# 1NC

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#### a. Interpretation and violation---the affirmative should defend topical action grounded in the resolution

#### 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.

#### A general subject isn’t enough—debate requires a specific point of difference

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Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs 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? I low 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 can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007.¶ Someone disturbed by the problem of the 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.¶ To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose.¶ Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania 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 treatv 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 effective dialogue—monopolizing strategy and prep makes the discussion one-sided and subverts any meaningful neg role

Galloway 7—Samford Comm prof (Ryan, 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. Substantive constraints on the debate are key to actualize effective pluralism and agonistic democracy

John Dryzek 6, Professor of Social and Political Theory, The Australian National University, Reconciling Pluralism and Consensus as Political Ideals, American Journal of Political Science,Vol. 50, No. 3, July 2006, Pp. 634–649

A more radical contemporary pluralism is suspicious of liberal and communitarian devices for reconciling difference. Such a critical pluralism is associated with agonists such as Connolly (1991), Honig (1993), and Mouffe (2000), and difference democrats such as Young (2000). As Honig puts it, “Difference is just another word for what used to be called pluralism” (1996, 60). Critical pluralists resemble liberals in that they begin from the variety of ways it is possible to experience the world, but stress that the experiences and perspectives of marginalized and oppressed groups are likely to be very different from dominant groups. They also have a strong suspicion ofliberal theory that looks neutral but in practice supports and serves the powerful.

Difference democrats are hostile to consensus, partly because consensus decisionmaking (of the sort popular in 1970s radical groups) conceals informal oppression under the guise of concern for all by disallowing dissent (Zablocki 1980). But the real target is political theory that deploys consensus, especially deliberative and liberal theory. Young (1996, 125–26) argues that the appeals to unity and the common good that deliberative theorists under sway of the consensus ideal stress as the proper forms of political communication can often be oppressive. For deliberation so oriented all too easily equates the common good with the interests of the more powerful, thus sidelining legitimate concerns of the marginalized. Asking the underprivileged to set aside their particularistic concerns also means marginalizing their favored forms of expression, especially the telling of personal stories (Young 1996, 126).3 Speaking for an agonistic conception of democracy (to which Young also subscribes; 2000, 49–51), Mouffe states:

To negate the ineradicable character of antagonism and aim at a universal rational consensus— that is the real threat to democracy. Indeed, this can lead to violence being unrecognized and hidden behind appeals to “rationality,” as is often the case in liberal thinking. (1996, 248)

Mouffe is a radical pluralist: “By pluralism I mean the end of a substantive idea of the good life” (1996, 246). But neither Mouffe nor Young want to abolish communication in the name of pluralism and difference; much of their work advocates sustained attention to communication. Mouffe also cautions against uncritical celebration of difference, for some differences imply “subordination and should therefore be challenged by a radical democratic politics” (1996, 247). Mouffe raises the question of the terms in which engagement across difference might proceed. Participants should ideally accept that the positions of others are legitimate, though not as a result of being persuaded in argument. Instead, it is a matter of being open to conversion due to adoption of a particular kind of democratic attitude that converts antagonism into agonism, fighting into critical engagement, enemies into adversaries who are treated with respect. Respect here is notjust (liberal) toleration, but positive validation of the position of others. For Young, a communicative democracy would be composed of people showing “equal respect,” under “procedural rules of fair discussion and decisionmaking” (1996, 126). Schlosberg speaks of “agonistic respect” as “a critical pluralist ethos” (1999, 70).

Mouffe and Young both want pluralism to be regulated by a particular kind of attitude, be it respectful, agonistic, or even in Young’s (2000, 16–51) case reasonable.Thus neither proposes unregulated pluralism as an alternative to (deliberative) consensus. This regulation cannot be just procedural, for that would imply “anything goes” in terms of the substance of positions. Recall thatMouffe rejects differences that imply subordination. Agonistic ideals demand judgments about what is worthy of respect and what is not. Connolly (1991, 211) worriesabout dogmatic assertions and denials of identity that fuel existential resentments that would have to be changed to make agonism possible. Young seeks “transformation of private, self-regarding desires into public appeals to justice” (2000, 51). Thus for Mouffe, Connolly, and Young alike, regulative principles for democratic communication are not just attitudinal or procedural; they also refer to the substance of the kinds of claims that are worthy of respect. These authors would not want to legislate substance and are suspicious of the content of any alleged consensus. But in retreating from “anything goes” relativism, they need principles to regulate the substance of what rightfully belongs in democratic debate.

#### Constraints on deliberation are necessary to re-found the political---an untamed agon eviscerates political action and judgment skills

Dana Villa 96—prof of political science, Amherst, Beyond Good and Evil: Arendt, Nietzsche, and the Aestheticization of Political Action, Political Theory, Vol. 20, No. 2 (May, 1992), pp. 274-308

The representative thinking made possible by disinterested judgment is Arendt‘s Kantian version of Nietzsche's perspectival objectivity, the objectivity born of using “more" and “differ-em" eyes to judge/interpret a thing.” There is, however, an obvious and crucial difference between perspectives represented through the free play of imagination and the “perspective seeing" that Nietzsche describes. For Nietzsche, the ability to view the world aesthetically presupposes liberation from any residual sense that the link between signifier and signified is in any way nonarbitrary. Having “more” and “different” eyes simply means the ability to relativize all accepted meanings, to dissolve their apparent solidity in the free play of signifiers.135 In Kant and Arendt, on the other hand, the free play of the imagination, the capacity for representative thought, has the effect of focusing the judging agent's attention on the publicly available aspects of the representation.'‘‘‘’ The representative nature of judgment enables the transcendence of "individual limitations" and “subjective private conditions,” thereby freeing us for the purely public aspect of the phenomenon.

The difference between genealogical "objectivity" and representative judgment, between the kind of aesthetic distance endorsed by Nietzsche and [hat endorsed by Kant and Arcndt, is summed up by the contrast between Nietzsche’s trope of “seeing things from another planet" and the Kantian] Arendtian appeal to “common sense,” the sensus communis.m Nietzschean aestheticism, in the form of perspectivism, has the effect of either placing one beyond any community of interpretation (the genealogical standpoint) or denying that a viable “background consensus" exists, thereby robbing the public realm of its fundamental epistemological precondition. There can be no arena of common discourse, no genuinely public space, whcn the “death of God” leads to the advent of Weber's “waning gods."Us Lyotard expresses a similar thought when he links the discovery of an irreducible plurality of incommensurable language games to the decline of the legitimizing metanarratives of modernity . in such a situation, judgment and interpretation are inevitably aestheticized: we are left, in Nietzsche's phrase, with the "yay and nay of the palate.""°

For Kant, the significance and implications of aesthetic distance are quite opposite. As noted previously, he is struck by the public character of the beautiful, despite the nonobjective quality of aesthetic t’ntpel'ience.“I The impartiality of detached aesthetic judgment, while not pretending to truth, guarantees that the object or ground of aesthetic satisfaction will be communicable. This in turn reveals a quality of taste as judgment, which is obscured by Nietzsche, and our own subjectivist notion of taste. Taste judgments of the disinterested sort are characterized by a peculiar claim: the pure judgment of taste "requires the agreement of everyone, and he who describes anything as beautiful claims that everyone ought to give approval to the object in question and describe it as beautiful?” The communicability of taste judgments leads Kant to posit the existence of a common sense, a common “feeling for the world." Indeed, Kant describes taste itself as “a kind of sensus communism“

The aesthetic distance achieved by representative thought thus points to the “grounding” of judging insight in common sense, a point that Arendt emphasizes. "Common sense,” she writes, “discloses to us the nature of the world insofar as it is a common world; we owe to it the fact that our strictly private and "subjective" five senses and their sensory data can adjust themselves to a nonsubjective and “objective” world which we have in common and share with others.“'“ The significance of Kanl’s theory oftaslejudgmcm for politics is that it shows how a nonfoundationalist theory of judgment can in fact serve to strengthen rather than undermine our sense of a shared world of appearances. Kant's analysis of taste judgment reveals how, in Arendt's words, “judging is one, if not the most, important activity in which this sharing-the-world-with-others comes to pass?"5 It does so by highlighting the public-directed claim implicit in all pure judgments of taste, by showing how the expression of approval or disapproval, satisfaction or dissatisfaction appeals to the common sense of one‘s judging peers. In matters of taste, one “expects agreement from everybody else.”"" Oriented toward agreement, relying on common sense, taste judgment emerges, contra Nietmhe, as the activity through which the public world presences itself as appearance, as the activity through which a community “decides how this world, independently of its utility and all our vital interests in it, is to look and sound, what we will see and what men will hear in

Kant‘s theory of judgment thus opens a space between the false objectivism of Plato (political judgment as a kind of episteme, as determinative judgment) and the subjectivism that accompanies Nietzsche’s endorsement of perspectival valuation. Taste judgments are valid, but their “specific validity“ is to be understood precisely in opposition to the "objective universal validity" that marks cognitive or practical judgments in the Kantian sense. As Arendt says, “its claims to validity can never extend further than the others in whose place the judging person has put himself for his considerations?“ Taste judgments are crucially dependent on perspective, the "it appears to me," on “the simple fact that each person occupies a place of his own from which he looks upon and judges the world.”"° Nevertheless, they constantly return us to a world of appearances “common to all its inhabitants. “Kant’s notion of taste judgment provides the perfect model for political judgment, in Arendt’s opinion, because it preserves appearance and perspective without abolishing the world.

We can sum up the achievement of Kant’s theory of judgment by saying that it removes the spectre of the subjectivism of perspectivism of taste, yet without recourse to objective or cognitive grounds of validation. Lacking an objective principle, taste judgments are necessarily difficult, and where their validity is questioned, it can be redeemed only by persuasive means. As Arendt says in “The Crisis in Culture”: taste judgments (unlike demonstrable facts or truths demonstrated by argument) “share with political opinions that they are persuasive; the judging person — as Kant says quite beautifully -can only ‘woo the consent of everyone else’ in the hope of coming to an agreement with him eventually.”"°

Taste judgments are, in a word, redeemed deliberatively. Kant's conception of aesthetic judgment—departing from the exchange of viewpoints necessary for representative thinking and culminating in the persuasive exchange that accompanies the rendering of each judgment—is thus, for Arendt, political through and through.‘51 It requires an ongoing process of exchange and deliberation, one "without criteria," as Lyotard would say)“

This is yet another reason why Kantian taste judgment is the appropriate model for Arendt’s account of political judgment, the “receptive side” of virtuoso action. It reasserts the intersubjective nature of both appearances and judgment while severing the links between the common or public and the universal. Our capacity for judgment rests on our feeling for the world, and this requires neither a transcendental ground for appearances nor universally valid criteria of argumentative rationality. Practical questions emphatically do not admit of truth.‘” Yet political judgment seen as a kind of taste judgment nevertheless helps to tame the agon by reintroducing the connection between plurality and deliberation, by showing how the activity of judgment can, potentially, reveal to an audience what they have in common in the process of articulating their differences. And what they have in common, contra Aristotle and contemporary oommunitarians, are not purposes per se but the world. Debate, not consensus, constitutes the essence of political life, according to Arcndtf" The conception of taste judgment proposed by Kant reopens the space of deliberation threatened by an overly agonistic aestheticization of action but in such a way that consensus and agreement are not the Isles of action and judgment but, at best. a kind of regulative ideal.

The turn to Kant thus enables Arendt to avoid the antipolitical tendencies encountered in the actor-centered version of agonistic action. The meaning creative capacity of nonsovereign action becomes importantly dependent on the audience, conceived as a group of deliberating agents exercising their capacity for judgment. The judgment of appearances or the meaning of action is seen by Arcndt as predicated on a twofold “death of the author”: the actor does not create meaning as the artist does a work1 nor can the audience redeem the meaning of action through judgment unless the individuals who constitute it are able to forget themselves. This is not to say that Arendt’s conception of political action and judgment extinguishes the self; rather, it is to say that self-coherence is achieved through a process of self-disclosure that is importantly decentered for both actor and judge, for the judging spectator is also engaged in the "sharing of words and deeds” in his capacity as a deliberating agent. As Arendt reminds us, “By his manner of judging, the person discloses to an extent also himself, what kind of person he is, and this disclosure, which is involuntary, gains in validity to the degree that it has liberated itself from merely individual idiosyncrasiesm’

The agon is tamed, then, not by retreating from the aestheticization of action but by following its anti-Platonic impulse through to the end. The "completion" of the theory of action by a Kant-inspired theory of judgment retains the focus on action as something heroic or extraordinary, as beyond

good and evil. It does so, however, by shifting the emphasis from world- and self-creation to the world-illuminating power of “great" words and deeds, to [he beauty of such action. As a public phenomenon, the beautiful can only be confirmed in its being by an audience animated by a care for the world. The difference between Arendt’s aesthcticization of politics and Nietzsche's aestheticizatjon of life is nowhere clearer than in the connection that Arendt draws between greatness and beauty in "The Crisis in Culture":

Generally speaking, culture indicates that the public realm, which is rendered politically secure by men ofaction, offers its space of display to those things whose essence it is to appear and to be beautiful. In other words. culture indicates that an and politics. their conflicts and tensions notwithstanding. are interrelated and even mutually dependent. Seen against the blckground of political experiences and of activities which, if left to themselves, come and go without leaving any trace in the world, beauty is the manifestation ofimpcrishability. The fleeting greatness of word and deed can endure to the extent that beauty is bestowed upon it Mthout the beauty, that is, the radiant glory in which potential immortality is made manifest in the human world, all human life would be futile and no greatness could endure.

