In these societies there was no well-entrenched mercantile or industrial class. It is as much truer of Indian Muslims as of other Muslim countries. The Hindus, on the other hand, had centuries old merchant class, which smoothly adjusted itself to modern industrial capitalism. Thus those who took to modern industrial capitalism felt need for secularisation and social change. The pressures for change were result of the changing ground reality for them.¶ The Muslims, on the other hand, felt no such need for change, as there was no well-entrenched mercantile class to feel the need for effecting smooth change over to modernity. Also, in most of the Muslim countries, including India, Islam was embraced by weaker and poorer sections of society, for it appealed to those sections due to its emphasis on equality and justice. Those sections had no felt need for modernisation and they remained under the tight grip of traditional `Ulama who were anyway opposed to the process of secularisation.¶ Also, unlike other religions, Muslims had well-developed Shari`ah law which was unanimously accepted as divine in origin. Most of the religious leaders thus rejected the very concept of secular law as unacceptable. The `Ulama, as pointed out above, had strong grip over the hearts and minds of the poor and illiterate masses and used the social base to oppose any change. The feudal lords, too, had not much use for secularism and readily struck an alliance with the `Ulama giving them full support. Thus the `Ulama strongly resisted any change in the Shari`ah laws. Not only that, they would not even admit of any reform. Those like Muhammad Abduh and others who advocated ijtihad (creative interpretation of Shari`ah laws in view of modernisation and change) were marginalised. Those important socio-economic factors cannot be ignored while discussing Islam and secularism.¶ Before we proceed further I would like to throw some light on some inherent limitations of secularism also. In nineteenth century rationalism became a dogma. The rationalists and secularists almost began to worship reason and dismissed religion with contempt. In fact the rationalists have been as contemptuous of religion as the faithfuls have been of secularism. Both have refused to admit limitations of their respective positions. One can say that as there are religious fundamentalists there are rational or secular fundamentalists also. These secular fundamentalists have no respect for believers whom they consider as nothing less than 'superstitious'. Even certain cultural practices are considered as such. Some of them even refuse to admit the emotional richness of life.¶ There has to be a balance between reason and faith. Faith is as important to human existence as reason is. Reason, in fact, is a tool humans use to achieve their goal. Reason can never become absolute though its usefulness as a tool cannot be minimised. Faith, on the other hand, is not tool but belief in higher values. These values are fundamental to a meaningful life on this earth. Reason at best ensures 'successful' life but not meaningful one. It is faith in values like compassion, justice, equality, non-violence etc. which make human life meaningful. Thus a creative synthesis between reason and faith is absolutely necessary for successful and meaningful life on this earth. Sacral and secular should not be treated as two poles or antagonistic contradiction. They are rather complimentary to each other.¶ The faithfuls should also bear in mind that faith should not mean blind imitation of the past traditions. Faith has to be in values, not in past traditions. As absolute secularism could lead to a life devoid of meaning and responsibility towards fellow human beings absolute faith also could lead to blind surrender to an authority which leads to highly exploitative practices. One has to guard against such possibility by employing ones rational faculty. In other words while reason would not become arrogant, faith should not become blind.¶ If understood in this sense one will not find any contradiction between reason and faith and between religion and secularism. Islam is also compatible with secularism, seen from this perspective. If secularism is interpreted as an atheistic philosophy, no believer in religion would accept it, let alone a believer in Islam. Islam, as pointed out above, lays strong emphasis on belief in God and unity of God. Muslims believe in divine revelation of Qur'an and in Muhammad being Messenger of Allah. One need not challenge these beliefs in the name of secularism. Secularism should be taken in political rather than philosophical sense. Secularism in political sense creates social and political space for all religious communities.¶ The nineteenth century rationalism and modernism is itself under challenge today. Our period is characterised as post-modernist period in which religious pluralism rather than rejection of religion is accepted. Post-modernism recognises limitations of reason and accepts validity of religious ethos. We are now in a world which is far removed from struggle between the Church and lay people. Church has also accepted the inevitability of secularisation of society. It no longer enjoys the hegemonic position it enjoyed before reformation. It has also apologised for persecution of scientists for discovering new scientific truths. It has also accepted the concepts of democracy and human rights. There is, thus, no serious contradiction between Church and secularism.¶ Islam, it must be noted, has no concept of organised church. No single religious authority is considered absolute. There has been, on the other hand, the concept of consensus (ijma`) among the `Ulama (the learned men of Islam) which is quite democratic. In fact consensus has been considered as one of the sources of Islamic law in the Sunni Islam. Also, there is concept of ijtihad which infuses the spirit of dynamism and movement, though, of late, the 'Ulama have refrained from using it for change. However, pressures are building up in Islamic societies for using the concept of ijtihad. All Islamic societies are in throes of change and modernisation. Islamic laws are no more a stagnant pool of old traditions. Changes are being effected.¶ As there is no organised church in Islam the 'Ulama are divided on the issues of modernisation and change. In Iran too intense struggle is on between the conservatives and the reformists. In Saudi Arabia too the process of change is for anyone to see though the monarchy is quite cautious and wants to carry the orthodox `Ulama along. But social pressures are building up in the Saudi society in favour of change and modernisation. Even in Afghanistan the Taliban rule is more coercive than consensual. The Taliban enjoy political and not social hegemony.¶ Islam admits of freedom of conscience and democratic rights and there are no two opinions about it. Islam also officially accepts religious pluralism in as much as it is Qur'anic doctrine to hold other prophets in equal esteem. The Holy Prophet provided equal social and religious space to all religions present in Medina, as pointed out above, through the Covenant of Medina. The leaders of Jami`at al-`Ulama in India rejected the concept of two nations and supported the composite nationalism on the basis of this Covenant. Religious pluralism and composite nationalism, which is the very spirit of secularism today in India, is not incompatible to Islam at all. All Islamic leaders of India have accepted Indian secularism. Even the Jama`at-e-Islami-e-Hind has not only accepted Indian democracy and secularism but has set up a democratic and secular front.¶ The other characteristic of secular democracy is a respect for human dignity and human rights. The Qur'an expressly upholds both. It is true some rulers in the Islamic world reject the concept of human rights as Western in origin and not fit for their society. But it is to preserve their own absolute and unchallenged rule rather than upholding Islamic doctrinal position. It is cultural and political rather than religious problem. There are different political systems in different Islamic countries from monarchy to military dictatorship to limited democracy to democracy. But it will be naïve to blame Islam for this. One has to look into the political history of the country rather than search for its causes in to Islamic doctrines. Islamic doctrines do not nurture any concept of absolutism as perhaps no other religion does. In fact the Qur'an's emphasis is on consultation (shura), and even the Prophet used to consult his companions in secular matters.¶ It will thus be seen that Islam is not incompatible to secularism if it does not mean rejection of religious faith. Throughout the world today there is increasing emphasis on harmonious coexistence of different religious faiths and Islam had inculcated this spirit from the very beginning of revelation of the Qur'an. The doctrine that religion and politics cannot be separated in Islam is a later historical construct rather than the Qur'anic doctrine. It is human construct rather than a divine revelation. One of the important aspects of modern secularism is of course separation of religion from the state. While the state should not interfere in religious autonomy, religious authorities should not poke their nose in affairs of the state. The Indian `Ulama had accepted this position with good conscience throughout freedom struggle and it was on this basis that they became allies of the Indian National Congress.

