# 1NC

### 1NC

#### The affirmative must defend a statutory or judicial restriction of restrictions on the presidents warfighting powers in one or more of the topic areas.

#### Statutory restriction requires legislation

Black’s Law Dictionary 2013

(ONLINE LEGAL DICTIONARY 2nd Edition, <http://thelawdictionary.org/statutory-restriction/>)

What is STATUTORY RESTRICTION?¶ Limits or controls that have been place on activities by its ruling [legislation](http://thelawdictionary.org/legislation/).¶

#### Judicial restrictions are done by the courts

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

#### Presidential “war power” = the presidents authority to conduct war as commander-in-chief.

**Howard 1 -** 38 Hous. L. Rev. 261, \*¶ Copyright (c) 2001 Houston Law Review¶ Houston Law Review¶ Spring, 2001¶ 38 Hous. L. Rev. 261¶ LENGTH: 16940 words¶ COMMENT: COMBAT IN KOSOVO: IGNORING THE WAR POWERS RESOLUTION¶ NAME: Gerald G. Howard

[\*270] The issue, then, becomes one of defining and monitoring the authority of the political leader in a democratic nation. Black's Law Dictionary defines "war power" as "the constitutional authority of Congress to declare war and maintain armed forces, and of the President to conduct war as commander-in-chief." 45 The power and authority of United States political leaders to conduct war stems from two documents: the United States Constitution and the War Powers Resolution. 46 One must understand each of these sources of authority to properly assess the legality of the combat operations in Kosovo.

#### Violation: The aff claims to advocate the crash site of the drone – that is not a restriction and is not done through judicial or statutory means

#### A.) Limits – not defending judicial or statutory restrictions means that there is no cap to what constitutes as a restriction. Screws the neg – predictable ground is obliterated because links come from the two restrictions – only thing we are guaranteed to have.

#### B.) clash – it is the only way to truth test what the affirmative has presented this means that the arguments we lose on are not a result of us being bad but rather that the work we have done is centered around the question of restrictions and not baudrillards thoughts on the hyper real.

#### C.) Effective Deliberation- On a topic about war powers the question of effective deliberation is particularly pertinent---debate is not the site to directly drive political change, but rather it helps inculcate the requisite skills to leave the debate space better prepared to advocate for the good, however that good may be defined---as such, you should vote for the team that actualizes debate’s potential to equip students with the faculties to advocate for change---this is only possible by instituting deliberation through a set of practices.

#### The word “resolved” before the colon means the plan must be enacted in a legislative forum, that’s a quote from the Army Officer School 04.

 (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

####  “United States federal government should” means any discussion of the plan should be about the consequences after the government enacts it, literally

Ericson, 03 (Jon M., 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 though 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.

#### Should indicates obligation or duty

**Compact Oxford English Dictionary, 8** (“should”, 2008, http://www.askoxford.com/concise\_oed/should?view=uk)

should

modal verb (3rd sing. should) 1 used to indicate obligation, duty, or correctness. 2 used to indicate what is probable. 3 formal expressing the conditional mood. 4 used in a clause with ‘that’ after a main clause describing feelings. 5 used in a clause with ‘that’ expressing purpose. 6 (in the first person) expressing a polite request or acceptance. 7 (in the first person) expressing a conjecture or hope.

USAGE Strictly speaking should is used with I and we, as in I should be grateful if you would let me know, while would is used with you, he, she, it, and they, as in you didn’t say you would be late; in practice would is normally used instead of should in reported speech and conditional clauses, such as I said I would be late. In speech the distinction tends to be obscured, through the use of the contracted forms I’d, we’d, etc.

#### And independently a voting issue for limits and ground--- negative strategy is based on the “should” question of the resolution---there are an infinite number of reasons that the scholarship of their advocacy could be a reason to vote affirmative--- these all obviate the only predictable strategies based on topical action---they overstretch our research burden and undermine preparedness for all debates

#### Aff conditionality – without the plan text as a stable source of the offense the aff can shift their advocacy to get out of offense which discourages research and clash

#### The Aff’s failure to advance a defense of the federal government substantially increasing restrictions on war powers undermines debate’s transformative and intellectual potential

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

Steinberg and Freeley ‘13

David Director of Debate at U Miami, Former President of CEDA, officer, American Forensic Association and National Communication Association. Lecturer in Communication studies and rhetoric. Advisor to Miami Urban Debate League, Masters in Communication, and Austin, JD, Suffolk University, attorney who focuses on criminal, personal injury and civil rights law, *Argumentation and Debate*

*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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

#### First, effective deliberation requires a forum of discussion that facilitates political agonism and the capacity to substantively engage the topic at hand---in short, a forum of switch side debate where the negative can predict and respond to the aff is the most intellectually effective---this is crucial to affecting productive change in all facets of life---the process in this instance is more important than the substance of their advocacy

Gutmann and Thompson 96 – Amy Gutmann 96 is the president of Penn and former prof @ Princeton, AND Dennis Thompson is Alfred North Whitehead Professor of Political Philosophy at Harvard University, Democracy and Disagreement, pp 1