Arendtian aestheticism, an aestheticism predicated on a love of the world and which admires great action because it possesses a beauty that illuminates the world, is critically different from Nietzschean aestheticism, the aestheticism of the artist. A persistent theme in Arendt's writing, one parallel to her emphasis on the tension between philosophy and politics, concerns the conflict between art and politics.157 This conflict does not emerge out of the phenomenology of art versus that of political action; as we have seen, Arendt thinks both are importantly similar. Rather, the conflict centers on the mentality of the artist versus that of the political actor. The artist is, according to Arendt, a species of homo faber, who characteristically views the world in terms of means and ends. He is unable to conceive praxis independently of poiesis: the work always retains priority over the activity itself. The result is that performance is denigrated, action misconceived.

Nietzsche, of course, has even less use for homo faber than Arendt, who takes pains to voice her criticism not against making as such but against the universalization ol'a particular attitude. Nevertheless, if we take an Arendtian perspective, it is clear that N ictzsche, the artist-philosopher, must be counted among those who “fall into the common error of regarding the state or govemmenl as a work of art,” as an expression of a form-giving will to power)” The Republic stands as the initiator of the state as “collective masterpiece," as artwork, trope. The fact that Plato launched this metaphor in terms of what Lacoue-Labarthe calls a “mimetology,” while Nietzsche

repudiates again and again all metaphors of correspondence or adequation, does not alter their fundamental agreement: both regard action not as essentially performance but as making.I59 Poiesis has a radically different connounion for Nietzsche, to be sure, but the activity of self-fashioning and self-overcoming does not overturn the Platonic paradigm so much as bring it to closure. Nietzsche may explode the notion of telos in its classical sense, but the model of the work retains its significance. Thus despite the importance of his anti-Platonism to the project of dcconstructing the tradition’s model of action, his contribution to the thinking of plurality and difference in apolitical way is subject to a crucial limitation. Thought essentially in terms of an “aesthetics of existence," in terms of a project of self-fashioning freed from any telos, the positively valorized notion of difference proposed by Nietzsche remains poetic. Like the activity of the artist, it “must be isolated from the public, must be sheltered and concealed from it“ if it is to achieve adequate expression.“J The poetic, ultimately anti theatrical framework assumed by Nietzsche prohibits the Arendtian thought that under certain very specific conditions, it is precisely the public realm which is constituted by plurality and which enables the fullest, most articulated expression of difference.

CONCLUSION

Arendt resists the Habermasian temptation to seek quasi-transcendental standards of agreement in a “polytheistic" disillusioned age However, it is important to realize that her appeal to a Kantian notion of taste and the sensus communis is not tantamount to an endorsement of the Aristotelian view of political community and judgment (her comments linking tastejudgments to phroncsis notwithstanding).'°‘ Arendt’s Kantian, aeslheticizing turn has, unsurprisingly, confused commentators, who note the highly attenuated character of community and the depoliticizcd notion of judgment in Kant.‘M Arendt chooses Kantian formalism over Aristotelian concretencss because, while she wants to focus on the shared world of appearance that is the public realm, she has no desire whatever to frame “what we have in common” in terms of purposes or ends. In this regard, the problem with the Aristotelian notion of koinoru'a, as defined in book 3 of the Politics, is that it creates not a stage fot action but a vehicle for teleological fulfillment."u Arendt’s appeal to the sensus oommunis self-consciously avoids the overly substantive, local character of koinonia or Sittlichlteit. At the same time, it denies the false universalism of moralitat. Arendt‘s theory of judgment points not to the determinancy of phronesis, with its emphasis on context and local practices, but to "the free reflexive discovery of rules in light of indeterminate, transcendent ideas of community”

The critique of Aristotelian/oommunitarian thinking is also applicable to the kind of postmodern relativism that we find in a thinker like Lyotard. Like Arendt, Lyotard's conception of judgment is a curious mixture of Nietzschean, Aristotelian, and Kantian elements)” However, the postmodern "incredulity towards metanarratives” serves not only to deny the possibility of any overarching metadiscourse that might render diverse language games commensurable but to deny the possibility of a public space of discourse, at least insofar as this space claims, implicitly, to synthesize perspectives and distance interests. For Lyotard, discourse is essentially fragmented: “All we can do is gaze in wonderment at the diversity of discursive species, just as we do at the diversity of plant or animal speities."166 It is also incducibly interested: “to speak is to fight, in the general sense of playing, and speech acts fall within the domain of a general agonistic:s."'67 Given these assumptions, it is not surprising that Lyotard feels that Kant has left our ability to judge "hanging,” as it were, and turns to the will to power as an explanation of this faculty.“8 What we find in Lyotard is the false Nietzschean dichotomy between a universal, metaphysically grounded metadiscourse and a fragmented, postmetaphysical discursive realm in which “public” discourse/judgment reflects either local habit or the agonistic ability to create new moves, impose new interpretations, generate new criteria— all in the name of the will to power.“ Arendt's appeal to taste judgment and a shared feeling for the world may be immensely problematic, but it does serve to underline the falseness of this dichotomy.

One may grant that Arendl's aesthcticism avoids the trope of the fiction du polin'que, universalism, and postmodern pluralism. yet still feel that her “solution" is of dubious relevance to our situation. True, there is a distance and alienation built into the Kantian idea of a community of taste that may make the Arendtian response to Enlightenment universalism more palatable to a postmodern sensibility than the oven Aristotelianism of a Maclntyre or a Gadamer. Nevertheless, the “withering away of common sense" in the modern and postmodern ages would appear to relegate Arendt's modification of Nietzschean aestheticism t0 the status of a rearguard action. The fragmentation of contemporary life renders the idea of a “common fooling for the world" more paradoxical, and possibly less viable, than a recovery of ethos or the legislation of a proceduralist rationality.

"Hie simple answer to this objection is mat Arendt completely agrees. Her work stands not only as a comprehensive rethinking of the nature and meaning of political action but as an extended mediation on how the energies

of modernity have worked to dissipate our feeling for the world, to alienate us from the worlti The last part of The Human Condition equates modernity with world alienation: the reduction of Being to process, the subjeclification of the real, and finally, the triumph of a laboring mentality all work to alienate man not from himself but from the world."’° “Worldliness,” presupposed by the sensus communis, is not a distinguishing characteristic of the animal laboranst Similarly, Arendt would entirely agree with the postmodernist who questions the possibility of circumscribing a particular realm of phenomena in a world where boundaries are increasingly blurred. in her analysis of "the rise of the social” in the modern age, Arcndt identifies this blurring as the central movement of modernity."l Her work departs from the strongest possible conviction that our reality is one in which stable boundaries and distinctions have been dissolved and rendered virtually impossible.

The postmodernist will object that Arendtian aestheticism. unlike Nietzsche's, mourns the loss of the world as an articulated, bounded whole. Nietzschean aestheticism is an affirmation of the Dionysian capacity to destroy fixed identities, to dissolve Apollonian slampings into flux. Postmodern theory affirms this aestheticism, exaggerating the immanent tendencies of postmodern reality in the pursuit of an active (i.e., creative) nihilism: it has no time for guilty nostalgia. Arendtian aestheticism, in contrast, stakes its hopes entirely on the rethematization of certain ontological dimensions of human experience (action, the public world, and self), which this blurring obscures, denatures, and makes increasingly difficult to articulate. The fetishistic quality of her distinction making, her Kantian finickincss in delimiting the political: these attest to a deeply rooted desire to preserve the possibility of meaning created by political action and redeemed by political judgment.

#### The impact outweighs—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.

#### Guidelines for dialogue are intersubjectively possible and desirable---they are necessary to cultivate democratic habits and political judgment---the affirmative’s rejection of normative constraints goes too far

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Beginning with Foucault these were concerned with carrying out an archeology of knowledge with a view to deciphering the potential for restrictions native to, andreproduced by, Western culture since the classical age. Following the same movement, through the concept of différence, Derrida (and at the same time Lacan) pointed out the internal division of the subject between two contrary existential tendencies: the one, centrifugal and directed towards loss and death; the other, centripetal and directed towards conservation and power. Then, in introducing his Leçon at the Collège de France, Barthes proclaimed the explosive slogan: "All language is fascist." By this he meant that syntactical and grammatical conventions constitute a constricting structure from which the writer could escape only by "cheating the language" in order to go beyond orthodox usage. What is essential in the text is no longer the content or manifest sense, but the structure of musical and psychological associations which, like a slip of the tongue, manifest the deepest orientations of the writer — generally referred to as a Freudian or pleasure slip. This literary kamasutra or "science of the pleasures of language" — which Barthes already had developed in Le plaisir du texte — complements on the level of rhetoric the work of Deleuze and Guatari on the psychoanalytic level. Strongly influenced by the Nietzschean idea of "culture," the authors of L’Anti-Oedipe call "writing" that "terrible alphabet" or "cruel system of signs" engraved in the flesh of man who, by that very fact, loses his privileges as the ego scriptor and become a "Desiring machine."1 In this context Jean Baudrillard’s prediction of the subjection of man to the position of a thing gains in force. In Les strategies fatales Baudrillard writes: the subject was beautiful only in itspride andarbitrariness, its limitless willful power, its transcendence as subject of power and of history, or in the drama of its alienation. Without this one is pitiably deficient, the pawn of his own desires or image, incapable of forming a clear representation of the universe and sacrificing himself in an attempt to revive the dead body of history.2 In sum, the insight which would give birth to the revolt of May 1968 destroyed in one stroke the related ideas of conscience, will and autonomy which had constituted the contribution of the Enlightenment; that is, the ability of a subject, besieged by the irrational forces of myth and religion, to give focus to a world in terms of his understanding and will. It is this heritage of the Enlightenment which today is being reaffirmed. The urgency of this return to enlightened reason under the auspices of the Kantian philosophy of the subject provides the principal themes for the last books of Luc Ferry and Alain Renaut. In La pensée 68: essai sur l’anti-humanisme contemporain3 and Heidegger et les modernes,4 the intention is to warn against the dangerously metaphysical process by which the thinkers of the last decade have practiced — often without being aware of it — a systematic anti-humanism.

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Ironically, under the pretext of eliminating once and for all the metaphysics of reason centered upon the subject, Foucault andDerrida have found themselves caught in the spiral of metaphysical hyperbole. For the a priori identity they suppose between knowledge and power leads them to place the human ideal beyond all kinds of meaning and in so doing to make it inaccessible, in relation to which the individual can only renounce his or her autonomy. In other words, in the end the excess of thought fascinated by the absolute becomes a form of regression. Dispossessed of his attributes as a subject (that is, of knowledge and will) on both the speculative and the practical levels, and thus incapable of acting upon "the world," the modern man is subjected to the transcendentalism of another lay, non theological religion, which leads him to search his salvation no longer in the truth or efficacity of a satisfying answer, but in the effort and tension of an endless questioning. It is as reaction to (in the chemical sense) and against (in the political sense) this metaphysical hyperbole that one should interpret the desire of Ferry and Renaut to search for the conditions of a "non-metaphysical humanism"

 capable of "conferring coherent philosophical status upon the promise of freedom contained in the requirements (of the term humanism)."5 In a parallel manner Jürgen Habermas wishes to restore to philosophy its true place and function as the "guardian of rationality." Rejecting the erroneous association between reason and power, the author of Morale et communication6 attempts to show that the normative rules of linguistic communication, inasmuch as they provide a universal basis for intersubjective exchanges, constitute the best defense against an abuse of power. Although Barthes deduces a fascist character for language from its normative function, Habermas tries to show that this same function is, on the contrary, presupposed intuitively by every subject who takes part in a process of communication. This permits him to state the ethical principle of dialogue: "only those norms can claim validity which are accepted . . . by all the persons participating in a practical discussion."7 Nonmetaphysical humanism and the ethics of communicative action agree that human activities and relationships must be perceived no longer in terms of an ideal of inaccessible purity, but from the pragmatic point of view where conditions of efficacity and utility are understood on the basis of results in daily life.

#### Their strategy of opening up to radical uncertainty goes too far in decentering provisional communal identities necessary for politics in a world of speed---minimal guidelines don’t stifle becoming or entrench predictability---they are necessary to help pluralism flourish

David McIvor 10, research associate at the Kettering Foundation, The Politics of Speed: Connolly, Wolin, and the Prospects for Democratic Citizenship in an Accelerated Polity, Polity (2011) 43, 58–83

So, what is the point? Connolly does not describe or define it in this essay. However, judging by the rest of Connolly's work, we might say that the point is akin to the “moment” in Nietzsche's description of the rift in time,57 or Arendt's “present” in her re-telling of Kafka's parable in Between Past and Future.58 The “point” is the conjunctive of a fraught struggle between the forces of fundamentalization and pluralization; it is the joint or center of a “tense balance” between “the claims of regularity, predictability, and commonality” and “those of experimentalism, artistry, and becoming.”59 Speed becomes dangerous, then, when it tilts us against ethico-political interventions on behalf of individual and collective plurality. When the world moves so fast that we cannot resist nostalgia or overcome ressentiment, we are past this “point,” and will henceforth require more intense micro-political efforts to recalibrate our attentiveness to becoming and flux.