#### Debating the law teaches us how to make it better – rejection is worse

Todd Hedrick 12, Assistant Professor of Philosophy at Michigan State University, Sept, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

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

#### The right fills in --- turns all their impacts

Orly Lobel 7, University of San Diego Assistant Professor of Law, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

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

# 2NC

## Topicality/Framework

### Violations

#### Statute requires legislative action

The Law Dictionary 13 “What is Statutory Restriction?, The Law Dictionary: **Featuring Black’s Law Dictionary Free Online Legal Dictionary 2nd Edition**, http://thelawdictionary.org/statutory-restriction/

What is STATUTORY RESTRICTION?

Limits or controls that have been place[d] on activities by its ruling legislation.

## State Good on Case

### AT: Threat Con

#### Reps alone don’t cause war

Reiter 95 DAN REITER is a Professor of Political Science at Emory University and has been an Olin post-doctoral fellow in security studies at Harvard “Exploring the Powder Keg Myth” International Security v20 No2 Autumn 1995 pp 5-34 JSTOR

A criticism of assessing the frequency of preemptive wars by looking only at wars themselves is that this misses the non-events, that is, instances in which preemption would be predicted but did not occur. However, excluding non-events should bias the results in favor of finding that preemptive war is an important path to war, as the inclusion of non-events could only make it seem that the event was less frequent. Therefore, if preemptive wars seem infrequent within the set of wars alone, then this would have to be considered strong evidence in favor of the third, **most skeptical view of preemptive war**, because even when the sample is rigged to make preemptive wars seem frequent (by including only wars), they are still rare events. Below, a few cases in which preemption did not occur are discussed to illustrate factors that constrain preemption.¶ The rarity of preemptive wars offers preliminary support for the third, most skeptical view, that the preemption scenario does not tell us much about how war breaks out. Closer examination of the three cases of preemption, set forth below, casts doubt on the validity of the two preemption hypotheses discussed earlier: that hostile images of the enemy increase the chances of preemption, and that belief in the dominance of the offense increases the chances of preemption. In each case there are motives for war aside from fear of an imminent attack, indicating that such fears may not be sufficient to cause war. In addition, in these cases of war the two conditions hypothesized to stimulate preemption—hostile images of the adversary and belief in the military advantages of striking first—are present to a very high degree. This implies that these are insubstantial causal forces, as they are associated with the outbreak of war only when they are present to a very high degree. This reduces even further the significance of these forces as causes of war. To illustrate this point, consider an analogy: say there is a hypothesis that saccharin causes cancer. Discovering that rats who were fed a lot of saccharin and also received high levels of X-ray exposure, which we know causes cancer, had a higher risk for cancer does not, however, set off alarm bells about the risks of saccharin. Though there might be a relationship between saccharin consumption and cancer, this is not demonstrated by the results of such a test.

### Finishing Lobel

#### The right fills in --- turns all their impacts

Orly Lobel 7, University of San Diego Assistant Professor of Law, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

 that the multiplication of practices will evolve into something substantial. In fact, the myth of engagement obscures the actual lack of change being produced, while the broader pattern of equating extralegal activism with social reform produces a false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. ¶ The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of extralegal activism — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all produce a fantasy that change can be brought about through small-scale, decentralized transformation. The emphasis is local, but the locality is described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. In reality, although there has been a recent proliferation of associations and grassroots groups, few new local-statenational federations have emerged in the United States since the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? ¶ It is important for next-generation progressive legal scholars, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We must differentiate, for example, between inward-looking groups, which tend to be self-regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, within critical discourse there is a need to recognize the limited capacity of small-scale action. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change. Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

### Key Constraint

#### Academic, institutions-based debate regarding war powers is critical to check excessive presidential authority---college students key

Kelly Michael Young 13, Associate Professor of Communication and Director of Forensics at Wayne State University, "Why Should We Debate About Restriction of Presidential War Powers", 9/4, public.cedadebate.org/node/13

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.