OF THE CHALLENGES that American democracy faces today, none is more formidable than the problem of moral disagreement. Neither the theory nor the practice of democratic politics has so far found an adequate way to cope with conflicts about fundamental values. We address the challenge of moral disagreement here by developing a conception of democracy that secures a central place for moral discussion in political life. Along with a growing number of other political theorists, we call this conception deliberative democracy. The core idea is simple: when citizens or their representatives disagree morally, they should continue to reason together to reach mutually acceptable decisions. But the meaning and implications of the idea are complex. Although the idea has a long history, it is still in search of a theory. We do not claim that this book provides a comprehensive theory of deliberative democracy, but we do hope that it contributes toward its future development by showing the kind of delib-eration that is possible and desirable in the face of moral disagreement in democracies. Some scholars have criticized liberal political theory for neglecting moral deliberation. Others have analyzed the philosophical foundations of deliberative democracy, and still others have begun to explore institutional reforms that would promote deliberation. Yet nearly all of them stop at the point where deliberation itself begins. None has systematically examined the substance of deliberation—the theoretical principles that should guide moral argument and their implications for actual moral disagreements about public policy. That is our subject, and it takes us into the everyday forums of democratic politics, where moral argument regularly appears but where theoretical analysis too rarely goes. Deliberative democracy involves reasoning about politics, and nothing has been more controversial in political philosophy than the nature of reason in politics. We do not believe that these controversies have to be settled before deliberative principles can guide the practice of democracy. Since on occasion citizens and their representatives already engage in the kind of reasoning that those principles recommend, deliberative democracy simply asks that they do so more consistently and comprehensively. The best way to prove the value of this kind of reasoning is to show its role in arguments about specific principles and policies, and its contribu¬tion to actual political debates. That is also ultimately the best justification for our conception of deliberative democracy itself. But to forestall pos¬sible misunderstandings of our conception of deliberative democracy, we offer some preliminary remarks about the scope and method of this book. The aim of the moral reasoning that our deliberative democracy pre-scribes falls between impartiality, which requires something like altruism, and prudence, which demands no more than enlightened self-interest. Its first principle is reciprocity, the subject of Chapter 2, but no less essential are the other principles developed in later chapters. When citizens reason reciprocally, they seek fair terms of social cooperation for their own sake; they try to find mutually acceptable ways of resolving moral disagreements. The precise content of reciprocity is difficult to determine in theory, but its general countenance is familiar enough in practice. It can be seen in the difference between acting in one's self-interest (say, taking advantage of a legal loophole or a lucky break) and acting fairly (following rules in the spirit that one expects others to adopt). In many of the controversies dis-cussed later in the book, the possibility of any morally acceptable resolution depends on citizens' reasoning beyond their narrow self-interest and considering what can be justified to people who reasonably disagree with them. Even though the quality of deliberation and the conditions under which it is conducted are far from ideal in the controversies we consider, the fact that in each case some citizens and some officials make arguments consistent with reciprocity suggests that a deliberative perspective is not Utopian. To clarify what reciprocity might demand under non-ideal conditions, we develop a distinction between deliberative and nondeliberative disa-greement. Citizens who reason reciprocally can recognize that a position is worthy of moral respect even when they think it morally wrong. They can believe that a moderate pro-life position on abortion, for example, is morally respectable even though they think it morally mistaken. (The abortion example—to which we often return in the book—is meant to be illustrative. For readers who deny that there is any room for deliberative disagreement on abortion, other political controversies can make the same point.) The presence of deliberative disagreement has important implications for how citizens treat one another and for what policies they should adopt. When a disagreement is not deliberative (for example, about a policy to legalize discrimination against blacks and women), citizens do not have any obligations of mutual respect toward their opponents. In deliberative disagreement (for example, about legalizing abortion), citizens should try to accommodate the moral convictions of their opponents to the greatest extent possible, without compromising their own moral convictions. We call this kind of accommodation an economy of moral disagreement, and believe that, though neglected in theory and practice, it is essential to a morally robust democratic life. Although both of us have devoted some of our professional life to urging these ideas on public officials and our fellow citizens in forums of practical politics, this book is primarily the product of scholarly rather than political deliberation. Insofar as it reaches beyond the academic community, it is addressed to citizens and officials in their more reflective frame of mind. Given its academic origins, some readers may be inclined to complain that only professors could be so unrealistic as to believe that moral reasoning can help solve political problems. But such a complaint would misrepresent our aims. To begin with, we do not think that academic discussion (whether in scholarly journals or college classrooms) is a model for moral deliberation in politics. Academic discussion need not aim at justifying a practical decision, as deliberation must. Partly for this reason, academic discussion is likely to be insensitive to the contexts of ordinary politics: the pressures of power, the problems of inequality, the demands of diversity, the exigencies of persuasion. Some critics of deliberative democracy show a similar insensitivity when they judge actual political deliberations by the standards of ideal philosophical reflection. Actual deliberation is inevitably defective, but so is philosophical reflection practiced in politics. The appropriate comparison is between the ideals of democratic deliberation and philosophical reflection, or between the application of each in the non-ideal circumstances of politics. We do not assume that politics should be a realm where the logical syllogism rules. Nor do we expect even the more appropriate standard of mutual respect always to prevail in politics. A deliberative perspective sometimes justifies bargaining, negotiation, force, and even violence. It is partly because moral argument has so much unrealized potential in dem-ocratic politics that we believe it deserves more attention. Because its place in politics is so precarious, the need to find it a more secure home and to nourish its development is all the more pressing. Yet because it is also already part of our common experience, we have reason to hope that it can survive and even prosper if philosophers along with citizens and public officials better appreciate its value in politics. Some readers may still wonder why deliberation should have such a prominent place in democracy. Surely, they may say, citizens should care more about the justice of public policies than the process by which they are adopted, at least so long as the process is basically fair and at least minimally democratic. One of our main aims in this book is to cast doubt on the dichotomy between policies and process that this concern assumes. Having good reason as individuals to believe that a policy is just does not mean that collectively as citizens we have sufficient justification to legislate on the basis of those reasons. The moral authority of collective judgments about policy depends in part on the moral quality of the process by which citizens collectively reach those judgments. Deliberation is the most appropriate way for citizens collectively to resolve their moral disagreements not only about policies but also about the process by which policies should be adopted. Deliberation is not only a means to an end, but also a means for deciding what means are morally required to pursue our common ends.