Yet there is another and perhaps a more damning way in which Connolly might be missing the point. As quoted above, Connolly finds that those who “recoil from speed” are nostalgic for a slower temporality and find themselves supporting frozen hierarchies in the pursuit of a predictable, slow world. Yet it is also possible to level similar charges against Connolly himself: those who recoil from slow time may align themselves with a tendency in late-modern capitalism that tears asunder the possibilities of democratic negotiations born from attachment to place, vocation, and familiar others.60 This goes well beyond the decline of social capital and the chilling specter of the lone bowler. It is by now well known that rapid vocational mobility leads to lower rates of political and civic participation.61 Yet these declines are themselves part of a growing skepticism towards public institutions as such, a trend that feeds demand for exclusive and positional goods and further entrenches class-based inequalities.62 Moreover, Sheldon Wolin's worry about the normalization of incessant change is that increasing restraints on personal freedom and public life will be accepted by a society habituated to adaptation (“becoming”?). Connolly's recoil from the normalizing pressures of democratic collective identity may perversely support what Wolin calls the “triumph of contemporaneity and of its accomplice, forgetting or collective amnesia.”63 The sobering implication is not only that democratic practices and habits will desiccate, but that their loss will not be recognized or mourned.

Connolly's recoil from collective identity also keeps him from fully appreciating the implications of his calls for “self-experimentation” on “virtual registers” via “fugitive experiences of unconscious performance.”64 Connolly provides two examples of this virtual register: a “violinist who escapes … the slowness of consciousness by getting lost in the imperatives of performance” and a “point guard clearing his mind of clutter as he dribbles down the middle of the court so the ball can be delivered to a shooter at the right instant with exactly the right bounce in a movement too fast and precise to be entrusted to the slow time of consciousness.”64 However, while these rapid maneuvers may take place in “fast time,” they are absolutely dependent on extensive training and practice (i.e. slow time). Maybe Dylan had it right: “the slow one now will later be fast.” Connolly acknowledges this fact but does not seem to recognize how it compromises (or at the very least complicates) his larger argument about speed and democracy.65 Again, recent work on flexible capitalism has shown that “success” in late-modernity (i.e. economic advancement) is negatively correlated with attachment to one's company, locality, or craft.66 Yet this same work has shown that success within these parameters leaves individuals less capable of accepting ambiguity and generously relating to others—the very foundations of Connolly's normative model for agonistic citizenship.67 This in turn feeds the demand for positional and exclusive goods as consumers prefer flexible accommodations and products to the arduous labors of collective negotiation and public action.

Perhaps, then, we are already past the point when social acceleration yielded beneficent consequences for democratic politics. It seems that theorists who care about the prospects of democracy in late-modernity must insist that certain habits are important enough to be cultivated and practiced in slow time. For just as it takes training to become a violinist or point guard, so, too, is training required to become a citizen of a complex, multilayered, and temporally desynchronized polity. Connolly downplays the possibility that slow time practices and habits may in fact serve pluralization; in the process he has overestimated the salutary impact of speed and obscured the difficulties of negotiating these accelerated tempos without a foot (or more) in slow time. While Connolly accuses Wolin and other “self-proclaimed democrats” of “freezing actors into stone,” his work threatens to leave us endlessly spinning and dancing like a toy top: moving fast but going nowhere.

Wolin: Democratic Citizenship as a Fugitive Experience

A society … caught in the frenzy of rapid change has difficulty knowing how to think about the consequences of loss, especially of things widely shared … rapid change not only blunts the collective conscience but dims the collective memory.

—Sheldon Wolin, Democracy Incorporated

Connolly argues that we should embrace speed for the work it does on our cultural/political selves. Sheldon Wolin, on the other hand, has argued that to adopt the accelerated rhythms of culture and economy would be to accept an anti-political ethos inherent to those systems, and turn democratic praxis into largely irrelevant shadow boxing.68 The dispute over speed and democracy, however, conceals another (more fundamental) disagreement between Connolly and Wolin. Unlike Connolly and Shapiro, who posit an ontological and political tendency towards settled identity, which then aggressively protects itself against the threat of its own denied difference, Wolin argues that commonality is “fugitive and impermanent.”69 For Connolly, political identities are always occupied territories, which are justly subject to disruption. For Wolin, it is difference that is stable, and democracy is concerned not with the disturbance but the discovery of “artificial” commonality. Political identities are fleeting phenomena, and similarity is not (only) a violent imposition on becoming but a pre-condition for democratic power and justice.70 Put slightly differently, if Connolly's philosophy seems unconsciously indebted to Freud's pleasure principle, then Wolin's unstated political ontology more closely resembles the death drive.

Democratic power, then, is fugitive, but it is still possible for ephemeral moments of collective action to protest the limits of the institutional order and reveal possibilities for new modes of political practice and being. This action takes place despite intransigent heterogeneity—different constituencies valuing different outcomes at different times through different means. Fugitive democracy (“the carrier of commonality”) is the temporary suspension of this heterogeneity in the interests of collective power.71 These exceptional points in time—Wolin identifies the early months of the Free Speech Movement at Berkeley as paradigmatic—disrupt a managed system of elite rule on behalf of widely-shared grievances.72 Whereas Connolly values democratic theory and praxis insofar as they disrupt and pluralize homogenous and hegemonic conceptions of time, culture, and place, Wolin values a “discordant” democracy that “affirms the value of limits.”73 Wolin certainly locates discourses of political identity in desperate need of disturbance—specifically those that emphasize an a-political model of “managed democracy” and a de-mobilized citizenry content with the pursuit of commodious living in a glaringly inegalitarian polity.74 His anxiety about postmodern discourses of disturbance is that they align with a certain tendency within “inverted totalitarianism” that thrives on a perpetually mobile—yet never mobilized—populace. Wolin therefore dismisses the “flashy but empty” discordance of “latter-day Nietzscheans” because it affirms pure becoming rather than a space of appearances in which common problems can find redress through the concerted efforts of ordinary men and women.75

Democratic citizenship, on the other hand, is a “discordant” but limit-affirming experience that compels individuals to identify and address problems they share in common with others. As Wolin puts it, “being a citizen involves doing the best one can to take part in common tasks, the deliberations that define them, and the responsibilities that follow. As a way of existence it lives in the ebb-and-flow of everyday activities, responsibilities, and relationships.”76 Wolin refers to the experience of membership in a democratic assemblage as “incorporation,” which suggests that one becomes “an integral part of some stable grouping and accept(s) it as the principle identity of individuals and the primary object of their loyalty.”77 However, it is crucial to note that Wolin's model of incorporation does not imply the elimination of differences within the body politic. Some differences may be bracketed in the interests of collective power, but Wolin does not imagine that these differences will thereby fail to matter or exist. For him, citizenship practices are the means by which we come into contact with different viewpoints, preferences, and lifestyles. The model here is less that of Rousseau's general will than a will to generality, an aspiration of “commonality amid difference.”77

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#### Voting affirmative endorses a radical limit on executive power to respond to crises---despite whatever smoke and mirrors they throw up about the aff, that’s its fundamental premise

William E. Scheuerman 2, Associate Professor of Political Science, University of Minnesota, Summer 2002, “ARTICLE: CONSTITUTIONALISM IN AN AGE OF SPEED,” Constitutional Commentary, 19 Const. Commentary 353

The crisis rhetoric often exploited by would-be executive constitutional reformers is revealing. Since Machiavelli, executive power has been intimately associated with the possibility of rapid-fire agere in juxtaposition to slow-going deliberare. n75 In this spirit, Federalist 70 notes that only by placing executive authority in the hands of "one man" can unity "conducive to energy," as well as "decision, activity, secrecy, and dispatch," be assured. n76 Montesquieu's observation that a plural executive conflicts with the main purpose of executive power, namely its capacity to act with "dispatch," was already well on its way to becoming dogma by the time Hamilton outlined the basic structure of the U.S. President. n77 The association of the executive with "dispatch" (or speed) remains a crucial feature of contemporary liberal democratic thinking as well. For example, in a pivotal 1936 Supreme Court decision that dramatically enhanced executive authority in foreign policy, Justice Sutherland described the President as the only institutional actor who "can energize and direct policy in ways that could not be done by either Congress or his own bureaucracy. His decision-making processes can take on degrees of speed, secrecy, flexibility, and efficiency that no other governmental institution can match." n78 [\*385] Executives who aspire to undertake major constitutional reform obviously have much to gain by using, manufacturing, or even simulating crises, since emergencies cry out for rapid-fire responses and the executive is purportedly best suited to initiate such responses.

Fundamental constitutional alteration obviously represents a key aspect of constitutional change. However, constitutional norms are also adapted to social and economic acceleration in less dramatic ways. Social and economic acceleration risks transforming the executive into a privileged site for constitutional adaptation, fundamental or otherwise. Earlier in the essay I noted that the intensification of social and economic change not only requires a more-or-less permanent reinterpretation of constitutional norms, but frequent alterations to the fundamental rules of the constitutional system as well. I also suggested that social and economic acceleration makes it increasingly difficult to draw a clear line between constitutional interpretation and fundamental alteration. These points are important for understanding executive-driven constitutional change as well. If I am not mistaken, there are pressing reasons for expecting the executive to gain most from the process of social and economic acceleration. Our traditional preconceptions about executive power imply that executive-based constitutional adaptation is best suited to social and economic acceleration. If 1) the executive is institutionally best-equipped to undertake rapid-fire action, and 2) ours is a social world in which the need for rapid-fire responses to changing social and economic realities is at a premium, then 3) the executive would seem especially well-adapted to many facets of constitutional adaptation. To the extent that social and economic acceleration implies both incessant reinterpretations and frequent alterations to the constitutional system, substantial doses of executive-driven constitutional change might seem to represent a perfectly sensible institutional adaptation, notwithstanding its potential normative and political ills. Just as the distinction between interpretation and fundamental alteration so often becomes unclear in legal practice, so too the difficulty of distinguishing between the executive's reinterpretation of the constitutional "rules of the game" and its fundamental modification or alteration of those rules is likely to grow.

Only systematic empirical research can demonstrate whether social and economic acceleration actually contributes to [\*386] the amplification of executive authority long observed by political scientists and legal scholars. Nonetheless, there are good reasons for suspecting that the speed-up of social and economic relations represents a neglected part of the familiar story of the growth of executive authority along with the corresponding decay of traditional legal virtues - including constancy and clarity - entailed by executive discretion. n79 Especially in foreign policy, the necessity for "dispatch" functions as a ready justification for undertaking substantial executive-driven alterations to the constitutional status quo. n80 Economic and social crises, and even the relatively ordinary tasks of economic management, also risk increasing the scope of executive prerogative, since the executive seems best equipped to provide the rapid-fire institutional responses required by the high-speed dynamics of contemporary capitalism. n81 In light of the "rapidity, scope, and intensity" of social and economic change, the traditional association of the executive with speed potentially paves the way for unparalleled exercises of executive power.

#### Causes nuclear war and bioterror---exec flex is key to successful fourth-gen warfare

Zheyao Li 9, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

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

#### Expansive war powers are critical to prevent great power war --- Cold War proves

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\*We do not endorse ableist language

What did not happen in the Cold War is even more important than what did. For the three centuries after the recognition of the nation-state system in the Peace of Westphalia, great power wars were commonplace. Just as the twentieth century had its World Wars I and II, the nineteenth had the Napoleonic Wars, and the seventeenth had the Thirty Years' War, to name but a few. These wars took an enormous toll on humanity -- military deaths in World War I reached about 10 million for all nations, and 25 million in World War II, with estimates ranging from double to triple those numbers in civilian deaths. By the twentieth century, the United States could no longer isolate itself from the struggles in Europe. World War I cost the United States 116,000 soldiers and sailors killed and 204,000 wounded. In World War II, the U.S. armed forces had 405,000 killed and 672,000 wounded. In World War I, the Wilson administration spent about $310 billion on the military. In World War II, the military consumed about $3.5 trillion (both figures in 2008 dollars). With the development of tactical and strategic nuclear weapons, military conflict between the United States and the Soviet Union would have been far worse in terms of casualties and financial costs than both World Wars -- and probably all U.S. wars -- put together. That the United States avoided another great power conflict from 1945-92 is a testament to the stewardship of Presidents from Truman through George H. W. Bush. Nine American Presidents from different parties, over half a century, patiently pursued a policy that contained, and ultimately exhausted, an enemy that outmatched the United States in land power. They had to follow a moderate course that sometimes required active challenges to the Soviets, at other times, restraint. It was not produced by a system where Congress generally controls foreign and national security policy. Many academics assume that congressional dominance would lead to less war, because Congress is slower to move at home and less adventuresome abroad. In effect, this approach finds a virtue in the internal transaction costs within Congress, which make it difficult for a large number of people to reach agreement.49 But there is no historical reason why Congress should be less warlike than Presidents. It was the war hawks in Congress, not President Madison, who pushed the United States into the War of 1812, for example. A Congress eager for territorial expansion sought war in 1846 and 1898. Putting aside whether their assumptions about Congress are accurate, the critics' reading of the Constitution could have placed the nation in a straitjacket as it rose to confront the challenges of the Cold War. It is true that a high level of cooperation among the branches was necessary to prevail, but containing the Soviet Union called for a wide range of instruments of national power, ranging from covert action, to crisis management, to shorter conflicts, to long-term national security planning. Congress could not have conducted successful policy along these dimensions. The unpredictability, suddenness, and high stakes of foreign affairs were the very reasons for the Framers' creation of an independent executive branch. Presidential leadership during the Cold War did not just advance American interests in the short term, but benefited human welfare in the West and Asia. At the end of World War II, the economies and populations of the Axis powers were ruined. Germany's population had fallen to its 1910 level, 68 million, and its economy had collapsed. Japan was similarly devastated; its population in 1950 was estimated to be roughly 84 million, and the war destroyed about 40 percent of its industrial capacity. Today, Germany's population is 82 million, and its GDP is $2.9 trillion, third in the world. Japan's population today is 127 million, and its GDP is $4.34 trillion, second in the world. Italy's GNP today is $1.84 trillion, seventh in the world. Although Presidents had demanded unconditional surrender, once the war was over they reintegrated our former enemies into the political and economic systems of the West. Presidents supported a system of market-based economies and constitutional democracy -- with the financial support of Congress at times -- primarily through their control over foreign policy.50 We can also see the effects in the countries that witnessed the most direct American intervention. South Korea, a small agrarian nation with a population of 21 million in 1955, today has a population of 48 million and is the 13th largest economy in the world with a GNP of $888 billion. (Nominal GNP in 1962 was only $2.3 billion.) North Korea's population, by contrast, has stagnated for the past decade at around 21-22 million, with annual economic growth of less than half of one percent; its economy is barely functional, with a GNP of no more than $40 billion (which ranks it at the very bottom in the world), and its society is governed by the most extreme Communist dictatorship left on earth. Vietnam, too, took its toll on the lives and treasury of the United States and arguably destroyed two Presidencies, but the effects of American withdrawal may have been even steeper -- millions of Vietnamese were killed or sent to concentration camps, or fled as boat people. Wars in both Korea and Vietnam sent important signals to the Soviet Union and China that the United States would continue to resist Communist expansion forcefully. It is impossible to answer counterfactual questions, but if Congress had held the upper constitutional hand in war and had refused to send troops to Korea and Vietnam, the Cold War may have ended very differently. The costs of congressional paralysis during the Cold War could well have been higher than the costs of executive action, even taking into account these setbacks.