### Cochran

Molly Cochran 99, Assistant Professor of International Affairs at Georgia Institute for Technology, “Normative Theory in International Relations”, 1999, pg. 272

To conclude this chapter, while modernist and postmodernist debates continue, while we are still unsure as to what we can legitimately identify as a feminist ethical/political concern, while we still are unclear about the relationship between discourse and experience, it is particularly important for feminists that we proceed with analysis of both the material (institutional and structural) as well as the discursive. This holds not only for feminists, but for all theorists oriented towards the goal of extending further moral inclusion in the present social sciences climate of epistemological uncertainty. Important ethical/political concerns hang in the balance. We cannot afford to wait for the meta-theoretical questions to be conclusively answered. Those answers may be unavailable. Nor can we wait for a credible vision of an alternative institutional order to appear before an emancipatory agenda can be kicked into gear. Nor do we have before us a chicken and egg question of which comes first: sorting out the metatheoretical issues or working out which practices contribute to a credible institutional vision. The two questions can and should be pursued together, and can be via moral imagination. Imagination can help us think beyond discursive and material conditions which limit us, by pushing the boundaries of those limitations in thought and examining what yields. In this respect, I believe international ethics as pragmatic critique can be a useful ally to feminist and normative theorists generally.

# 1NR

## Iran DA

### UQ

#### Obama not pushing restrictions now

David Gray Adler 11, Director of the Andrus Center for Public Policy @ Boise State University, March 4, “Presidential Ascendancy in Foreign Affairs and the Subversion of the Constitution,” http://www.civiced.org/pdfs/GermanAmericanConf2011/Adler.pdf

Presidential domination of American foreign affairs has become a commonplace after a half - century of unchecked expansion of executive powers. The emergence of a “presidential monopoly” over the conduct of foreign relations, built atop an extraordinary concentration of power in the president, reflects the doctrine of executive supremacy launched by the Supreme Court in United States v. Curtiss - Wright . 11 Across the decades, advocates of expansive presiden tial power in the realm of foreign affairs and national security have sought legal sanction in Justice George Sutherland’s opinion for the Court in Curtiss - Wright . In one way or another, the White House has adduced Sutherland’s characterization of the president as the “sole organ” of American foreign policy, endowed with plenary, inherent and extra - constitutional powers to initiate war, authorize torture, seize and detain American citizens indefinitely, set aside laws, establish military tribunals and s uspe nd and terminate treaties, in addition to assertions of authority to order covert operations, extraordinary rendition and warrantless wiretapping.

#### **PC is working to hold Dems in line precisely because Obama’s framing opposition to sanctions around the idea that the Executive should be free from restrictions in foreign policy---the plan’s a loss on the vital argument preventing sanctions**

VOA 1-23 – Voice of America News, 1/23/14, “Support Slipping for Iran Sanctions in US Senate,” http://www.voanews.com/content/support-slipping-for-iran-sanctions-in-senate/1836453.html

More Democratic senators are quietly signaling their opposition to a bill that spells out new sanctions against Iran if negotiations to limit the country’s nuclear program do not yield a final accord.

The bill retains bipartisan support in both houses of Congress, but passage is seen as increasingly unlikely in the Democratic-led Senate amid an intense lobbying effort by the Obama administration to hold off on sanctions while international negotiations proceed.

Senators Patty Murray and Elizabeth Warren are the latest Democrats to announce their opposition to the Iran sanctions bill currently before Congress.

In a letter to constituents in Washington state, Murray said “the administration should be given time to negotiate a strong verifiable comprehensive agreement” on Iran’s nuclear program. At the same time, she pledged to work “to swiftly enact sanctions” if the talks ultimately fail.

Similarly, a spokeswoman for Warren says the Massachusetts senator “does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing.”

The sanctions bill has 16 Democratic co-sponsors, near-unanimous support among Republicans, and the backing of politically potent pro-Israeli U.S. lobbying groups. But 11 Senate committee chairs, including Murray, currently oppose the bill.

Among Democrats who signed on to the measure late last year, some have grown less vocal in their defense and promotion of the measure in recent weeks. Senate Majority Leader Harry Reid has neither explicitly promised a vote on the bill, nor ruled it out.

Congressional expert William Galston of the Brookings Institution says pressure from President Barack Obama appears to be swaying a growing number of Democratic lawmakers.

“The White House is determined to prevent this from happening," he said. "The administration believes in the marrow of its bones that the executive branch is the lead negotiator in the matter and that it deserves a chance to conduct its own foreign policy."

Iran says any new sanctions would violate last year’s interim nuclear accord and spell the end of negotiations.

The White House has promised a presidential veto of any sanctions Congress may pass before negotiations run their course.

#### Here’s a specific link---plan takes an extraordinary amount of PC and zaps Obama’s agenda

Greg McNeal 11, Associate Professor of Law, Pepperdine University School of Law. THE STATUS QUO BIAS AND COUNTERTERRORISM DETENTION, http://www.law.northwestern.edu/journals/jclc/backissues/v101/n3/1013\_855.McNeal.pdf

In short, because new counterterrorism detention policies will be different from the current practices in place in other nations, a reform proposal cannot capture the attention of policymakers because almost any reform proposal will be seen as illegitimate by some. It may maximize security, or certainty, or rights, but the biggest hurdle to overcome is not those values—the values Wittes’s proposals maximize—instead, the biggest hurdle is legitimacy, an amorphous value that is difficult to maximize absent conformity, and conformity is in the eye of the beholder.