#### Effective deliberation is crucial to personal agency and is only possible in a switch-side debate format where debaters divorce themselves from ideology---this is vital to preventing mass violence and genocide

Patricia Roberts-Miller 3 is Associate Professor of Rhetoric at the University of Texas "Fighting Without Hatred:Hannah Ar endt ' s Agonistic Rhetoric" JAC 22.2 2003

Totalitarianism and the Competitive Space of Agonism

Arendt is probably most famous for her analysis of totalitarianism (especially her The Origins of Totalitarianism andEichmann in Jerusa¬lem), but the recent attention has been on her criticism of mass culture (The Human Condition). Arendt's main criticism of the current human condition is that the common world of deliberate and joint action is fragmented into solipsistic and unreflective behavior. In an especially lovely passage, she says that in mass society people are all imprisoned in the subjectivity of their own singular experience, which does not cease to be singular if the same experience is multiplied innumerable times. The end of the common world has come when it is seen only under one aspect and is permitted to present itself in only one perspective. (Human 58) What Arendt so beautifully describes is that isolation and individualism are not corollaries, and may even be antithetical because obsession with one's own self and the particularities of one's life prevents one from engaging in conscious, deliberate, collective action. Individuality, unlike isolation, depends upon a collective with whom one argues in order to direct the common life. Self-obsession, even (especially?) when coupled with isolation from one' s community is far from apolitical; it has political consequences. Perhaps a better way to put it is that it is political precisely because it aspires to be apolitical. This fragmented world in which many people live simultaneously and even similarly but not exactly together is what Arendt calls the "social." Arendt does not mean that group behavior is impossible in the realm of the social, but that social behavior consists "in some way of isolated individuals, incapable of solidarity or mutuality, who abdicate their human capacities and responsibilities to a projected 'they' or 'it,' with disastrous consequences, both for other people and eventually for themselves" (Pitkin 79). One can behave, butnot act. For someone like Arendt, a German-assimilated Jew, one of the most frightening aspects of the Holocaust was the ease with which a people who had not been extraordinarily anti-Semitic could be put to work industriously and efficiently on the genocide of the Jews. And what was striking about the perpetrators of the genocide, ranging from minor functionaries who facilitated the murder transports up to major figures on trial at Nuremberg, was their constant and apparently sincere insistence that they were not responsible. For Arendt, this was not a peculiarity of the German people, but of the current human and heavily bureaucratic condition of twentieth-century culture: we do not consciously choose to engage in life's activities; we drift into them, or we do them out of a desire to conform. Even while we do them, we do not acknowledge an active, willed choice to do them; instead, we attribute our behavior to necessity, and we perceive ourselves as determined—determined by circumstance, by accident, by what "they" tell us to do. We do something from within the anonymity of a mob that we would never do as an individual; we do things for which we will not take responsibility. Yet, whether or not people acknowledge responsibil¬ity for the consequences of their actions, those consequences exist. Refusing to accept responsibility can even make those consequences worse, in that the people who enact the actions in question, because they do not admit their own agency, cannot be persuaded to stop those actions. They are simply doing their jobs. In a totalitarian system, however, everyone is simply doing his or her job; there never seems to be anyone who can explain, defend, and change the policies. Thus, it is, as Arendt says, rule by nobody. It is illustrative to contrast Arendt's attitude toward discourse to Habermas'. While both are critical of modern bureaucratic and totalitar¬ian systems, Arendt's solution is the playful and competitive space of agonism; it is not the rational-critical public sphere. The "actual content of political life" is "the joy and the gratification that arise out of being in company with our peers, out of acting together and appearing in public, out of inserting ourselves into the world by word and deed, thus acquiring and sustaining our personal identity and beginning something entirely new" ("Truth" 263). According to Seyla Benhabib, Arendt's public realm emphasizes the assumption of competition, and it "represents that space of appearances in which moral and political greatness, heroism, and preeminence are revealed, displayed, shared with others. This is a competitive space in which one competes for recognition, precedence, and acclaim" (78). These qualities are displayed, but not entirely for purposes of acclamation; they are not displays of one's self, but of ideas and arguments, of one's thought. When Arendt discusses Socrates' thinking in public, she emphasizes his performance: "He performed in the marketplace the way the flute-player performed at a banquet. It is sheer performance, sheer activity"; nevertheless, it was thinking: "What he actually did was to make public, in discourse, the thinking process" {Lectures 37). Pitkin summarizes this point: "Arendt says that the heroism associated with politics is not the mythical machismo of ancient Greece but something more like the existential leap into action and public exposure" (175-76). Just as it is not machismo, although it does have considerable ego involved, so it is not instrumental rationality; Arendt's discussion of the kinds of discourse involved in public action include myths, stories, and personal narratives. Furthermore, the competition is not ruthless; it does not imply a willingness to triumph at all costs. Instead, it involves something like having such a passion for ideas and politics that one is willing to take risks. One tries to articulate the best argument, propose the best policy, design the best laws, make the best response. This is a risk in that one might lose; advancing an argument means that one must be open to the criticisms others will make of it. The situation is agonistic not because the participants manufacture or seek conflict, but because conflict is a necessary consequence of difference. This attitude is reminiscent of Kenneth Burke, who did not try to find a language free of domination but who instead theorized a way that the very tendency toward hierarchy in language might be used against itself (for more on this argument, see Kastely). Similarly, Arendt does not propose a public realm of neutral, rational beings who escape differences to live in the discourse of universals; she envisions one of different people who argue with passion, vehemence, and integrity. Continued… Eichmann perfectly exemplified what Arendt famously called the "banal¬ity of evil" but that might be better thought of as the bureaucratization of evil (or, as a friend once aptly put it, the evil of banality). That is, he was able to engage in mass murder because he was able not to think about it, especially not from the perspective of the victims, and he was able to exempt himself from personal responsibility by telling himself (and anyone else who would listen) that he was just following orders. It was the bureaucratic system that enabled him to do both. He was not exactly passive; he was, on the contrary, very aggressive in trying to do his duty. He behaved with the "ruthless, competitive exploitation" and "inauthen-tic, self-disparaging conformism" that characterizes those who people totalitarian systems (Pitkin 87). Arendt's theorizing of totalitarianism has been justly noted as one of her strongest contributions to philosophy. She saw that a situation like Nazi Germany is different from the conventional understanding of a tyranny. Pitkin writes, Totalitarianism cannot be understood, like earlier forms of domination, as the ruthless exploitation of some people by others, whether the motive be selfish calculation, irrational passion, or devotion to some cause. Understanding totalitarianism's essential nature requires solving the central mystery of the holocaust—the objectively useless and indeed dysfunctional, fanatical pursuit of a purely ideological policy, a pointless process to which the people enacting it have fallen captive. (87) Totalitarianism is closely connected to bureaucracy; it is oppression by rules, rather than by people who have willfully chosen to establish certain rules. It is the triumph of the social. Critics (both friendly and hostile) have paid considerable attention to Arendt's category of the "social," largely because, despite spending so much time on the notion, Arendt remains vague on certain aspects of it. Pitkin appropriately compares Arendt's concept of the social to the Blob, the type of monster that figured in so many post-war horror movies. That Blob was "an evil monster from outer space, entirely external to and separate from us [that] had fallen upon us intent on debilitating, absorb¬ing, and ultimately destroying us, gobbling up our distinct individuality and turning us into robots that mechanically serve its purposes" (4). Pitkin is critical of this version of the "social" and suggests that Arendt meant (or perhaps should have meant) something much more complicated. The simplistic version of the social-as-Blob can itself be an instance of Blob thinking; Pitkin's criticism is that Arendt talks at times as though the social comes from outside of us and has fallen upon us, turning us into robots. Yet, Arendt's major criticism of the social is that it involves seeing ourselves as victimized by something that comes from outside our own behavior. I agree with Pitkin that Arendt's most powerful descriptions of the social (and the other concepts similar to it, such as her discussion of totalitarianism, imperialism, Eichmann, and parvenus) emphasize that these processes are not entirely out of our control but that they happen to us when, and because, we keep refusing to make active choices. We create the social through negligence. It is not the sort of force in a Sorcerer's Apprentice, which once let loose cannot be stopped; on the contrary, it continues to exist because we structure our world to reward social behavior. Pitkin writes, "From childhood on, in virtually all our institutions, we reward euphemism, salesmanship, slo¬gans, and we punish and suppress truth-telling, originality, thoughtful-ness. So we continually cultivate ways of (not) thinking that induce the social" (274). I want to emphasize this point, as it is important for thinking about criticisms of some forms of the social construction of knowledge: denying our own agency is what enables the social to thrive. To put it another way, theories of powerlessness are self-fulfilling prophecies. Arendt grants that there are people who willed the Holocaust, but she insists that totalitarian systems result not so much from the Hitlers or Stalins as from the bureaucrats who may or may not agree with the established ideology but who enforce the rules for no stronger motive than a desire to avoid trouble with their superiors (see Eichmann and Life). They do not think about what they do. One might prevent such occurrences—or, at least, resist the modern tendency toward totalitarian¬ism—by thought: "critical thought is in principle anti-authoritarian" (Lectures 38). By "thought" Arendt does not mean eremitic contemplation; in fact, she has great contempt for what she calls "professional thinkers," refusing herself to become a philosopher or to call her work philosophy. Young-Bruehl, Benhabib, and Pitkin have each said that Heidegger represented just such a professional thinker for Arendt, and his embrace of Nazism epitomized the genuine dangers such "thinking" can pose (see Arendt's "Heidegger"). "Thinking" is not typified by the isolated con¬templation of philosophers; it requires the arguments of others and close attention to the truth. It is easy to overstate either part of that harmony. One must consider carefully the arguments and viewpoints of others: Political thought is representative. I form an opinion by considering a given issue from different viewpoints, by making present to my mind the standpoints of those who are absent; that is, I represent them. This process of representation does not blindly adopt the actual views of those who stand somewhere else, and hence look upon the world from a different perspective; this is a question neither of empathy, as though I tried to be or to feel like somebody else, nor of counting noses and joining a majority but of being and thinking in my own identity where actually I am not. The more people's standpoints I have present in my mind while I am ponder¬ing a given issue, and the better I can imagine how I would feel and think if I were in their place, the stronger will be my capacity for represen¬tative thinking and the more valid my final conclusions, my opinion. ("Truth" 241) There are two points to emphasize in this wonderful passage. First, one does not get these standpoints in one's mind through imagining them, but through listening to them; thus, good thinking requires that one hear the arguments of other people. Hence, as Arendt says, "critical thinking, while still a solitary business, does not cut itself off from' all others.'" Thinking is, in this view, necessarily public discourse: critical thinking is possible "only where the standpoints of all others are open to inspection" (Lectures 43). Yet, it is not a discourse in which one simply announces one's stance; participants are interlocutors and not just speakers; they must listen. Unlike many current versions of public discourse, this view presumes that speech matters. It is not asymmetric manipulation of others, nor merely an economic exchange; it must be a world into which one enters and by which one might be changed. Second, passages like the above make some readers think that Arendt puts too much faith in discourse and too little in truth (see Habermas). But