### Case

#### No “global concentration camp” --- Re-election bids, PC, and legacy concerns prevent presidential overreach

Nathan Alexander Sales 12, Assistant Professor of Law, George Mason University School of Law, “Self-Restraint and National Security,” 6/28/12, JOURNAL OF NATIONAL SECURITY LAW &POLICY [Vol. 6:227, http://jnslp.com/wp-content/uploads/2012/08/08\_\_Sales\_Master\_6-28-12-NS.pdf

The utility functions of government officials famously include a wide range of values.15 As relevant here, senior policymakers in the executive branch will seek to maximize at least three things. Above all, they will want to maximize their chances of keeping their jobs. First-term Presidents want to be reelected; members of the cabinet and the White House staff want their boss to stay in office and they want to retain his confidence.16 Second, policymakers will want to maximize their political capital, which they can use to promote their domestic and international policy agendas. A President who wants Congress to enact desired legislation is more likely to attain that goal if he has high public approval ratings and is able to call in favors on Capitol Hill than if he is unpopular with voters and lacks congressional allies.17 Third, taking a longer view, policymakers will want to burnish their legacies. Presidents want to be on the “right side of history”; they want future generations to approve of the policy choices they make while in power. ¶ This quest for job security, political capital, and legacy will lead policymakers to pursue two specific goods in the national security context. First, operational success. Policymakers will want a given military or intelligence operation to accomplish the objective that it is meant to achieve. If a President leads a war that quickly topples the enemy, he is likely to enjoy improved public approval ratings, weaker resistance from political opponents, and the prospect of favorable treatment in the history books.19 A President who leads the nation into a quagmire can expect the opposite outcomes. Second, policymakers seek legal compliance. They will want a given operation to accomplish its goals in a way that does not offend any applicable principle of domestic or international law. This is so because the costs of such violations can be significant. All things being equal, a wartime President would prefer to vanquish an enemy by complying with the law of war than to gain victory by, say, deliberately bombing protected civilians. Policymakers commission two different sets of agents to pursue these goals. Operators are responsible for the first – mission success. Reviewers are responsible for the second – legal compliance. Neither agent receives a comprehensive commission to act as the principals’ surrogate. Instead, responsibility for achieving policymakers’ twin objectives is divided.

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

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

- Defenses solve---benefits of offense are overstated

- Too difficult to execute/mistakes in code are inevitable

- AT: Infrastructure attacks

- Military networks are air-gapped/difficult to access

- Overwhelming consensus goes neg

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

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

#### Cyberwar isn’t an existential threat --- best studies prove

Healey 13 Jason, Director of the Cyber Statecraft Initiative at the Atlantic Council, "No, Cyberwarfare Isn't as Dangerous as Nuclear War", 3/20, [www.usnews.com/opinion/blogs/world-report/2013/03/20/cyber-attacks-not-yet-an-existential-threat-to-the-us](http://www.usnews.com/opinion/blogs/world-report/2013/03/20/cyber-attacks-not-yet-an-existential-threat-to-the-us)

America does not face an existential cyberthreat today, despite recent warnings. Our cybervulnerabilities are undoubtedly grave and the threats we face are severe but far from comparable to nuclear war. ¶ The most recent alarms come in a Defense Science Board report on how to make military cybersystems more resilient against advanced threats (in short, Russia or China). It warned that the "cyber threat is serious, with potential consequences similar in some ways to the nuclear threat of the Cold War." Such fears were also expressed by Adm. Mike Mullen, then chairman of the Joint Chiefs of Staff, in 2011. He called cyber "The single biggest existential threat that's out there" because "cyber actually more than theoretically, can attack our infrastructure, our financial systems."¶ While it is true that cyber attacks might do these things, it is also true they have not only never happened but are far more difficult to accomplish than mainstream thinking believes. The consequences from cyber threats may be similar in some ways to nuclear, as the Science Board concluded, but mostly, they are incredibly dissimilar. ¶ Eighty years ago, the generals of the U.S. Army Air Corps were sure that their bombers would easily topple other countries and cause their populations to panic, claims which did not stand up to reality. A study of the 25-year history of cyber conflict, by the Atlantic Council and Cyber Conflict Studies Association, has shown a similar dynamic where the impact of disruptive cyberattacks has been consistently overestimated. ¶ Rather than theorizing about future cyberwars or extrapolating from today's concerns, the history of cyberconflict that have actually been fought, shows that cyber incidents have so far tended to have effects that are either widespread but fleeting or persistent but narrowly focused. No attacks, so far, have been both widespread and persistent. There have been no authenticated cases of anyone dying from a cyber attack. Any widespread disruptions, even the 2007 disruption against Estonia, have been short-lived causing no significant GDP loss. ¶ Moreover, as with conflict in other domains, cyberattacks can take down many targets but keeping them down over time in the face of determined defenses has so far been out of the range of all but the most dangerous adversaries such as Russia and China. Of course, if the United States is in a conflict with those nations, cyber will be the least important of the existential threats policymakers should be worrying about. Plutonium trumps bytes in a shooting war.¶ This is not all good news. Policymakers have recognized the problems since at least 1998 with little significant progress. Worse, the threats and vulnerabilities are getting steadily more worrying. Still, experts have been warning of a cyber Pearl Harbor for 20 of the 70 years since the actual Pearl Harbor. ¶ The transfer of U.S. trade secrets through Chinese cyber espionage could someday accumulate into an existential threat. But it doesn't seem so seem just yet, with only handwaving estimates of annual losses of 0.1 to 0.5 percent to the total U.S. GDP of around $15 trillion. That's bad, but it doesn't add up to an existential crisis or "economic cyberwar."

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

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

#### The status quo is structurally improving

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The world is getting better, faster, than we could ever have imagined. For those of us who are fortunate enough to live in wealthy communities or countries, we have a common set of reference points we use to describe the world's most intractable, upsetting, unimaginable injustices. Often, we only mention these horrible realities in minimizing our own woes: "Well, that's annoying, but it's hardly as bad as children starving in Africa." Or "Yeah, this is important, but it's not like it's the cure for AIDS." Or the omnipresent description of any issue as a "First World Problem". But let's, for once, look at the actual data around developing world problems. Not our condescending, world-away displays of emotion, or our slacktivist tendencies to see a retweet as meaningful action, but the actual numbers and metrics about how progress is happening for the world's poorest people. Though metrics and measurements are always fraught and flawed, Gates' single biggest emphasis was the idea that measurable progress and metrics are necessary for any meaningful improvements to happen in the lives of the world's poor. So how are we doing? THE WORLD HAS CHANGED The results are astounding. Even if we caveat that every measurement is imprecise, that billionaire philanthropists are going to favor data that strengthens their points, and that some of the most significant problems are difficult to attach metrics to, it's inarguable that the past two decades have seen the greatest leap forward in the lives of the global poor in the history of humanity. Some highlights: Children are 1/3 less likely to die before age five than they were in 1990. The global childhood mortality rate for kids under 5 has dropped from 88 in 1000 in 1990 to 57 in 1000 in 2010. The global infant mortality rate for kids dying before age one has plunged from 61 in 1000 to 40 in 1000. Now, any child dying is of course one child too many, but this is astounding progress to have made in just twenty years. In the past 30 years, the percentage of children who receive key immunizations such as the DTP vaccine has quadrupled. The percentage of people in the world living on less than $1.25 per day has been cut in half since 1990, ahead of the schedule of the Millennium Development Goals which hoped to reach this target by 2015. The number of deaths to tuberculosis has been cut 40% in the past twenty years. The consumption of ozone-depleting substances has been cut 85% globally in the last thirty years. The percentage of urban dwellers living in slums globally has been cut from 46.2% to 32.7% in the last twenty years. And there's more progress in hunger and contraception, in sustainability and education, against AIDS and illiteracy. After reading the Gates annual letter and following up by reviewing the UN's ugly-but-data-rich Millennium Development Goals statistics site, I was surprised by how much progress has been made in the years since I've been an adult, and just how little I've heard about the big picture despite the fact that I'd like to keep informed about such things. I'm not a pollyanna — there's a lot of work to be done. But I can personally attest to the profound effect that basic improvements like clean drinking water can have in people's lives. Today, we often use the world's biggest problems as metaphors for impossibility. But the evidence shows that, actually, we're really good at solving even the most intimidating challenges in the world. What we're lacking is the ability to communicate effectively about how we make progress, so that we can galvanize even more investment of resources, time and effort to tackling the problems we have left.

#### The squo is structurally improving

Goklany 9**—**Worked with federal and state governments, think tanks, and the private sector for over 35 years. Worked with IPCC before its inception as an author, delegate and reviewer. Negotiated UN Framework Convention on Climate Change. Managed the emissions trading program for the EPA. Julian Simon Fellow at the Property and Environment Research Center, visiting fellow at AEI, winner of the Julian Simon Prize and Award. PhD, MS, electrical engineering, MSU. B.Tech in electrical engineering, Indian Institute of Tech. (Indur, “Have increases in population, affluence and technology worsened human and environmental well-being?” 2009, http://www.ejsd.org/docs/HAVE\_INCREASES\_IN\_POPULATION\_AFFLUENCE\_AND\_TECHNOLOGY\_WORSENED\_HUMAN\_AND\_ENVIRONMENTAL\_WELL-BEING.pdf)