The legitimacy challenges outlined above are further complicated by the fact that, most policy and political actors are not as rationally calculating as Wittes seems to hope. Rather, they are satisficing, making incremental decisions based on limited data.111 The policy process, when understood this way, is not a rational comprehensive process that will generate the best policy outcome, but is rather a series of “successive limited comparisons” in which actors make choices about the status quo, and the feasible alternatives.112

In this framework, legitimacy is a key feasibility criterion, and perhaps the insurmountable obstacle facing reform minded advocates like Wittes.

Taken together, what lessons can we learn from Wittes? His reform proposals are sensible, and as a normative matter, proper. I agree with the underlying premise upon which his case for candor rests—that detention is a necessary tool of security with a long history in American law.113 I also agree with his contention that the U.S. should not put off change, shirking its responsibilities in the hope that new challenges won’t overwhelm the system.114

III. THE CASE FOR PESSIMISM

Nonetheless, as the preceding discussion highlights, reform advocates face significant challenges overcoming the bias towards the status quo.

Despite my agreement with Wittes and other reformers, I believe a case for pessimism can and should be made, if for no other reason than to outline the major obstacles standing in the way of reform. The story told thus far is one of a hyper-political discourse, coupled with a counterproductive detention policy that neither serves the interests of the government nor the interests of human rights. Yet the policy endures. What accounts for the power of the status quo? The durability may be a consequence of a failure on the part of the United States both to acknowledge that problems exist and conscious efforts to hide failures. This denial has proven itself as a flexible tool for managing detentions, that is, “[i]t has given the United States a relatively stable and reasonably favorable short-term equilibrium, one in which international pressure over detention matters has declined dramatically.”115 While effective in the short run, human rights and civil liberties activists on one side and government lawyers on the other side all seem to admit that a legislative policy fix would be preferable.116 Denial alone though, cannot explain the status quo because, to many advocates, the time to fix detention policy is now.117

A. THE POWER OF THE STATUS QUO

 Which raises the question, if the problems are as serious as some contend (and I believe they are), what explains the lack of change?

Policy scholars have proven that the power of the status quo is a dominant feature in federal policymaking.118 One way to understand the power of the status quo is to envision it as a consequence of friction in the policymaking process. This friction prevents change from coming about, at least until the pressure for change overcomes the friction of the status quo.119 Wittes admits as much when he notes that change may be unlikely until the U.S. is engaged in a conflict that overwhelms the nation’s capacity to detain, either due to a mass influx of detainees or due to special categories of detainees whose intelligence value may be lost due to the inability of the U.S. to appropriately detain them.120

 At that point we may see pressure for change (albeit late, and at some cost). A way of understanding this in friction terms is to recognize that there is a constant undercurrent of pressure in favor of changing detention policy. The effect of that pressure may be zero, until it crosses a threshold, and over that threshold we may witness a substantial amount of policy movement. However, short of sufficient political pressure—likely prompted by the dim future painted by Wittes—I fail to see how reforms in counterterrorism policy will come about.

B. ATTENTION AND THE STATUS QUO

Part of the challenge in bringing about a change from the status quo is the ability to focus the attention of policymakers.121 This is not to say that attention to counterterrorism detention is nonexistent, rather attention to the problem seems to be constant, but so too is information in support of and opposed to current policies. In Part II, I described how a hyper-partisan discourse surrounds counterterrorism detention policy debates, noting how arguments about Guantanamo specifically and counterterrorism detention policy generally, can lead to the status quo. Similarly, Wittes notes that human rights groups from the left have demonized preventive detention while those on the right have made Guantanamo an ideological commitment and plank in their political platform.122

In this policy context it is difficult to focus the attention of policymakers, and persuasive arguments are not as new or persuasive as advocates may believe them to be. As prominent policy scholars have noted, “the problem is rarely the scarcity of information, but rather its overabundance—policy makers don’t know how to make sense of it all, being overwhelmed with so much information coming at them from [interest groups] on all kinds of issues.”123 For detention policy, attention may be present but other priorities may seem more urgent. As this Article was entering the editorial process, the healthcare debate,124 targeted killing and Predator drones in Libya,125 and WikiLeaks126 were the policy issues of the day, by the time this Article is in print, those issues will likely be replaced by more contemporary issues. If the status quo is to be changed, serious attention must be focused on changing it, and that can only happen with a policy window akin to the future crisis Wittes describes, and even then policy leaders must be convinced that the status quo policy is seriously, not just marginally flawed.127