Arendt is no crude relativist; she believes in truth, and she believes that there are facts that can be more or less distorted. She does not believe that reality is constructed by discourse, or that truth is indistinguishable from falsehood. She insists tha^ the truth has a different pull on us and, consequently, that it has a difficult place in the world of the political. Facts are different from falsehood because, while they can be distorted or denied, especially when they are inconvenient for the powerful, they also have a certain positive force that falsehood lacks: "Truth, though powerless and always defe ated in a head-on clash with the powers that be, possesses a strength of its own: whatever those in power may contrive, they are unable to discover or invent a viable substitute for it. Persuasion and violence can destroy truth, but they cannot replace it" ("Truth" 259). Facts have a strangely resilient quality partially because a lie "tears, as it were, a hole in the fabric of factuality. As every historian knows, one can spot a lie by noticing incongruities, holes, or the j unctures of patched-up places" ("Truth" 253). While she is sometimes discouraging about our ability to see the tears in the fabric, citing the capacity of totalitarian governments to create the whole cloth (see "Truth" 252-54), she is also sometimes optimistic. InEichmann in Jerusalem, she repeats the story of Anton Schmidt—a man who saved the lives of Jews—and concludes that such stories cannot be silenced (230-32). For facts to exert power in the common world, however, these stories must be told. Rational truth (such as principles of mathematics) might be perceptible and demonstrable through individual contemplation, but "factual truth, on the contrary, is always related to other people: it concerns events and circumstances in which many are involved; it is established by witnesses and depends upon testimony; it exists only to the extent that it is spoken about, even if it occurs in the domain of privacy. It is political by nature" (23 8). Arendt is neither a positivist who posits an autonomous individual who can correctly perceive truth, nor a relativist who positively asserts the inherent relativism of all perception. Her description of how truth functions does not fall anywhere in the three-part expeditio so prevalent in bothrhetoric and philosophy: it is not expressivist, positivist, or social constructivist. Good thinking depends upon good public argument, and good public argument depends upon access to facts: "Freedom of opinion is a farce unless factual information is guaranteed" (238). The sort of thinking that Arendt propounds takes the form of action only when it is public argument, and, as such, it is particularly precious: "For if no other test but the experience of being active, no other measure but the extent of sheer activity were to be applied to the various activities within the vita activa, it might well be that thinking as such would surpass them all" (Human 325). Arendt insists that it is "the same general rule— Do not contradict yourself (not your self but your thinking ego)—that determines both thinking and acting" (Lectures 3 7). In place of the mildly resentful conformism that fuels totalitarianism, Arendt proposes what Pitkin calls "a tough-minded, open-eyed readiness to perceive and judge reality for oneself, in terms of concrete experience and independent, critical theorizing" (274). The paradoxical nature of agonism (that it must involve both individuality and commonality) makes it difficult to maintain, as the temptation is great either to think one's own thoughts without reference to anyone else or to let others do one's thinking. Arendt's Polemical Agonism As I said, agonism does have its advocates within rhetoric—Burke, Ong, Sloane, Gage, and Jarratt, for instance—but while each of these theorists proposes a form of conflictual argument, not one of these is as adversarial as Arendt's. Agonism can emphasize persuasion, as does John Gage's textbook The Shape of Reason or William Brandt et al.'s The Craft of Writing. That is, the goal of the argument is to identify the disagreement and then construct a text that gains the assent of the audience. This is not the same as what Gage (citing Thomas Conley) calls "asymmetrical theories of rhetoric": theories that "presuppose an active speaker and a passive audience, a speaker whose rhetorical task is therefore to do something to that audience" ("Reasoned" 6). Asymmetric rhetoric is not and cannot be agonistic. Persuasive agonism still values conflict, disagreement, and equality among interlocutors, but it has the goal of reaching agreement, as when Gage says that the process of argument should enable one's reasons to be "understood and believed" by others (Shape 5; emphasis added). Arendt's version is what one might call polemical agonism: it puts less emphasis on gaining assent, and it is exemplified both in Arendt's own writing and in Donald Lazere's "Ground Rules for Polemicists" and "Teaching the Political Conflicts." Both forms of agonism (persuasive and polemical) require substantive debate at two points in a long and recursive process. First, one engages in debate in order to invent one's argument; even silent thinking is a "dialogue of myself with myself (Lectures 40). The difference between the two approaches to agonism is clearest when one presents an argument to an audience assumed to be an opposition. In persuasive agonism, one plays down conflict and moves through reasons to try to persuade one's audience. In polemical agonism, however, one's intention is not necessarily to prove one's case, but to make public one' s thought in order to test it. In this way, communicability serves the same function in philosophy that replicability serves in the sciences; it is how one tests the validity of one's thought. In persuasive agonism, success is achieved through persuasion; in polemical agonism, success may be marked through the quality of subsequent controversy. Arendt quotes from a letter Kant wrote on this point: You know that I do not approach reasonable objections with the intention merely of refuting them, but that in thinking them over I always weave them into my judgments, and afford them the opportunity of overturning all my most cherished beliefs. I entertain the hope that by thus viewing my judgments impartially from the standpoint of others some third view that will improve upon my previous insight may be obtainable. {Lectures 42) Kant's use of "impartial" here is interesting: he is not describing a stance that is free of all perspective; it is impartial only in the sense that it is not his own view. This is the same way that Arendt uses the term; she does not advocate any kind of positivistic rationality, but instead a "universal interdependence" ("Truth" 242). She does not place the origin of the "disinterested pursuit of truth" in science, but at "the moment when Homer chose to sing the deeds of the Trojans no less than those of the Achaeans, and to praise the glory of Hector, the foe and the defeated man, no less than the glory of Achilles, the hero of his kinfolk" ("Truth" 262¬63). It is useful to note that Arendt