Although global population is no longer growing exponentially, it has quadrupled since 1900. Concurrently, affluence (or GDP per capita) has sextupled, global economic product (a measure of aggregate consumption) has increased 23-fold and carbon dioxide has increased over 15-fold (Maddison 2003; GGDC 2008; World Bank 2008a; Marland et al. 2007).4 But contrary to Neo- Malthusian fears, average **human well-being,** measured by any objective indicator, **has never been higher**. Food supplies, Malthus’ original concern, are up worldwide. Global food supplies per capita increased from 2,254 Cals/day in 1961 to 2,810 in 2003 (FAOSTAT 2008). This helped reduce hunger and malnutrition worldwide. The proportion of the population in the developing world, suffering from chronic hunger declined from 37 percent to 17 percent between 1969–71 and 2001–2003 despite an 87 percent population increase (Goklany 2007a; FAO 2006). The reduction in hunger and malnutrition, along with improvements in basic hygiene, improved access to safer water and sanitation, broad adoption of vaccinations, antibiotics, pasteurization and other public health measures, helped reduce mortality and increase life expectancies. These improvements first became evident in today’s developed countries in the mid- to late-1800s and started to spread in earnest to developing countries from the 1950s. The infant mortality rate in developing countries was 180 per 1,000 live births in the early 1950s; today it is 57. Consequently, global life expectancy, perhaps the single most important measure of human well-being, increased from 31 years in 1900 to 47 years in the early 1950s to 67 years today (Goklany 2007a). Globally, average **annual per capita incomes tripled** since 1950. The proportion of the world’s population outside of high-income OECD countries living in absolute poverty (average consumption of less than $1 per day in 1985 International dollars adjusted for purchasing power parity), fell from 84 percent in 1820 to 40 percent in 1981 to 20 percent in 2007 (Goklany 2007a; WRI 2008; World Bank 2007). Equally important, the world is more literate and better educated. Child labor in low income countries declined from 30 to 18 percent between 1960 and 2003. In most countries, people are freer politically, economically and socially to pursue their goals as they see fit. More people choose their own rulers, and have freedom of expression. They are more likely to live under rule of law, and less likely to be arbitrarily deprived of life, limb and property. Social and professional mobility has never been greater. It is easier to transcend the bonds of caste, place, gender, and other accidents of birth in the lottery of life. People work fewer hours, and have more money and better health to enjoy their leisure time (Goklany 2007a). Figure 3 summarizes the U.S. experience over the 20th century with respect to growth of population, affluence, material, fossil fuel energy and chemical consumption, and life expectancy. It indicates that population has multiplied 3.7-fold; income, 6.9-fold; carbon dioxide emissions, 8.5-fold; material use, 26.5-fold; and organic chemical use, 101-fold. Yet its life expectancy increased from 47 years to 77 years and infant mortality (not shown) declined from over 100 per 1,000 live births to 7 per 1,000. It is also important to note that not only are people living longer, they are healthier. The disability rate for seniors declined 28 percent between 1982 and 2004/2005 and, despite better diagnostic tools, major diseases (e.g., cancer, and heart and respiratory diseases) occur 8–11 years later now than a century ago (Fogel 2003; Manton et al. 2006). If similar figures could be constructed for other countries, most would indicate qualitatively similar trends, especially after 1950, except Sub-Saharan Africa and the erstwhile members of the Soviet Union. In the latter two cases, life expectancy, which had increased following World War II, declined after the late 1980s to the early 2000s, possibly due poor economic performance compounded, especially in Sub-Saharan Africa, by AIDS, resurgence of malaria, and tuberculosis due mainly to poor governance (breakdown of public health services) and other manmade causes (Goklany 2007a, pp.66–69, pp.178–181, and references therein). However, there are signs of a turnaround, perhaps related to increased economic growth since the early 2000s, although this could, of course, be a temporary blip (Goklany 2007a; World Bank 2008a). Notably, in most areas of the world, the healthadjusted life expectancy (HALE), that is, life expectancy adjusted downward for the severity and length of time spent by the average individual in a less-than-healthy condition, is greater now than the unadjusted life expectancy was 30 years ago. HALE for the China and India in 2002, for instance, were 64.1 and 53.5 years, which exceeded their unadjusted life expectancy of 63.2 and 50.7 years in 1970–1975 (WRI 2008). Figure 4, based on cross country data, indicates that contrary to Neo-Malthusian fears, both life expectancy and infant mortality improve with the level of affluence (economic development) and time, a surrogate for technological change (Goklany 2007a). Other indicators of human well-being that improve over time and as affluence rises are: access to safe water and sanitation (see below), literacy, level of education, food supplies per capita, and the prevalence of malnutrition (Goklany 2007a, 2007b).

# 2NC

### AT: Resolve = Reduce by Mental Analysis

Resolved is legislative

AOS 4, Army Officer School, 5-12, “# 12, Punctuation – The Colon and Semicolon”, http://usawocc.army.mil/IMI/wg12.htm)

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A formal resolution, after the word "resolved:" Resolved: (colon) That this council petition the mayor.

### AT: Should Indicates Futurity

#### This is just bizarre---the definition of should on their webpage says nothing about futurity---we’ll enter the whole thing into the debate---whichever meaning of “should” they think connotes futurity will clearly be grammatically distinct from its use in the resolution, which indicates the relative correctness or lack thereof of a decision---that means the topic evaluates the desirability of government action

OED 11 (http://oxforddictionaries.com/definition/should?region=us)

verb (3rd sing. should)

1used to indicate obligation, duty, or correctness, typically when criticizing someone’s actions:

he should have been careful

I think we should trust our people more

you shouldn’t have gone

 indicating a desirable or expected state:

by now students should be able to read with a large degree of independence

 used to give or ask advice or suggestions:

you should go back to bed

what should I wear?

 (I should) used to give advice:

I should hold out if I were you

2used to indicate what is probable:

$348 million should be enough to buy him out

the bus should arrive in a few minutes

3 formal expressing the conditional mood.

 (in the first person) indicating the consequence of an imagined event:

if I were to obey my first impulse, I should spend my days writing letters

 referring to a possible event or situation:

if you should change your mind, I’ll be at the hotel

should anyone arrive late, admission is likely to be refused

4used in a clause with “that” after a main clause describing feelings:

it is astonishing that we should find violence here

5used in a clause with “that” expressing purpose:

in order that training should be effective it must be planned systematically

6(in the first person) expressing a polite request or acceptance:

we should be grateful for your advice

7(in the first person) expressing a conjecture or hope:

he’ll have a sore head, I should imagine

“It won’t happen again.” “I should hope not.”

8used to emphasize to a listener how striking an event is or was:

you should have seen Marge’s face

 (who/what should —— but) emphasizing how surprising an event was:

I was in this store when who should I see across the street but Toby

#### Should means desirable

AC 99 (Atlas Collaboration, “Use of Shall, Should, May Can,” http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

### AT: USFG is the People

#### Central government

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

### Other Interps

#### Statutory restrictions require that the restriction itself be codified in statute

Joshua Kershner 10, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

#### OCOs are distinct from command and control

USAF 9, Air Force Research, Development, Test and Evaluation (RDT&E) Budget Item Justification for FY 2010, Appropriation/Budget Activity 3600 – Advanced Technology Development, http://www.dtic.mil/descriptivesum/Y2010/AirForce/0603789F.pdf

In FY 2009: Analyze development of selected offensive cyber operations capabilities, integrated kinetic and cyber operations planning and execution capabilities, and cyber command and control (Cyber C2) operations functions.

#### Automated response is part of command and control

Ericka Rovira 7, Kathleen McGarry, and Raja Parasuraman, The Catholic University of America, Washington, D.C., Effects of Imperfect Automation on Decision Making in a Simulated Command and Control Task, www.usma.edu/bsl/Shared%20Documents/RoviraetalHF07.pdf

Military command and control(C 2 )typically requires strategic and tactical decisions to be made in a timely manner based on multiple sources of information. A major goal for C 2 systems is to shorten the targeting cycle or tighten the sensor to shooter loop (i.e., execute the process more quickly than the enemy; Adams, 2001). The sensor to shooter cycle includes processes from the time a sensor spots a target until a shooter locks on it. Shortening the cycle by necessity requires that the human operators of C 2 systems be supported in some manner. Automation is one major form of support.

An important design issue for automated support tools is how much authority to assign to the automation. Factors inﬂuencing this decision include how well the automation supports the operator’s situation awareness as well as the type and reliabilityoftheautomation(Barnes,2003).Unfortunately,automatedaidshavenotalwaysenhanced system performance, primarily because of problems in their use by human operators or unanticipated interactions with other subsystems. Problems in human-automation interaction have included unbalanced workload, reduced system awareness, decision biases, mistrust, overreliance, and complacency (Parasuraman & Riley, 1997).There is thus a need for designing automation that supports military operators in command and control in ways that avoid such negative inﬂuences

### McIvor / AT K of Predictability

#### Their strategy of opening up to radical uncertainty goes too far in decentering provisional communal identities necessary for politics in a world of speed---minimal guidelines don’t stifle becoming or entrench predictability---they are necessary to help pluralism flourish

David McIvor 10, research associate at the Kettering Foundation, The Politics of Speed: Connolly, Wolin, and the Prospects for Democratic Citizenship in an Accelerated Polity, Polity (2011) 43, 58–83

Wolin: Democratic Citizenship as a Fugitive Experience

A society … caught in the frenzy of rapid change has difficulty knowing how to think about the consequences of loss, especially of things widely shared … rapid change not only blunts the collective conscience but dims the collective memory.

—Sheldon Wolin, Democracy Incorporated

Connolly argues that we should embrace speed for the work it does on our cultural/political selves. Sheldon Wolin, on the other hand, has argued that to adopt the accelerated rhythms of culture and economy would be to accept an anti-political ethos inherent to those systems, and turn democratic praxis into largely irrelevant shadow boxing.68 The dispute over speed and democracy, however, conceals another (more fundamental) disagreement between Connolly and Wolin. Unlike Connolly and Shapiro, who posit an ontological and political tendency towards settled identity, which then aggressively protects itself against the threat of its own denied difference, Wolin argues that commonality is “fugitive and impermanent.”69 For Connolly, political identities are always occupied territories, which are justly subject to disruption. For Wolin, it is difference that is stable, and democracy is concerned not with the disturbance but the discovery of “artificial” commonality. Political identities are fleeting phenomena, and similarity is not (only) a violent imposition on becoming but a pre-condition for democratic power and justice.70 Put slightly differently, if Connolly's philosophy seems unconsciously indebted to Freud's pleasure principle, then Wolin's unstated political ontology more closely resembles the death drive.

Democratic power, then, is fugitive, but it is still possible for ephemeral moments of collective action to protest the limits of the institutional order and reveal possibilities for new modes of political practice and being. This action takes place despite intransigent heterogeneity—different constituencies valuing different outcomes at different times through different means. Fugitive democracy (“the carrier of commonality”) is the temporary suspension of this heterogeneity in the interests of collective power.71 These exceptional points in time—Wolin identifies the early months of the Free Speech Movement at Berkeley as paradigmatic—disrupt a managed system of elite rule on behalf of widely-shared grievances.72 Whereas Connolly values democratic theory and praxis insofar as they disrupt and pluralize homogenous and hegemonic conceptions of time, culture, and place, Wolin values a “discordant” democracy that “affirms the value of limits.”73 Wolin certainly locates discourses of political identity in desperate need of disturbance—specifically those that emphasize an a-political model of “managed democracy” and a de-mobilized citizenry content with the pursuit of commodious living in a glaringly inegalitarian polity.74 His anxiety about postmodern discourses of disturbance is that they align with a certain tendency within “inverted totalitarianism” that thrives on a perpetually mobile—yet never mobilized—populace. Wolin therefore dismisses the “flashy but empty” discordance of “latter-day Nietzscheans” because it affirms pure becoming rather than a space of appearances in which common problems can find redress through the concerted efforts of ordinary men and women.75

Democratic citizenship, on the other hand, is a “discordant” but limit-affirming experience that compels individuals to identify and address problems they share in common with others. As Wolin puts it, “being a citizen involves doing the best one can to take part in common tasks, the deliberations that define them, and the responsibilities that follow. As a way of existence it lives in the ebb-and-flow of everyday activities, responsibilities, and relationships.”76 Wolin refers to the experience of membership in a democratic assemblage as “incorporation,” which suggests that one becomes “an integral part of some stable grouping and accept(s) it as the principle identity of individuals and the primary object of their loyalty.”77 However, it is crucial to note that Wolin's model of incorporation does not imply the elimination of differences within the body politic. Some differences may be bracketed in the interests of collective power, but Wolin does not imagine that these differences will thereby fail to matter or exist. For him, citizenship practices are the means by which we come into contact with different viewpoints, preferences, and lifestyles. The model here is less that of Rousseau's general will than a will to generality, an aspiration of “commonality amid difference.”77

#### Debates about state-policy don’t flatten or exclude difference---they help foster political advocacy and critical habits necessary for navigating inevitable differences in democracy---the affirmative’s emphasis on flux makes negotiating plurality impossible

David McIvor 10, research associate at the Kettering Foundation, The Politics of Speed: Connolly, Wolin, and the Prospects for Democratic Citizenship in an Accelerated Polity, Polity (2011) 43, 58–83

In some ways Wolin's description of revolution seems to converge with Connolly's emphasis on speed as a means of creating a pluralistic ethos and ultimately political change. Yet Connolly, as I have argued above, has elided the intense requirements of slow time practice that support the possibility of successful, “rapid” change. Furthermore, Wolin finds that the tempos of frenetic agitation have “not vanished … [but] simply switched location.” The rise of corporate-driven capitalism has appropriated the revolutionary tempo through the “troika effect,” which unites capital, technology and science:

By enlisting technological innovation and scientific discovery and joining them with its own impulses, capital has produced an unprecedented form of power. The combination has quickened the rate of change throughout the world … . Globalized capital … may be said to monopolize agitation … thus corporate capital is the agitator, the exemplar of permanent revolution, of normalized agitation.85

Speedy agitation has been co-opted by corporate capital, which in turn “encourages change, elevates fashion to a norm, and … instructs an agitated populace that virtually every job and habitat are temporary.”86 This emphasis on flux and change disrupts the attachments that normally develop over time, including those related to vocation or community (and, by extension, those which lead to agitation). For Wolin, a hopeful politics today depends on whether or not “agitation … can find its bearings.”86 In order for this to occur the “appropriate tempo” of democratization must be identified. Since Wolin identifies this tempo as the slower one found at the local level of state, county, and municipality, we must wonder if he has not fallen into the nostalgic shackles that Connolly has already fit for him. Far from it. While recognizing the difficulty of frenetic agitation in a hurrying, racing world, Wolin thinks that such agitation can emerge from and alter the slower tempos of small-scale deliberation and debate occurring in local politics. Agitation can “educate … and energize” particularism, leading it to “challenge the center” in changed times. Democratic agitation “takes time” in that it must be nursed by patient deliberation, but it also “takes time” when, energized by such micro-political activities, it alters the status quo in powerful, lasting ways.