C. THE NEED TO JUSTIFY CHANGE As articulated above, those who want to change detention policy bear the burden of proof. To move from the status quo, they must convince policymakers with limited attention that existing detention policy is so suboptimal that a new policy is justified. This is a substantial challenge, not just because people naturally resist change, or because they prefer the substance of the status quo, but also because the status quo is understandable, it is manageable, and many may fear the uncertainty and unintended consequences of changing the system.128 To justify change, advocates must not only make the case to one policymaker or a handful of policymakers but must change the expectations and collective understandings of entire policy communities.129 In this context, it is important to ask who the constituency is for policy change. In counterterrorism matters, there is an entire cottage industry of national security and human rights experts whose daily existence is justified and reinforced by the status quo. For example, a central feature of the work the American Civil Liberties Union,130 Center for Constitutional Rights,131 Human Rights Watch,132 Human Rights First,133 Amnesty International,134 and dozens of other groups is opposition to current detention policies. But unlike a traditional lobby, what constituency do these groups represent? More pointedly, are the mistakes in detention policy important enough for any individual member of Congress to take steps to change the policy? Will a member lose their seat over a failure to provide greater due process protections to detainees? Or is it more likely that they will lose their seat if they champion the cause of detainees and one of those detainees is released and kills some of his constituents? That is the political calculus facing policymakers, and in that calculus it seems difficult to justify changing detention policy absent some clear benefit to national security. Moreover, even if individual policymakers agree that the policy should be changed, they may face substantial hurdles in their attempts to convince Congressional leaders (who drive the legislative agenda) that the policy should be overhauled.135

The power of the status quo is substantial and perhaps one of its most enduring features is the ability to “kick the can down the road.” As policy scholars have noted, “[t]he most important reason for the endurance of the status quo is that power is divided within the American system and attention is limited. Because power is fragmented, many political actors must come together if policy change is to be made.”136

#### Conceded losers lose---no new arguments

### Epistemology

#### Epistemology doesn’t precede our impacts—threats must be dealt with

Olav Knudsen 1, PoliSci Professor at Sodertorn University, “Post-Copenhagen Security Studies,” *Security Dialogue* 32:3, September, <http://sdi.sagepub.com/cgi/reprint/32/3/355>

Moreover, I have a problem with the underlying implication that it is unimportant whether states ‘really’ face dangers from other states or groups.  In the Copenhagen school, threats are seen as coming mainly from the actors’ own fears, or from what happens when the fears of individuals turn into paranoid political action.  In my view, this emphasis on the subjective is a misleading conception of threat, in that it discounts an independent existence or whatever is perceived as a threat. Granted, political life is often marked by misperceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenomena do not occur simultaneously to large numbers of politicians, and hardly most of the time.  During the cold War, threats—in the sense of plausible possibilities of danger—referred to ‘real’ phenomena, and they refer to ‘real’ phenomena now.  The objects referred to are often not the same, but that is a different matter.   Threats have to be dealt with both in terms of perceptions and in terms of the phenomena which are perceived to be threatening.   The point of Waever’s concept of security is not the potential existence of danger somewhere but the use of the word itself by political elites.   In his 1997 PhD dissertation, he writes, ‘One can view “security” as that which is in language theory called a speech act: it is not interesting as a sign referring to something more real—it is the utterance itself that is the act.’  The deliberate disregard for objective actors is even more explicitly stated in Buzan & Waever’s joint article of the same year.   As a consequence, the phenomenon of threat is reduced to a matter of pure domestic politics.   It seems to me that the security dilemma, as a central notion in security studies, then loses its foundation.  Yet I see that Waever himself has no compunction about referring to the security dilemma in a recent article.  This discounting of the objective aspect of threats shifts security studies to insignificant concerns.  What has long made ‘threats’ and ‘threat perceptions’ important phenomena in the study of IR is the implication that urgent action may be required.   Urgency, of course, is where Waever first began his argument in favor of an alternative security conception, because a convincing sense of urgency has been the chief culprit behind the abuse of ‘security’ and the consequent ‘politics of panic,’ as Waever aptly calls it.  Now, here—in the case of urgency—another baby is thrown our with the Waeverian bathwater.   When situations of urgency arise, those situations are challenges to democracy; they are actually at the core of the problematic arising with the process of making security policy in parliamentary democracy.  But in Waever’s world, threats are merely more or less persuasive, and the claim of urgency is just another argument.  I hold that instead of ‘abolishing’ threatening phenomena ‘out there’ by reconceptualizing them, as Waever does, we should continue paying attention to them, because situations with a credible claim to urgency will keep coming back and then we need to know more about how they work in the interrelations of groups and states (such as civil wars, for instance), not least to find adequate democratic procedures for dealing with them. Drawing on the securitization concept, much research now focuses on the process of defining something as a threat in order to put ‘new’ things on the political agenda.  It should follow from the above that I disagree with the level of emphasis thus placed on the subjective side.  Such an emphasis means that researchers are asked to distance themselves from the world of politics as it is and to shift their attention one-sidedly towards the politics of ‘what could be’.  This aspect of Waever’s approach is clearly not accidental; it is intended to be that way. The problem here is that this serves to downgrade the significance of problems that exist out there—not just in the heads of politicians and decision-makers but as challenges to their experience and problem-solving efforts.  The implication of the agenda-setting approach is that perceptions and images are arbitrary, a stance which in itself may be ill-advised because it detracts from the significance of issues like crisis management in Europe, which ought to have a fairly high priority.  Yet, to be fair, the distance of theory from policy is not only a product of the Copenhagen school; it is also an effect of the excessive emphasis on epistemology and metatheoretical issues referred to above.