tends not to use the term "universal," opting more often for "common," by which she means both what is shared and what is ordinary, a usage that evades many of the problems associated with universalism while preserving its virtues (for a brief butprovocative application of Arendt's notion of common, see Hauser 100-03). In polemical agonism, there is a sense in which one' s main goal is not to persuade one's readers; persuading one's readers, if this means that they fail to see errors and flaws in one' s argument, might actually be a sort of failure. It means that one wishes to put forward an argument that makes clear what one's stance is and why one holds it, but with the intention of provoking critique and counterargument. Arendt describes Kant's "hope" for his writings not that the number of people who agree with him would increase but "that the circle of his examiners would gradually be en¬larged" {Lectures 39); he wanted interlocutors, not acolytes. This is not consensus-based argument, nor is it what is sometimes called "consociational argument," nor is this argument as mediation or conflict resolution. Arendt (and her commentators) use the term "fight," and they mean it. When Arendt describes the values that are necessary in our world, she says, "They are a sense of honor, desire for fame and glory, the spirit of fighting without hatred and 'without the spirit of revenge,' and indifference to material advantages" {Crises 167). Pitkin summarizes Arendt's argument: "Free citizenship presupposes the ability to fight— openly, seriously, with commitment, and about things that really mat¬ter—without fanaticism, without seeking to exterminate one's oppo¬nents" (266). My point here is two-fold: first, there is not a simple binary opposition between persuasive discourse and eristic discourse, the conflictual versus the collaborative, or argument as opposed to debate. Second, while polemical agonismrequires diversity among interlocutors, and thus seems an extraordinarily appropriate notion, and while it may be a useful corrective to too much emphasis on persuasion, it seems to me that polemical agonism could easily slide into the kind of wrangling that is simply frustrating. Arendt does not describe just how one is to keep the conflict useful. Although she rejects the notion that politics is "no more than a battlefield of partial, conflicting interests, where nothing countfs] but pleasure and profit, partisanship, and the lust for dominion," she does not say exactly how we are to know when we are engaging in the existential leap of argument versus when we are lusting for dominion ("Truth" 263). Like other proponents of agonism, Arendt argues that rhetoric does not lead individuals or communities to ultimate Truth; it leads to decisions that will necessarily have to be reconsidered. Even Arendt, who tends to express a greater faith than many agonists (such as Burke, Sloane, or Kastely) in the ability of individuals to perceive truth, insists that self-deception is always a danger, so public discourse is necessary as a form of testing (see especially Lectures and "Truth"). She remarks that it is difficult to think beyond one's self-interest and that "nothing, indeed, is more common, even among highly sophisticated people, than the blind obstinacy that becomes manifest in lack of imagination and failure to judge" ("Truth" 242). Agonism demands that one simultaneously trust and doubt one' s own perceptions, rely on one's own judgment and consider the judgments of others, think for oneself and imagine how others think. The question remains whether this is a kind of thought in which everyone can engage. Is the agonistic public sphere (whether political, academic, or scientific) only available to the few? Benhabib puts this criticism in the form of a question: "That is, is the 'recovery of the public space' under conditions of modernity necessarily an elitist and antidemocratic project that can hardly be reconciled with the demand for universal political emancipa¬tion and the universal extension of citizenship rights that have accompa¬nied modernity since the American and French Revolutions?" (75). This is an especially troubling question not only because Arendt's examples of agonistic rhetoric are from elitist cultures, but also because of com¬ments she makes, such as this one from The Human Condition: "As a living experience, thought has always been assumed, perhaps wrongly, to be known only to the few. It may not be presumptuous to believe that these few have not become fewer in our time" {Human 324). Yet, there are important positive political consequences of agonism. Arendt' s own promotion of the agonistic sphere helps to explain how the system could be actively moral. It is not an overstatement to say that a central theme in Arendt's work is the evil of conformity—the fact that the modern bureaucratic state makes possible extraordinary evil carried out by people who do not even have any ill will toward their victims. It does so by "imposing innumerable and various rules, all of which tend to 'normalize' its members, to make them behave, to exclude spontaneous action or outstanding achievement" (Human 40). It keeps people from thinking, and it keeps them behaving. The agonistic model's celebration of achievement and verbal skill undermines the political force of conformity, so it is a force against the bureaucratizing of evil. If people think for themselves, they will resist dogma; if people think of themselves as one of many, they will empathize; if people can do both, they will resist totalitarianism. And if they talk about what they see, tell their stories, argue about their perceptions, and listen to one another—that is, engage in rhetoric—then they are engaging in antitotalitarian action. In post-Ramistic rhetoric, it is a convention to have a thesis, and one might well wonder just what mine is—whether I am arguing for or against Arendt's agonism. Arendt does not lay out a pedagogy for us to follow (although one might argue that, if she had, it would lookmuch like the one Lazere describes in "Teaching"), so I am not claiming that greater attention to Arendt would untangle various pedagogical problems that teachers of writing face. Nor am I claiming that applying Arendt's views will resolve theoretical arguments that occupy scholarly journals. I am saying, on the one hand, that Arendt's connection of argument and thinking, as well as her perception that both serve to thwart totalitarian¬ism, suggest that agonal rhetoric (despite the current preference for collaborative rhetoric) is the best discourse for a diverse and inclusive public sphere. On the other hand, Arendt's advocacy of agonal rhetoric is troubling (and, given her own admiration for Kant, this may be intentional), especially in regard to its potential elitism, masculinism, failure to describe just how to keep argument from collapsing into wrangling, and apparently cheerful acceptance of hierarchy. Even with these flaws, Arendt describes something we would do well to consider thoughtfully: a fact-based but not positivist, communally grounded but not relativist, adversarial but not violent, independent but not expressivist rhetoric.