Again, Wolin does not look to slow time practices and local sites of action in order to flatten or exclude difference. According to Wolin, a leisurely pace and deliberation are “conditioned by the presence of differences and the attempt to negotiate them.”87 Democratic theory that emphasizes speed and dislocation, on the other hand, mimics the temporal rhythms of contemporary culture and economy at the expense of the tempos of deliberation and reflection that are important in themselves and insofar as they make possible the politics of a quicker pace. Some habits and practices are fundamental to the honoring and negotiating of plurality.

In order to develop these habits, Wolin wants to direct attention away from the state and towards localities with their particularities, peculiarities, and irregularities. On Wolin's reading, national politics is little more than a spectacle, and the citizen's role within that spectacle is often only as “a rooter limited to choosing sides.”88 Localities, on the other hand, remain venues that promise robust participation. As individuals slowly develop the habits related to participation—interpreting and coming to know one's environment and its other inhabitants, its multiple histories and overlapping concerns—their very being changes. “Politicalness” marks our capacity “to develop … into beings who know and value what it means to participate in and be responsible for the care and improvement of our common and collective life.”89 By nurturing this politicalness we begin to feel a tug of loyalty towards a common reality that had not heretofore existed. Wolin, in describing the early stages of the Free Speech Movement, referred to this experience as the “revival of a sense of shared destiny, of some common fate which can bind us into a people we have never been.”90 Of course, these assemblages are subject to the same “thousand natural shocks” to which all flesh is heir. Publics rise and fall; democratic moments remain momentary. Yet those who are honed by these experiences and who are dedicated to their recovery become what Wolin calls a “multiple civic self … one who is required to act the citizen in diverse settings: national, state, city or town, neighborhood, and voluntary association.”91 This is “perhaps the most complex conception of citizenship ever devised” yet “we have no coherent conception of it.”91 The multiple civic self is not modeled along republican or representative lines, which reduce participation to occasional ratification or refusal, and which filter popular power through elite-managed institutions. Nor, however, is it based on the radical democratic conception of citizenship as direct sharing in power. The complexities of what Wolin calls “the megastate” and the sheer size of the United States exceed what an Athens-styled radical democracy could manage. The multiple civic self is one capable of participating not simply in his/her locality but “intellectually and passionately in the controversies surrounding the megastate” in order to “reclaim” public space and insist upon “widened debate.”92 Wolin is not (only) a localist. Rather, he thinks that the skills and habits best acquired by consistent participation in our particular localities lay the groundwork for a form of citizenship attuned to the plural layers of political action and struggle in late-modern America. Moreover, the multiple civic self promotes the dispersal of power between local, state, and national bodies.93 Such diffusion re-establishes a separation of powers that forces slow-time negotiations upon the impatient megastate.94 The slowly developed habits of participation make possible a more robust form of democratic citizenship and, perhaps, fugitive democratic moments.

 These moments, in turn, can help to slow the world down.

Political theorists and social actors inspired by Wolin's example and worried about the inegalitarian consequences of social acceleration should look to start from his (so far underdeveloped) idea of the multiple civic self. Instead of refurbishing federal institutions or romanticizing the consequences of speed, we ought to attend primarily to what Wolin calls the “recurrent aspiration” of democracy: “to find room in which people can join freely with others to take responsibility for solving their common problems and thereby sharing the modest fate that is the lot of all mortals.”95 By pursuing solutions to mutual problems through concerted action, we as citizens can hone the craft of democratic participation—broadening our notions of self and learning to honor the differences we encounter within a shared space.96

The differences drawn above between Wolin and Connolly—and the choice that they seem to offer, Connolly or Wolin—may seem exaggerated, given the broad convergence between their normative interests and political concerns.97 Perhaps, then, a critical synthesis can be located between Wolin's efforts at nurturing democratic identity and Connolly's recent emphasis on generating a positive political resonance machine capable of promoting the use of inclusive goods while remaining attentive to difference and dissonance. For Connolly, the success of such movements will depend on cultivating the democratic virtues of what he calls “agonistic respect” and “critical responsiveness.” In fact, it is the latter two qualities, first articulated together in Neuropolitics, that form Connolly's recent conception of “bicameral citizenship,” which might be seen as a response or friendly rejoinder to Wolin's idea of the multiple civic self.98 Bicameralism comes from a “decent respect for the persistent diversity of the human condition” and results in a tolerance of ambiguity in our relationships and contestability in our creeds.99 The stubborn opacity of the world and the agonistic nature of political life can both become, on Connolly's reading, the basis for a generous acceptance of disagreement and difference. But the acceptance of such opacity would not necessarily come at the expense of a search for spaces of convergence or commonality—what Wolin calls the “sense of shared destiny.”

The dispositions of agonistic respect and critical responsiveness can clearly resonate with and reinforce the care and concern for the common that Wolin puts at the center of fugitive democracy. Yet these efforts, I would argue, need to be situated within a praxis whereby (seemingly anachronistic) habits of participation and engagement are nurtured in spite of the pressures of an accelerated society. For outside of these practices, what will inspire a commitment to the virtues relevant to democratic flourishing? What will make Connolly's virtues more compelling than resentment about the “illegible” social relations in “liquid” modernity? Connolly's under-theorization of the bonds of democratic identification and commitment seems a symptom of his sanguinity about the connection between speed and pluralism (“the acceleration of speed, though it contains counterpressures, amplifies trends towards diversity among multiple dimensions of being”).100 We ought to remain slightly skeptical, therefore, when Connolly writes, “acceleration prepares us for bicameralism” or asserts “it takes massive energy to turn us against pluralism.”101 We ought to ask whether this sanguine attitude is really justified by our understanding of the world around us. After all, since the fifteenth century, nearly 4,000 human languages have died out, and there have been similar crashes in biodiversity and methods of agricultural production since the rise of the steam engine. It seems that diversity of political, cultural, and ecological life is far from a given; one might say rather that it requires “massive energy” in order to persist.

### AT Predictability Bad---Armstrong

#### **Breaking down predictability is self-defeating and impossible---creativity inevitably depends upon constraints, the attempt to wish away the structure of predictability collapses the very structure their aff depends on---it’s better to retain predictability and be creative within it**

Armstrong 2K – Paul B. Armstrong, Professor of English and Dean of the College of Arts and Sciences at the State University of New York at Stony Brook, Winter 2000, “The Politics of Play: The Social Implications of Iser's Aesthetic Theory,” New Literary History, Vol. 31, No. 1, p. 211-223

Such a play-space also opposes the notion that the only alternative to the coerciveness of consensus must be to advocate the sublime powers of rule-breaking. 8 Iser shares Lyotard's concern that to privilege harmony and agreement in a world of heterogeneous language games is to limit their play and to inhibit semantic innovation and the creation of new games. Lyotard's endorsement of the "sublime"--the pursuit of the "unpresentable" by rebelling against restrictions, defying norms, and smashing the limits of existing paradigms--is undermined by contradictions, however, which Iser's explication of play recognizes and addresses. The paradox of the unpresentable, as Lyotard acknowledges, is that it can only be manifested through a game of representation. The sublime is, consequently, in Iser's sense, an instance of doubling. If violating norms creates new games, this crossing of boundaries depends on and carries in its wake the conventions and structures it oversteps. The sublime may be uncompromising, asocial, and unwilling to be bound by limits, but its pursuit of what is not contained in any order or system makes it dependent on the forms it opposes. [End Page 220]

The radical presumption of the sublime is not only terroristic in refusing to recognize the claims of other games whose rules it declines to limit itself by. It is also naive and self-destructive in its impossible imagining that it can do without the others it opposes. As a structure of doubling, the sublime pursuit of the unpresentable requires a play-space that includes other, less radical games with which it can interact. Such conditions of exchange would be provided by the nonconsensual reciprocity of Iserian play.

Iser's notion of play offers a way of conceptualizing power which acknowledges the necessity and force of disciplinary constraints without seeing them as unequivocally coercive and determining.

 The contradictory combination of restriction and openness in how play deploys power is evident in Iser's analysis of "regulatory" and "aleatory" rules. Even the regulatory rules, which set down the conditions participants submit to in order to play a game, "permit a certain range of combinations while also establishing a code of possible play. . . . Since these rules limit the text game without producing it, they are regulatory but not prescriptive. They do no more than set the aleatory in motion, and the aleatory rule differs from the regulatory in that it has no code of its own" (FI 273). Submitting to the discipline of regulatory restrictions is both constraining and enabling because it makes possible certain kinds of interaction that the rules cannot completely predict or prescribe in advance. Hence the existence of aleatory rules that are not codified as part of the game itself but are the variable customs, procedures, and practices for playing it. Expert facility with aleatory rules marks the difference, for example, between someone who just knows the rules of a game and another who really knows how to play it. Aleatory rules are more flexible and open-ended and more susceptible to variation than regulatory rules, but they too are characterized by a contradictory combination of constraint and possibility, limitation and unpredictability, discipline and spontaneity.

### T Version

#### Requiring the affirmative to anchor their analysis of social acceleration around specific institutional policy reforms is key to solve the case---liberal institutions are inevitably making decisions that affect our ability to cope with speed---only analysis of how policymakers should respond makes debate’s political subjectivity relevant and effective

William E. Scheuerman 4, Associate Professor of Political Science, University of Minnesota, 2004, Liberal Democracy and the Social Acceleration of Time, p. 225-227

Social acceleration places many familiar legal and political concerns in a fresh light. A proper understanding of traditional liberal democratic institutional aspirations, including the separation of powers, deliberative representative legislatures, constitutionalism, and the rule of law, requires us to pay careful attention to their temporal presuppositions. Many widely discussed institutional trends—the rise of the executive, dramatic shifts in the separation of powers, threats to traditional visions of constitutionalism and rule of law, a general speed-up of legislation, the ongoing globalization of law—can be fruitfully reinterpreted, at least in part, as institutional adaptations to social acceleration. Social acceleration also forces us to think creatively about liberal democracy's prospects in the new century. Might we successfully reconfigure liberal democracy for a temporal context distinct from that in which its eighteenth-and early-nineteenth-century defenders first hinted at the possibility of its realization? Can we revive traditional liberal democratic ideals of "government by discussion " the closely related notion of a freewheeling deliberative legislature, the separation of powers, constitutionalism, and the rule of law? A substantial dose of institutional imagination is called for if we are to update liberal democracy to make it mesh with the dictates of speed. Although my own contribution here to a revitalization of liberal democracy has undoubtedly been a modest one, I hope at the very least to encourage others to confront the difficult unanswered questions posed by changes in the temporality of contemporary society for political life. Thus far, it has generally been anthropologists, geographers, and sociologists who have dealt with questions of social temporality. It is now time for political and legal scholars—as well as citizens and policy makers—to situate the problem of social speed at the top of their agenda.

Perhaps it is fitting that my discussion of reflexive law tentatively raised the issue of transnational democracy. For no more basic intellectual and political challenge of social speed faces us than the need to consider the possibility of extending liberal democracy beyond national borders. As I hinted at earlier, the prospect of achieving reflexive law within global economic regulation may ultimately depend on institutionalizing effective transnational forms of liberal democratic state authority. Reflexive law as a possible paradigm for tackling the legal challenges of social acceleration can only take an initial step toward grappling with the broader and more demanding enterprise of achieving transnational liberal democracy. One striking implication of the compression of space generated by high-speed social activity is a long-term trend by which key social and economic activities arc "stretched" and intensified across preexisting political boundaries. For those of us committed to liberal democracy, the "shrinking" of the world via speed probably calls for the advancement of liberal democracy on the transnational arena as well as within the boundaries of existing nation-states. At the same time, social acceleration threatens to undermine even modest attempts to establish transnational liberal democratic institutions (e.g., the rule of law). Speed cries out for transnational governance while simultaneously undermining normatively acceptable forms of it.

Fortunately, a formidable body of scholarly literature shows that many scholars are already busy at work on the difficult normative and institutional questions posed by the possibility of transnational forms of liberal democracy.' Unless the concept of social acceleration plays a pivotal role in that debate, however, its participants are likely to misconstrue many core issues at hand. Only by placing the concept of social acceleration at the center of their analyses can they successfully shift thinking about globalization and liberal democracy onto fruitful terrain. For example, it is surely inadequate simply to extend existing liberal democratic institutions to the transnational level because, as I have argued, these institutions are already plagued by serious faults that derive from social acceleration. It is incumbent on those who defend the idea of a "cosmopolitan democracy," for example, to explain exactly how their oftentimes provocative proposals can help counteract the deeply rooted anti-liberal and antidemocratic developmental trends thematized here. How might the invigoration of international supranational political bodies manage the challenge of social acceleration more effectively than the existing nation-state? What evidence exists that they might provide a better basis for regulating an increasingly high-speed capitalism?

If I am not mistaken, much more than the deepening of (existing) liberal democratic institutions on the global level will be necessary if we are to ward off the more worrisome features of social acceleration. It is probably no less mistaken to see the growing impotence of many elected legislatures as a relatively sudden and even unprecedented development resulting from the ongoing transnationalization of capitalist production and financial markets, unparalleled movements of immigrants and refugees, and cross-border environmental problems. The recent losses of democratic sovereignty lamented by many scholars of globalization are simply the latest chapter in a long-term erosion of democratic legitimacy directly linked to the revolutionary implications of social acceleration long evident within nation-state-based capitalist liberal democracy. The defensive tone of even relatively critical recent contributions to the debate on globalization and democracy is probably misplaced. In his recent essays on globalization, for example, Habermas at times seems primarily concerned with the task of preserving the existing constellation of welfare state liberal democracy in the face of transnational pressures to weaken liberal democracy and dismantle social programs.2 Alas, this preoccupation obscures the seriousness of the ills plaguing existing liberal democratic institutions. We undoubtedly should strive to ward off irresponsible attacks on the welfare state, and the sad liberal democratic status quo is preferable to the technocratic political fantasies of some contemporary defenders of laissez-faire. But we also need to devote more attention to a question whose significance Habermas and many other analysts of the impact of globalization on liberal democracy downplay: how can we refigure liberal democratic institutions so that they have a real chance of successfully confronting the awesome problems posed by social acceleration?