### AT: Securitization

#### Threats real---threat inflation would get our authors fired

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The underlying notion of “the security bureaucracies . . . looking for new enemies” is a threadbare concept that has somehow taken hold across the political spectrum, from the radical left (viz. Michael Klare [1981], who refers to a “threat bank”), to the liberal center (viz. Robert H. Johnson [1997], who dismisses most alleged “threats” as “improbable dangers”), to libertarians (viz. Ted Galen Carpenter [1992], Vice President for Foreign and Defense Policy of the Cato Institute, who wrote a book entitled A Search for Enemies). What is missing from most analysts’ claims of “threat inflation,” however, is a convincing theory of why, say, the American government significantly(not merely in excusable rhetoric) might magnify and even invent threats (and, more seriously, act on such inflated threat estimates). In a few places, Eland (2004, 185) suggests that such behavior might stem from military or national security bureaucrats’ attempts to enhance their personal status and organizational budgets, or even from the influence and dominance of “the military-industrial complex”; viz.: “Maintaining the empire and retaliating for the blowback from that empire keeps what President Eisenhower called the military-industrial complex fat and happy.” Or, in the same section:¶ In the nation’s capital, vested interests, such as the law enforcement bureaucracies . . . routinely take advantage of “crises”to satisfy parochial desires. Similarly, many corporations use crises to get pet projects— a.k.a. pork—funded by the government. And national security crises, because of people’s fears, are especially ripe opportunities to grab largesse. (Ibid., 182)¶ Thus, “bureaucratic-politics” theory, which once made several reputa- tions (such as those of Richard Neustadt, Morton Halperin, and Graham Allison) in defense-intellectual circles, and spawned an entire sub-industry within the field of international relations,5 is put into the service of dismissing putative security threats as imaginary. So, too, can a surprisingly cognate theory, “public choice,”6 which can be considered the right-wing analog of the “bureaucratic-politics” model, and is a preferred interpretation of governmental decision- making among libertarian observers. As Eland (2004, 203) summarizes:¶ Public-choice theory argues [that] the government itself can develop sepa- rate interests from its citizens. The government reflects the interests of powerful pressure groups and the interests of the bureaucracies and the bureaucrats in them. Although this problem occurs in both foreign and domestic policy, it may be more severe in foreign policy because citizens pay less attention to policies that affect them less directly.¶ There is, in this statement of public-choice theory, a certain ambiguity, and a certain degree of contradiction: Bureaucrats are supposedly, at the same time, subservient to societal interest groups and autonomous from society in general.¶ This journal has pioneered the argument that state autonomy is a likely consequence of the public’s ignorance of most areas of state activity (e.g., Somin 1998; DeCanio 2000a, 2000b, 2006, 2007; Ravenal 2000a). But state autonomy does not necessarily mean that bureaucrats substitute their own interests for those of what could be called the “national society” that they ostensibly serve. I have argued (Ravenal 2000a) that, precisely because of the public-ignorance and elite-expertise factors, and especially because the opportunities—at least for bureaucrats (a few notable post-government lobbyist cases nonwithstanding)—for lucrative self-dealing are stringently fewer in the defense and diplomatic areas of government than they are in some of the contract-dispensing and more under-the-radar-screen agencies of government, the “public-choice” imputation of self-dealing, rather than working toward the national interest (which, however may not be synonymous with the interests, perceived or expressed, of citizens!) is less likely to hold. In short, state autonomy is likely to mean, in the derivation of foreign policy, that “state elites” are using rational judgment, in insulation from self-promoting interest groups—about what strategies, forces, and weapons are required for national defense.¶ Ironically, “public choice”—not even a species of economics, but rather a kind of political interpretation—is not even about “public” choice, since, like the bureaucratic-politics model, it repudiates the very notion that bureaucrats make truly “public” choices; rather, they are held, axiomatically, to exhibit “rent-seeking” behavior, wherein they abuse their public positions in order to amass private gains, or at least to build personal empires within their ostensibly official niches. Such sub- rational models actually explain very little of what they purport to observe. Of course, there is some truth in them, regarding the “behavior” of some people, at some times, in some circumstances, under some conditions of incentive and motivation. But the factors that they posit operate mostly as constraints on the otherwise rational optimization of objectives that, if for no other reason than the playing out of official roles, transcends merely personal or parochial imperatives.¶ My treatment of “role” differs from that of the bureaucratic-politics theorists, whose model of the derivation of foreign policy depends heavily, and acknowledgedly, on a narrow and specific identification of the role- playing of organizationally situated individuals in a partly conflictual “pulling and hauling” process that “results in” some policy outcome. Even here, bureaucratic-politics theorists Graham Allison and Philip Zelikow (1999, 311) allow that “some players are not able to articulate [sic] the governmental politics game because their conception of their job does not legitimate such activity.” This is a crucial admission, and one that points— empirically—to the need for a broader and generic treatment of role.¶ Roles (all theorists state) give rise to “expectations” of performance. My point is that virtually every governmental role, and especially national-security roles, and particularly the roles of the uniformed mili- tary, embody expectations of devotion to the “national interest”; rational- ity in the derivation of policy at every functional level; and objectivity in the treatment of parameters, especially external parameters such as “threats” and the power and capabilities of other nations.¶ Sub-rational models (such as “public choice”) fail to take into account even a partial dedication to the “national” interest (or even the possibility that the national interest may be honestly misconceived in more paro- chial terms). In contrast, an official’s role connects the individual to the (state-level) process, and moderates the (perhaps otherwise) self-seeking impulses of the individual. Role-derived behavior tends to be formalized and codified; relatively transparent and at least peer-reviewed, so as to be consistent with expectations; surviving the particular individual and trans- mitted to successors and ancillaries; measured against a standard and thus corrigible; defined in terms of the performed function and therefore derived from the state function; and uncorrrupt, because personal cheating and even egregious aggrandizement are conspicuously discouraged.¶ My own direct observation suggests that defense decision-makers attempt to “frame” the structure of the problems that they try to solve on the basis of the most accurate intelligence. They make it their business to know where the threats come from. Thus, threats are not “socially constructed” (even though, of course, some values are).¶ A major reason for the rationality, and the objectivity, of the process is that much security planning is done, not in vaguely undefined circum- stances that offer scope for idiosyncratic, subjective behavior, but rather in structured and reviewed organizational frameworks. Non-rationalities (which are bad for understanding and prediction) tend to get filtered out. People are fired for presenting skewed analysis and for making bad predictions. This is because something important is riding on the causal analysis and the contingent prediction. For these reasons, “public choice” does not have the “feel” of reality to many critics who have participated in the structure of defense decision-making. In that structure, obvious, and even not-so-obvious,“rent-seeking” would not only be shameful; it would present a severe risk of career termination. And, as mentioned, the defense bureaucracy is hardly a productive place for truly talented rent-seekers to operatecompared to opportunities for personal profit in the commercial world. A bureaucrat’s very self-placement in these reaches of government testi- fies either to a sincere commitment to the national interest or to a lack of sufficient imagination to exploit opportunities for personal profit.