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

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

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

#### Second, a limited and pre-determined scope of discussion where each side can predict and adequately prepare to respond to their opponent’s argument is crucial to effective deliberation---debate is valuable because it teaches students to be able to defend their convictions against a well-prepared opponent

#### Democratic agonism can only successfully operate in a limited forum---it’s not a limitation on the content of argument, but on the form in which it is presented---this is not an appeal to exclusion, but to maximizing the deliberative potential of debate

Robert W. Glover 10 Prof of Poli Sci @ UConn "Games without Frontiers?: Democratic Engagement, Agonistic Pluralism, and the Question of Exclusion" Philosophy and Social Criticism Vol. 36

Recent democratic theory has devoted significant attention to the question of how to revitalize citizen engagement and reshape citizen involvement within the process of collective political decision-making and self-government. Yet these theorists do so with the sober recognition that more robust democratic engagement may provide new means for domination, exploitation- intensification of disagreement, or even the introduction of fanaticism into our public debates.1 Thus, numerous proposals have attempted to define the acceptable boundaries of our day-to-day democratic discourse and establish regulative ideals whereby we restrict the types of justifications that can be employed in democratic argumentation. This subtle form of exclusion delineates which forms of democratic discourse are deemed to be legitimate—worthy of consideration in the larger democratic community, and morally justifiable as a basis for policy. As an outgrowth of these concerns, this newfound emphasis on political legitimacy has provoked a flurry of scholarly analysis and debate." Different theorists promote divergent conceptions of what ought to count as acceptable and legitimate forms of democratic engagement, and promote more or less stringent normative conceptions of the grounds for exclusion and de-legitimization. One of the most novel approaches to this question is offered by agonistic pluralism, a strain of democratic theory advanced by political theorists such as William Connolly, Bonnie Honig, Ernesto Laclau, Chantal Mouffe, and James Tully. Agonistic pluralism, or simply agonism, is a theory of democracy rooted in the ancient Greek notion of the agon, a public struggle or contest between adversaries. While recognizing the necessity of placing restrictions upon democratic discourse, agonistic pluralists also call upon us to guard against the naturalization of such exclusion and the coercive act of power which it implies. Rather, we must treat these actions as contingent, subject to further scrutiny, critique, and re-articulation in contentious and widely inclusive democratic spaces. In so doing, agonistic pluralism offers us a novel means of approaching democratic discourse, receptive to the claims of new actors and identities while also recognizing that there must be some, albeit minimal, restrictions placed on the form that such democratic engagement takes. In short, the goal of agonists is not to 'eradicate the use of power in social relations but to acknowledge its ineradicable nature and attempt to modify power in ways that are compatible with democratic values'.5 This is democracy absent the 'final guarantee\* or the 'definitive legitimation.'4 As one recent commentator succinctly put it, agonistic pluralism forces democratic actors to '...relinquish all claims to finality, to happy endings../.5 Yet while agonistic pluralism offers valuable insights regarding how we might reshape and revitalize the character of our democratic communities, it is a much more diverse intellectual project than is commonly acknowledged. There are no doubt continuities among these thinkers, yet those engaged in agonistic pluralism ultimately operate with divergent fundamental assumptions, see different processes at work in contemporary democratic politics, and aspire towards unique political end-goals. To the extent that we do not recognize these different variants, we risk failing to adequately consider proposals which could positively alter the character of our democratic engagement, enabling us to reframe contemporary pluralism as a positive avenue for social change and inclusion rather than a crisis to be contained. This piece begins by outlining agonistic pluralism's place within the larger theoretical project of revitalizing democratic practice, centered on the theme of what constitutes 'legitimate" democratic discourse. Specifically, I focus on agonism's place in relation to 'participatory' and 'deliberative' strains of democratic theory. I then highlight the under-examined diversity of those theorists commonly captured under the heading of agonistic pluralism, drawing upon Chantal Mouffe\*s recent distinction between 'dissociative' and 'associative' agonism. However, I depart from her assertion that 'associative agonists' such as Bonnie Honig and William Connolly offer us no means by which to engage in the 'negative determination of frontiers\* of our political spaces. Contra Mouffe, I defend these theorists as offering the most valuable formulation of agonism, due to their articulation of the civic virtues and democratic (re)education needed to foster greater inclusivity and openness, while retaining the recognition that democratic discourse must operate with limits and frontiers.

### Case

#### No possibility for emancipation with Rhizomatic politics – it can never create change because it has no strategy

The Symptom 6

Online Journal for Lacan.com. “The Future of Another Illusion: Theory and Zizek’s Organ’s Without Bodies”. Ebsco Publishing 2006.