### Anderson

#### Debate inevitably involves exclusions---making sure that those exclusions occur along reciprocal lines is necessary to foster democratic habits and critical thinking---this process outweighs the content of the aff

Anderson 6—prof of English at Johns Hopkins (Amanda, The Way We Argue Now, 25-8)

25¶ Whether such a procedural approach actually helps to yield any substantive normative guidance is an issue of debate. Habermas has sought to justify communicative ethics through appeal to the principles of respect and reciprocity that he claims are inherent in linguistic practices geared toward reaching understanding. Attempting to redress the overwhelmingly negative forms of critique characteristic of both the Frankfurt School and poststructuralist traditions, he argues that the logocentrism of Western thought and the powerful instrumentality of reason are not absolute but rather constitute “a systematic foreshortening and distortion of a potential always already operative in the communicative practice of everyday life.” The potential he refers to is the potential for mutual understanding “inscribed into communication in ordinary language.” 7 Habermas acknowledges the dominance and reach of instrumental reason—his project is largely devoted to a systematic analysis of the historical conditions and social effects of that dominance—yet at the same time he wishes to retrieve an emancipatory model of communicative¶ ¶ 26¶ reason derived from a linguistic understanding of intersubjective relations. As Benhabib argues, this form of communicative action, embodied in the highly controversial and pervasively misunderstood concept of the “ideal speech situation,” entails strong ethical assumptions, namely the principles of universal moral respect and egalitarian reciprocity (SS, 29).¶ Habermas has famously argued that he does not believe any metaphysical grounding of such norms is possible; he insists instead that we view the normative constraints of the ideal speech community as “universal pragmatic presuppositions” of competent moral actors who have reached the postconventional stage of moral reasoning. Habermas’s theory combines a “weak transcendental argument” concerning the four types of validity claims operative in speech acts with an empirical reconstruction of psychosocial development derived from Lawrence Kohlberg. Benhabib, though she, too, appeals to socialization processes, distinguishes her position from Habermas’s “weak transcendental argument” by promoting a “historically self-conscious universalism” that locates the ethical principles of respect and reciprocity as “constituents of the moral point of view from within the normative hermeneutic horizon of modernity” (SS, 30). Benhabib’s work thus constitutes, like Habermas’s, a strong defense of specific potentialities of modernity. She differs from him in two key respects, besides the emphasis already outlined. First, she believes that Habermas’s emphasis on consensus seriously distorts his account of communicative ethics. Like others who have argued against the conflation of understanding and consensus, Benhabib champions instead a discourse model of ethics that is geared toward keeping the conversation going:¶ When we shift the burden of the moral test in communicative ethics from consensus to the idea of an ongoing moral conversation, we begin to ask not what all would or could agree to as a result of practical discourses to be morally permissible or impermissible, but what would be allowed and perhaps even necessary from the standpoint of continuing and sustaining the practice of the moral conversation among us. The emphasis now is less on rational agreement, but more on sustaining those normative practices and moral relationships within which reasoned agreement as a way of life can flourish and continue. (SS, 38)8¶ ¶ 27¶ The second significant difference between Habermas and Benhabib is that Benhabib rejects Habermas’s rigid opposition between justice and the good life, an opposition that effectively relegates identity-based politics to a lower plane of moral practice, and that for Benhabib undercuts our ability to apprehend the radical particularity of the other. While she believes in the importance of self-reflexive interrogations of conventional identities and roles, she strongly opposes any ethics or politics that privileges the unencumbered or detached self over the concrete, embodied, situated self. She argues in particular against those liberal models that imagine that conversations of moral justification should take place between individuals who have bracketed their strongest cultural or social identifications and attachments. Instead she promotes what she calls an “interactive universalism”:¶ Interactive universalism acknowledges the plurality of modes of being human, and differences among humans, without endorsing all these pluralities and differences as morally and politically valid. While agreeing that normative disputes can be settled rationally, and that fairness, reciprocity and some procedure of universalizability are constituents, that is, necessary conditions of the moral standpoint, interactive universalism regards difference as a starting point for reflection and action. In this sense, “universality” is a regulative ideal that does not deny our embodied and embedded identity, but aims at developing moral attitudes and encouraging political transformations that can yield a point of view acceptable to all. Universality is not the ideal consensus of fictitiously defined selves, but the concrete process in politics and morals of the struggle of concrete, embodied selves, striving for autonomy. (SS, 153) ¶ This passage encapsulates the core of Benhabib’s position, which attempts to mediate between universalism and particularism as traditionally understood. On the one hand, universalism’s informing principles of rational argumentation, fairness, and reciprocity adjudicate between different positions in the ethicopolitical realm, enabling crucial distinctions between those notions of the good life that promote interactive universalism and those that threaten its key principles. It insists, in other words, that there is a specifiable moral standpoint from which—to take a few prominent examples—Serbian aggression, neo-Nazism, and gay bashing can be definitively condemned. On the other hand, universalism “regards difference as a starting point.” It understands identity as “embodied and embedded” and promotes encounters with otherness so as to nurture the development of a moral attitude that will “yield a point of view acceptable to all.”¶ Of course it must simultaneously be recognized that the “all” here cannot coherently include those who have, according to universalism’s own principles, forfeited their place as equal participants in the ethicopolitical¶ ¶ 28¶ community. Ironically, then, Benhabib’s redefinition of universalism insists on inevitable exclusion, but not in the sense that many poststructuralist and postmodernist cultural critics do, as the hardwired effect of universalism’s false claims to inclusiveness, and as victimizing those disempowered by race, class, gender, or sexuality. Against naive conceptions of inclusiveness and plurality, which ultimately prove self-undermining in their toleration of communities, individuals, and practices that exclude others arbitrarily, interactive universalism claims that certain exclusions are not only justified, but indeed required by the principles of recognition and respect that underpin democratic institutions and practices.

# 1NR

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### Case

#### Value to life is inevitable and subjective

Lisa Schwartz, Chair at the Centre for Health Economics and Policy Analysis, 2002

“Medical Ethic: A Case Based Approach” Chapter 6, www.fleshandbones.com/readingroom/pdf/399.pdf

The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

#### No concentration camps or nuclear annihilation---democracy checks and proves people are embracing uncertainty productively

Edward Ross Dickinson 4, Associate Professor, History Ph.D., U.C. Berkeley, Central European History, Vol. 37 No. 1, p. 34-36

And it is, of course, embedded in a broader discursive complex (institutions, professions, fields of social, medical, and psychological expertise) that pursues these same aims in often even more effective and inescapable ways.89 In short, the continuities between early twentieth-century biopolitical discourse and the practices of the welfare state in our own time are unmistakable.¶ Both are instances of the “disciplinary society” and of biopolitical, regulatory, social-engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in the two kinds of regimes. Clearly the democratic welfare state is not only formally but also substantively quite different from totalitarianism. Above all, again, it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies.¶ In those cases in which the regime of rights does not successfully produce “health,” such a system can —and historically does— create compulsory programs to enforce it. But again, there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self-direction and participation that is functionally incompatible with authoritarian or totalitarian structures. And this pursuit of biopolitical ends through a regime of democratic citizenship does appear, historically, to have imposed increasingly narrow limits on coercive policies, and to have generated a “logic” or imperative of increasing liberalization. Despite limitations imposed by political context and the slow pace of discursive change, I think this is the unmistakable message of the really very impressive waves of legislative and welfare reforms in the 1920s or the 1970s in Germany.90¶ Of course it is not yet clear whether this is an irreversible dynamic of such systems. Nevertheless, such regimes are characterized by sufficient degrees of autonomy (and of the potential for its expansion) for sufficient numbers of people that I think it becomes useful to conceive of them as productive of a strategic configuration of power relations that might fruitfully be analyzed as a condition of “liberty,” just as much as they are productive of constraint, oppression, or manipulation. At the very least, totalitarianism cannot be the sole orientation point for our understanding of biopolitics, the only end point of the logic of social engineering. ¶ This notion is not at all at odds with the core of Foucauldian (and Peukertian) theory. Democratic welfare states are regimes of power/knowledge no less than early twentieth-century totalitarian states; these systems are not “opposites,” in the sense that they are two alternative ways of organizing the same thing. But they are two very different ways of organizing it. The concept “power” should not be read as a universal stifling night of oppression, manipulation, and entrapment, in which all political and social orders are grey, are essentially or effectively “the same.” Power is a set of social relations, in which individuals and groups have varying degrees of autonomy and effective subjectivity. And discourse is, as Foucault argued, “tactically polyvalent.” Discursive elements (like the various elements of biopolitics) can be combined in different ways to form parts of quite different strategies (like totalitarianism or the democratic welfare state); they cannot be assigned to one place in a structure, but rather circulate. The varying possible constellations of power in modern societies create “multiple modernities,” modern societies with quite radically differing potentials.91

**No desire for control**

David **Chandler 9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

Western governments appear to portray some of the distinctive characteristics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today. ¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global.¶ Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numerous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberalism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq. ¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the security threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own meaning through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military firepower and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involving the strategic accommodation of diverse powers and interests.

#### Impossible to mobilize support for lashout

Mandelbaum 11 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) <http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+(CFR.org+-+Main+Site+Feed>

HAASS: Michael, I think I know the answer to this question, but let me ask you anyhow, which is, the last 10 years of American foreign policy has been dominated by two extremely expensive interventions, one in Iraq, one now in Afghanistan. Will this sort of pressure both accelerate the end, particularly of Afghanistan? But, more important, will this now -- is this the end of that phase of what we might call "discretionary American interventions?" Is this basically over?¶ MANDELBAUM: Let's call them wars of choice. (Laughter.)¶ HAASS: I was trying to be uncharacteristically self-effacing here. But clearly it didn't hold. Okay.¶ MANDELBAUM: I think it is, Richard. And I think that this period really goes back two decades. I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs. But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. ¶ Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again. We're not going to do it because there won't be enough money. We're not going to do it because there will be other demands on the public purse. We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy. And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind. So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit. And that unit has come to an end.

### DA

#### Flexibility is key to solve conflict

Jung Hyok Kim 8, KDI School of Public Policy and Management, “A STUDY ON THE IMPACT OF U.S. “STRATEGIC FLEXIBILITY” ON THE KOREA-U.S. ALLIANCE

Military **flexibility is more important than ever** because nobody can expect complicated security environment and battlefield condition of today easily. The 21st century security environment faces various military and non-military threats; it becomes difficult to find the countermeasure against threatening. In this situation, military‘s mission and its scope of activity having been broadened from the conventional operation to the counter-terror and supporting national catastrophe as well as Military Operations Other Than War (MOOTW) such as peace keeping operations (PKO). Consequently, under the uncertain and complicated security environment, flexible thinking and countermeasures are necessarily needed for the military and leaders in order to successfully complete various duties. In the aspect of strategic theory and military doctrine, **flexibility functions as one of the War Principles.** For example, British military adopts flexibility as one of the ten Principles of War. 33 They emphasize that flexibility is an essential principle to cope with unpredictable and changeable conditions as well as in order not to indulge in dogma. On the other hand, the U.S. doctrine does not adopt ―Flexibility‖ as one of the nine Principles of War34 ; however, it functions same as the Principle of War. In order to achieve the military victory and strategic success simultaneously, the nine Principles of War should be adopted harmoniously; in addition, flexibility plays a role as binding material for these nine Principles of War, as if it functions like the tenth Principle of War.35 As discussed earlier, future forms of warfare can take many paths, and much uncertainty lies ahead. Flexible responses are often born of **flexible planning**. Further, in tomorrow‘s unfolding environment where asymmetric and other nontraditional threats will be more prevalent, open-minded, nonjudgmental and critical thinking skills—at all ranks and levels of war—will become the tools to eliminate dangerous blind spots and develop effective solutions. That is flexibility. As we go through the 21st century, the need for flexibility is an indispensable condition for conducting a victory for military operations in uncertain security conditions and ambiguous battlefield environments. 36