### State Key

#### Their enagement of security fails if it doesn’t engage specific governmental policies

Nunes 7 – João Reis Nunes, Marie Curie Fellow and Ph.D. Candidate in International Politics at the University of Wales, Aberystwyth, September 2007, “Politics, Security, Critical Theory: A Contribution to Current Debates on Security,” online: http://archive.sgir.eu/uploads/Nunes-joaonunes-politicssecuritycriticaltheory.pdf

This theoretical weakness needs to be addressed. Given the growing critical literature devoted to deconstructing and exposing the undemocratic character of security practices, a knee-jerk suspicion towards calls for ‘more security’ has led to attacks concerning the supposed ‘political irresponsibility’ or ‘violent/exclusionary/undemocratic leanings’ implicit in the Welsh School’s understanding of ‘security as emancipation’. Therefore, if it is to constitute a credible and fruitful element in the critical debate, any ‘emancipatory’ or ‘civilizing’ account of security must engage with a growing body of work devoted to the democratic governance of security30. The focus on the notion of governance allows this literature to approach the heterogeneity and multiplicity of security practices in a systematic fashion: drawing inspiration from the work of Foucault on governmentality, security practices are seen as strategies of constitution of subjects, that is, as ‘conscious attempts to shape and influence the conduct of individuals, groups and wide populations in furtherance of a particular objective’ (Wood and Dupont 2006:2). This systematic approach allows for attention to be drawn to the impact and relative weight of different actors, as well as to the interaction and mutual influence between different sites of governance, thereby allowing for a much more precise and normatively grounded account of the otherwise vague realm of ‘security practice’.

This is particularly important in a situation in which policies of security cannot be reduced to the unilateral intervention of the state apparatus upon the civil society, a rather traditional view of the practice of security that has been challenged by the emergence of an intricate web of (public and private) security actors and mentalities. As a consequence, the literature on the governance of security has come to accept the growing heterogeneity and dispersion of security practices, ranging from a purely ‘nodal’ understanding of governance to a form of pluralism ‘anchored’ on state intervention. The former vision (put forward in Shearing and Wood 2003, Wood and Shearing 2007, Johnston 2006 and Wood 2006) sees security as the result of the constant interaction of multiple ‘nodes’ in a network, each node constituting a site of governance that exhibits a set of particular characteristics (an institutional structure, resources, methodologies and ways of thinking). For these authors, no set of nodes is given conceptual priority; rather, the exact character and structure of governance and the interaction and contribution of various nodes is regarded as an empirically open question (Shearing and Wood 2003). This means that the specific content of security practice is always the result of the struggle between different actors (Dupont 2006), a situation that opens the way for the problematization of the normative value of actual policies and thus allows for democratizing influences.

#### Only anchoring our rethinking of security around the state can make the alt into a tangible public good that benefits people’s lives

Nunes 7 – João Reis Nunes, Marie Curie Fellow and Ph.D. Candidate in International Politics at the University of Wales, Aberystwyth, September 2007, “Politics, Security, Critical Theory: A Contribution to Current Debates on Security,” online: http://archive.sgir.eu/uploads/Nunes-joaonunes-politicssecuritycriticaltheory.pdf

In contrast, other authors recognize the desirability of anchoring the pluralism of security practices in state policies (Marks and Goldsmith 2006 and, most importantly, Loader and Walker 2007). According to these views, the state is seen as a ‘necessary virtue’ in that it plays an important normative role in the definition of the public good of security. For Loader and Walker, the ‘publicness’ of security demands ‘a certain amount of cultural and ordering work that must necessarily and routinely be accomplished’ (2007:170) and that can only be guaranteed by the state or its functional equivalent. Loader and Walker’s conception of ‘anchored pluralism’ recognizes that there should be as much pluralism as possible: both internally – in what comes to inclusiveness, representativeness and individual and minority protection mechanisms – and externally – in what regards the recognition of the appropriate place of multiple ‘sites of cultural and regulatory production’ (2007:193). However, the state is seen as the anchor of collective security provision, a ‘meta-regulator’ and a ‘wide boundary of social and security identity within which other identities may be encouraged’ (Loader and Walker 2007:193).

This paper does not intent to draw any definitive conclusions from this debate. It recognizes that it is not possible to say, in abstract terms, what an adequate democratic governance of security will look like. The definition of general democratic criteria must be replaced by practical, situation-specific normative concerns aimed at realizing a set of basic principles of security practice that, following Loader (2002), can be summarized along three dimensions: a) a politics of recognition, aimed at ensuring that security practices are determined by processes of public will-formation that take into account the views of individuals and groups that are likely to be affected by them; b) an attention towards the rights, legitimate aspirations and interests of individuals and groups, be they in a minority or majority position; and c) a politics of resources aimed at ensuring that all citizens are provided with a ‘fair share’ of security.

### AT: Causes War

#### Self-fulfilling prophecy is backwards

Joanna Macy 95, general systems scholar and deep ecologist, Ecopsychology

There is also the superstition that negative thoughts are self-fulfilling. This is of a piece with the notion, popular in New Age circles, that we create our own reality I have had people tell me that “to speak of catastrophe will just make it more likely to happen.” Actually, the contrary is nearer to the truth. Psychoanalytic theory and personal experience show us that it is precisely what we repress that eludes our conscious control and tends to erupt into behavior. As Carl Jung observed, “When an inner situation is not made conscious, it happens outside as fate.” But ironically, in our current situation, the person who gives warning of a likely ecological holocaust is often made to feel guilty of contributing to that very fate.

## Detention DA

### AT: Berube

#### Allowing nuclear war to occurs the ultimate immorality

NYE 86 Professor of IR – JFK School of Government – Harvard 1986 Nuclear Ethics

While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, an unsophisticated cosmopolitanism has serious drawbacks. First, if morality is about choices, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which the choices must be made. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences. And if such actions, for example the promotion of human rights in Eastern Europe, were to lead to crises and an unintended nuclear war the consequences might be the ultimate immorality. Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised.

33-34

#### Ethical policymaking requires calculation of our impacts—refusing consequentialism allows atrocity in the name of ethical purity

Nikolas Gvosdev 5 (Nikolas, Exec Editor of The National Interest, The Value(s) of Realism, SAIS Review 25.1, Muse)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

**AT: Root Cause/It’s America’s Fault**

**There’s no root cause of terror and the aff only emboldens attacks---seriously, no political grievance can explain or justify the fundamental willingness of terrorists to kill civilians and children as a matter of strategy**

Alan **Dershowitz 2**, criminal law professor, Harvard, Why Terrorism Works, p 24-5

**The current mantra of those opposed to a military response** to terrorism is **a plea to try** **to understand** and eliminate **the** root causes **of terrorism**. There are several reasons why this **is** exactly the wrong approach. The reason **terrorism works**-and will persist unless there are significant changes in the responses to it-is precisely **because its perpetrators believe that by** murdering innocent civilians **they will succeed in attracting** the **attention** of the world **to** their perceived grievances and **their demand that the world** "understand them" and "**eliminate their root causes." To submit to this demand is to send** the following counterproductive message to those with perceived grievances: **if you resort to terrorism, we will try harder to understand your grievances** **and respond to them than we would have if you employed less violent methods. This is** precisely **the criterion for success established by the terrorist themselves**. Listen to the words of Zehdi Labib Terzi, the Palestine Liberation Organization's chief observer at the United Nations: "The first several hijackings aroused the consciousness of the world and awakened the media and the world opinion much more-and more effectively-than twenty years of pleading at the United Nations." If this is true-and the Palestinians surely believe it is-then it should come as no surprise that hijackings and other forms of terrorism increased dramatically after the Palestinians were rewarded for their initial terrorism by increased world attention to its "root causes"-attention that quickly resulted in their leader being welcomed by the U.N. General Assembly, their organization being granted observer status at the United Nations, and their "government" being recognized by dozens of nations. We must take precisely the opposite approach to terrorism. **We must commit ourselves never to try to understand or eliminate its alleged root causes, but rather to place it beyond the pale of dialogue** and negotiation. Our message must be this: even if you have legitimate grievances, if you resort to terrorism **as a means toward eliminating them we will simply not listen to you, we will not try to understand you, and** we will **certainly never change any of our policies** toward you. Instead, **we will hunt you down and** destroy your capacity to engage in terror. **Any other approach will** encourage the use of terrorism **as a means toward achieving ends**-**whether those ends are legitimate, illegitimate, or anything in between.** Nor is there any single **substantive** root cause **of** all, or even most, **terrorism**. If there were-if poverty, for example, were the root cause of all terrorism-then by fixing that problem we could address the root cause of specific terrorist groups without encouraging others. But the reality is that the "**root causes"** of terrorism **are** as varied as human nature**. Every single "root cause" associated with terrorism has existed for centuries**, and the vast majority of **groups with equivalent** or more compelling **causes**-and with far greater poverty and disadvantage-**have never resorted to terrorism.** There has never even been a **direct** correlation-**to say nothing of causation-**between **the** degrees of injustice experienced by a given group and **the** willingness **of that group** to resort to terrorism. **The search for "root causes" smacks** more **of after-the-fact political justification** than inductive scientific inquiry. **The variables that distinguish aggrieved groups willing to target** innocent civilians **from equally situated groups unwilling to murder children have far less to do with the legitimacy of their causes or the suffering of their people than with** religious, cultural, political, and ethical differences. They also relate to universalism versus parochialism and especially to the value placed on human life. **To focus on** such **factors** as poverty, illiteracy, disenfranchisement, and others **all too common around our imperfect world is to fail to explain why so many groups with far greater grievances** and disabilities have **never resorted to terrorism**. **Instead, the focus must be on the reality that using an act of terrorism as the occasion for addressing the root causes** of that act **only encourages other groups to resort to terrorism** in order **to have their root causes advanced on the international agenda**. Put another way, the "root cause" of terrorism that must be eliminated is its success.