#### Presidential flexibility enables effective crisis response --- statutory restrictions/judicial review prevents this

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Understanding the contingency of our current circumstances brings us back to where we began, the purpose of the executive. As originally conceived, the need for the executive arose to respond to unforeseen dangers, unpredictable circumstances, and emergencies. It was given the virtues of speed, secrecy, vigor, and decisiveness to most effectively marshal society's resources in a time of crisis. The executive could correct for the instability, fractiousness, and inability to organize and decide (caused by what we today think of as transaction costs of a republican legislature) under time pressure. If the circumstances demand, the executive can even go beyond the standing laws in order to meet a greater threat to the nation's security.¶ It remains an open question whether the Constitution incorporated this prerogative. Hamilton believed that Article II's vesting of the executive power in the President necessarily included the ability to meet any challenge. To him, this power ought to "exist without limitation because" the "circumstances that endanger the safety of nations are infinite." There was no prerogative in the Lockean mold, only a President with open-ended powers in time of emergency. This broad conception of the executive underpinned the broader Hamiltonian program. A President of broad powers would guide the national government by developing proposals, managing legislation, and vigorously enforcing the law and setting foreign policy. In contrast, Jefferson believed that the President's ability to access the prerogative existed independent of the Constitution. To him, the natural right of self-preservation allowed the President to act beyond the Constitution itself when defending the nation. Whereas Locke believed that the executive would have to appeal to the heavens in the event of an exercise of the prerogative, Jefferson believed that an appeal to the nation was in order.¶ The prerogative allowed Jefferson to keep his devotion to a strict interpretation of the Constitution. If the prerogative could serve as a safety valve when emergency placed the government under stress, the Constitution would need no stretching. The government's powers would remain limited, rather than permanently extended, and individual liberty and hopefully state sovereignty would be preserved. The process for confirming the executive's use of the prerogative, an appeal to the people, advanced Jefferson's agenda to make the President the democratic representative of the nation as a whole. Jefferson did not believe that the approval of Congress or the courts alone was necessary, except insofar as they represented the will of the people.¶ History suggests that Hamilton had the better argument. The prerogative faces serious, perhaps fatal problems, chief of which is that it requires the executive to violate the Constitution. If the people bless executive lawbreaking, then they undermine the very purpose of the Constitution to bind future majorities. Although faced with the most serious threats to the nation's security, Lincoln and FDR did not claim a right to act outside the Constitution. While Lincoln suggested on several occasions that it might be necessary to violate the Constitution to save the nation, he never invoked the prerogative. In fact, he carefully argued that his every action, from using force against secession to the Emancipation Proclamation, was justified by his constitutional authorities. Roosevelt, too, never claimed the prerogative, and justified his actions by his authority as Commander-in-Chief. By the Cold War, the debate seemed to be over -- the Constitution accommodated the need to respond to extraordinary events through the President's executive power.¶ At first glance, it might appear that this understanding of the Constitution could only work to the benefit of the President. It allows him to claim a reservoir of power to meet any serious threat to the national security. But subordinating the prerogative to the law may have come with costs as well -- it has raised public expectations of the President to the point where no mere mortal can satisfy them. If the President has the constitutional authority to respond to any emergency, then the failure of the government to meet the latest national problem must be his fault.¶ A second effect may be the unwillingness of Presidents since FDR to challenge the Supreme Court. Presidents no longer claim an independent right to interpret the Constitution differently from the judiciary, giving up the inheritance of Jefferson, Jackson, Lincoln, and Roosevelt. There are understandable political reasons for this, but perhaps a deeper constitutional explanation lies in presidential adoption of the Hamiltonian theory of the executive. If the President accesses extraordinary power from the Constitution, he may seek judicial approval in order to address concerns that he is interpreting the Constitution solely for his own benefit. It is not clear whether this bargain is to the long-term benefit of the institution; abdicating the right to interpret the Constitution, in light of the President's obligation to enforce the laws, ultimately places the definition of his duties and powers solely in the hands of another branch. Presidents may have only won themselves the freedom to act in the short term, but they have left the long-term success in the hands of others.¶ The fundamental question of the prerogative lends presidential power a tragic quality. Due to the Constitution's design, the political system has great difficulty responding to unforeseen circumstances, fast-moving events, or decisions that require technical expertise or run high political risks. It will fall to the President to act at these times, which most often arise where the nation's foreign relations and national security are at stake. In exercising their constitutional powers, Presidents by definition act against the web of congressional statutes, court decisions, agency regulations, and interest groups that make up the political status quo. Invocation of executive authority is guaranteed to trigger a sharp response by the supporters of the governing regime.

#### Rule of law corrects presidential abuses of power

John Norton Moore 9, Walter L. Brown Professor of Law, Director of Center for National Security Law, Director of Center for Oceans Law and Policy, “Policy, Morality, Politics . . . and the Rule of Law,” Spring 2009, http://www.law.virginia.edu/html/alumni/uvalawyer/spr09/policymorality.htm

But I’d like to come back if I could and point to one of the issues Fred has raised in relation to law and morality in foreign policy issues. I think Fred is right. It’s sad that in most foreign policy issues we don’t see our national officials thinking a great deal about the moral dimensions. But despite that, I’m inclined to think that to some extent law itself and the rule of law is in many cases something that embodies human experience and thinking about effective policy and moral choices.¶ Indeed, I think the torture prohibitions in the treaties that the Bush administration set aside embodied precisely that level of human experience and moral choice that we had made earlier. I’m a considerably stronger proponent for the rule of law because for me, it is in its broadest sense a check on power. A democratic system typically has lots of those checks. We are blessed to live in a Madisonian system with a genius for checks and balances. For that reason, I think law was one of the checks that was quite important in ultimately overturning some of the failures in the Bush administration.

#### Exec won’t abuse power due to lack of desire and political mediation – and even if she does, security concerns make overreach necessary

Eric Posner 7, the Kirkland and Ellis Professor of Law @ U-Chicago, and Adrian Vermeule, the John H. Watson, Jr. Professor of Law @ Harvard, Jan 4, “Terror in the Balance: Security, Liberty, and the Courts,” Book, p. 53

\*gender modified

Four points are critical, and they suggest that the concern is either greatly overblown or does not support civil libertarian prescriptions, or both: presidential or executive preferences need not systematically favor increased executive power during emergencies; political constraints will rule out abuses that the politically engaged public does not favor; even if increased executive power in emergencies creates abuses, the security gains may be greater still; and in any event civil libertarian judicial review is a feeble bulwark against a truly imperial executive. ¶ First, the executive-despotism concern supposes that executive officials desire, above all, to maximize their power. As Daryl Levinson has emphasized, both for officials generally and for executive officials in particular, it is hardly obvious that this is so, at least in any systematic way. Lower—level executive officials and administrative agencies have many other possible goals or maximands, including the desire to enjoy leisure or to advance programmatic or ideological goals—goals which will usually be orthogonal to the tradeoff between security and liberty and which might even include the protection of civil liberties. The same is true for presidents: some have been power maximizers; some have not. Moreover, even with respect to power-maximizing presidents, critics fail to distinguish the [person] man from the office. Presidents as individuals do not internalize all of the gains from expanding the power of the presidency as an institution, because those gains are shared with future presidents and senior executive officials. Conversely, presidents as individuals do not fully internalize harms to the institution and may thus acquiesce its limitations on executive power for partisan or personal advantage. The latter point may be more pronounced in emergencies than in normal times, because emergencies shorten the relevant time horizon: policymaking for the short run looms larger than in normal times. (We bracket for now the question of whether this is bad, an issue taken up in chapter 2.) Emergencies thus increase the divergence between the utility of individual officeholders and the institutional power of their offices, which extends into the remote future, beyond the horizon of the emergency.¶ Second, whatever the intrinsic preferences of presidents and executive officials, politics sharply constrains their opportunities for aggrandizement, especially in times of emergency. The president is elected from a national constituency (ignoring the low probability that the Electoral College will make a difference). A first—term president who seeks reelection to a second term, or even a second—term president who seeks to leave a legacy, will try to appeal to the median voter, or at least to some politically engaged constituency that is unlikely to be extremist in either direction. If the national median or the political center favors increased executive authority during emergencies, then the president will push the bounds of his power, but if it does not, then [she] will not: there is no general reason to think that national politics will always push executive authority as far as possible, even during emergencies.¶ Of course, during emergencies, the public will often favor increased executive power, and this may be fully sensible, given the executive’s relative decisiveness, secrecy, centralization, and other advantages over Congress and other institutions. Note, in this connection, the important finding that political constraints on the executive are associated with increased terrorism; shackling the executive has real security costs. The critics of executive power typically assume that executive power not only expands during emergencies, but expands too far. However, the critics supply no general reason to think this is so; they systematically conflate increases in executive power with “aggrandizement,” a normatively loaded concept which connotes an unjustified increase. We return to this point shortly. Here, the point is just that the expansion of presidential power during emergencies may reflect nothing more than the demands of the politically effective public, rather than intrinsic opportunism.¶

#### 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.

#### Their critique is based on a poorly-researched caricature of terrorism studies --- they over-focus on minute biases while ignoring our overwhelming, objective, and self-reflexive evidence

Schmid 9 - Chair in International Relations; the Director of the Centre for the Study of Terrorism and Political Violence at St. Andrews University(Alex, Perspectives on Terrorism, v.3, issue 4, Book Review of “Critical Terrorism Studies. A new research agenda. by Richard Jackson”, <http://www.terrorismanalysts.com/pt/index.php?option=com_rokzine&view=article&id=96>

\*We do not endorse ableist language

The editors accuse, in their introduction  “the orthodox field” of orthodox terrorism studies of functioning “ideologically in the service of existing power structures”, with their academic research. Furthermore, they claim that orthodox scholars are frequently being used “to legitimise coercive intervention in the global South….” (p.6). The present volume is edited by three authors associated with the Centre for the Study of Radicalisation and Contemporary Political Violence (CSRV) in the Department of International Politics in Aberystwyth (Wales, UK). They also happen to be editors of a new Routledge journal “Critical Studies on Terrorism’ . The “critical” refers principally but not exclusively to the “Frankfurt-via-Welsh School Critical Theory Perspective”. The twelve contributors are not all equally “critical” in aHabermasian sense. The programmatic introduction of the editors is followed by two solid chapters from Magnus Ranstorp (former Director of CSTPV, St. Andrews, and currently Director of the Centre for Asymmetric Threat Studies at the Swedish National Defence College) and Andrew Silke (formerly with the UK Home Office and now Field Leader for Criminology at the University of East London). They both rightfully criticize some of the past sins and present shortcomings of the field of Terrorism Studies. One of them approvingly quotes Marc Sageman who observed that “disagreements among experts are the driving force of the scientific enterprise”. Such disagreements, however, exist among “orthodox” scholars like Sageman and  Hoffman or Pape and Abrams. In that sense, the claim by some critical theorists that the field of traditional Terrorism Studies is ossified without them, is simply is not true. One of the problems with many of the adherents of the “critical” school is that the focus is almost exclusively on the strawman they set up to shoot – “orthodox” terrorism discourse rather than on the practitioners of terrorism. Richard Jackson claims that “…most of what is accepted as well-founded ‘knowledge’ in terrorism studies is, in fact, highly debatable and unstable” (p.74), dismissing thereby almost four decades of scholarship as “based on a series of ‘virulent myths’, ‘half-truths’ and contested claims…biased towards Western state priorities” (p.80). For him “terrorism is…a social fact rather than a brute fact” and “…does not exist outside of the definitions and practices which seek to enclose it, including those of the terrorism studies field” (pp.75-76). He objects to prevailing “problem-solving theories of terrorism” in favour of an approach that questions “ the status quo and the dominant acts within it” (p.77). Another contributor, J.A. Sluka, argues, without offering any proof,  that “terrorism is fundamentally a product of social inequality and state politics” (p. 139). Behind many of the critical theorists who blame mainstream terrorism research for taking ‘the world as it finds it’ there is an agenda for changing the status quo and overthrowing existing power structures. There is, in itself, nothing wrong with wanting a new and better world order. However, it is not going to be achieved by using an alternative discourse on terrorism and counter-terrorism. Toros and Gunning, contributors of another chapter, state that “the sine qua non of Critical Theory is emancipation” (p. 99) and M. McDonald als puts “emancipation as central to the study of terrorism” (p.121). However, there is not a single word on the non-emancipated position of women under Islam in general or among the Taliban and their friends from al-Qaeda in particular. One of the strength (some argue weakness) of Western thinking is its ability for self-criticism – something largely absent in the Muslim world. In that sense, this volume falls within a Western tradition. However, self-criticism should not come at the cost of not criticising   adversaries by using the same yardstick. In this sense, this volume is strangely silent about the worldview of those terrorists who have no self-doubts and attack the Red Cross,  the United Nations, NGOs and their fellow Muslims with equal lack of scruples. A number of authors in the volume appear to equate terrorism uncritically with political violence in general while in fact it is more usefully thought of as one of some twenty sub-categories of  political violence - one characterized by deliberate attacks on civilians and non-combatants in order to intimidate, coerce or otherwise manipulate  various audiences and parties to a conflict. Part of the volume advocates reinventing the wheel. J. Gunning, for instance, recommends to employ Social Movement Theory for the study of terrorism. However, that theory has been employed already explicitly or implicitly by a number of more orthodox scholars, e.g. Donatella della Porta. Many “critical” statements in the volume are unsupported by convincing evidence, e.g. when C. Sylvester and S. Parashar state “The September 11 attacks and the ongoing war on terror reinforce gender hierarchy and power in international relations” (p.190). Jackson claims that the key question  for critical terrorism theory is “who is terrorism research for and how does terrorism knowledge support particular interests?” (p.224) It does not seem to occur to him that he could have studied this question by looking at the practitioners of terrorism and study al-Qaeda’s ideological writings and its training  and  recruiting manuals. If CTS is a call for “making a commitment to emancipatory praxis central to the research enterprise” (R. Jackson et al, p. 228), CTS academics should be the first on the barricades against jihadists who treat women not as equals and who would, if they get their way, eradicate freedom of thought and religion for all mankind. It is sad that some leading proponents of Critical Terrorism Studies appear to be in fact uncritical and blind on one eye.

#### 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.**