Deleuze and Guattari can only express a desire to get outside their aborescent, machinic model to achieve the space for philosophy - aesthetics (beautiful), ethics (loving), and politics (political). Their desire to sweep the slate clean is vastly symptomatic of ahistorical "space-clearing" announcements of postmodern philosophy, like Lyotard's The Postmodern Condition. Historically speaking, these treatises read as last gasps for air in the suffocating squeeze of an immanently spreading capitalism, desperate cries to will something oppositional into existence. One cannot, however, promote expansive growth while theoretically chopping at the trunk to fell the institutional tree, just as one cannot change the world through shopping, as Naomi Klein has rightfully pointed out. One reason why Deleuzoguattarian writing is so difficult to read is because it shifts out of the overdetermined Becoming versus Being mode at abrupt times to signal levels of more complexity. For instance, in "Treatise on Nomadology - The War Machine," they write "...if the State always finds it necessary to repress the nomad and minor sciences...it does so not because the content of these sciences is inexact or imperfect... but because they imply a division of labor opposed to the norms of the State" (368). The introduction of labor and the implication that people do the work of science complicates the argument. It introduces agency into the equation, but this variable cannot be worked out in their model. We find ourselves in a theoretical deadlock with our preeminent postmodern theorists. Deleuze and Guattari and Foucault can effectively describe our current condition in the academy; their models can even anticipate structural changes that show how their own work enters its classrooms. However, they offer us little in the way of prescribing change due to the fact that subjectivity remains a theoretical blind spot in their thinking.

#### Mysticism – Deluzian approach offers no possibility for difference – and stops engagement with any concrete political situations

Somers-Hall 07 [Henry. “The Politics of Creation.” A review of Peter Hallward’s Out of this World: Deleuze and the philosophy of creation. Pli 221-236. 2007.]

On Hallward’s reading, it is philosophy’s aim to extract from the state of affairs the pure (virtual) event, and thus to sever ties with actuality altogether. In this move, philosophy becomes mysticism, “fully spiritualised and dematerialised,”8 and thus a moment of pure affirmation.

MARKED AT AFFIRMATION

# 2NC

#### Deliberation – it fosters empathy and sounder decisions – the affirmatives destroys the possibility of having an engaged discussion – that is the only effective way to come to decisions

Harri Raisio 10, RESEARCHER AT THE UNIVERSITY OF VAASA --- Researcher, Faculty of Public Administration, University of Vaasa and PhD student in Social and Health Management, at the University of Vaasa, “The Public as Policy Expert: Deliberative Democracy in the Context of Finnish Health Care Reforms and Policies,” Journal of Public Deliberation, Volume 6, Issue 2, 2010, http://services.bepress.com/cgi/viewcontent.cgi?article=1159&context=jpd

In deliberation something happens that typically fails to occur during ordinary political discourse. Much political discussion takes place within groups of persons having similar beliefs and values. Deliberation, in contrast, with its intentional commitment to inclusion, diversity, and equality of participation, makes possible a “moral discussion”—“a kind of ideal role-taking”—in which participants are asked to view issues from the perspectives of others (Fishkin 2009: 125). Deliberation enhances moral perception and facilitates empathy, which make possible decisions that are not only sounder but also morally better (Fouke 2009). Precisely because self-interest is acknowledged and given its due, it can be transcended and the common good can emerge as an idea with concrete attributes (see Murphy 2005). Fishkin (2009) points to tentative empirical proofs which support the notion that public deliberation leads citizens to focus more on the public good.

#### B.) Decision making – the affirmative is the worst form of elitist politics that can never translate into the real world – it comes from a position of privilege that rejection of culuture is soley an academic achievement rather than material travesty

Racevskis 1979

Karlis, French Professor at Wright State University. “The Theoretical Violence of a Catastrophical Strategy,” Diacritics 9:3

The rejection of culture is a privilege that is not enjoyed by many: while our mental health and human integrity would probably benefit from such a rejection, as ordinary social beings, most of us simply cannot afford the consequences of this drastic a step. We are subject to a "double bind" dilemma familiar to psychiatric therapists: "For the 'average' person in our culture-with house, family, car, children, credit-rating, and job, and without the degrees of freedom enjoyed by intellectuals and the more privileged classes-any true 'cure' would amount to an injunction to 'go crazy,' as that is defined by the culture, and you can't feed your children that way" [Wilden, System and Structure, p. 262]. When all is said and done, both Baudrillard and Foucault appear as members of a highly privileged class-the class of intellectuals, poets, and professors. Dramatic differences, even clashes between intellectuals, poets, and professors are inevitable as they engage in the gamegms of words that constitute their universe, but the violence of these confrontations is mostly rhetorical and does not constitute a serious issue if viewed from the down-to-earth level of real violence. Yet there are discourses, such as Foucault's that in one way or another are responses to the kind of violence which is not abstract, which singles out specific subjects, not symbolic, not imaginary, but children, men, and women. Obviously, Baudrillard is also affected by dehumanization, brutalization, and exploitation, but in this regard he can only offer the hope of "brutal irruptions and of sudden disintegrations which, in an equally unpredictable but certain way as those of May 1968, will come to break up this white mass," that is, the promise of an upheaval that will destroy this society saturated with its own myth [La Societet de consommation, p. 316]. Seen in this light, and for those of us steeped in the Imaginary, the relative security offered by the Imaginary might well appear more attractive than this primordial spontaneity set loose by the Symbolic.

#### SSD good

Muir 93 – Star Muir, communication studies at George Mason University, 1993 (Philosophy and Rhetoric 26.4, p. 288-291)

Values clarification, Stewart is correct in pointing out, does not mean that no values are developed. Two very important values---tolerance and fairness---inhere to a significant degree in the ethics of switch-side debate. A second point about the charge of relativism is that tolerance is related to the development of reasoned moral viewpoints. The willingness to recognize the existence of other views, and to grant alternative positions a degree of credibility, is a value fostered by switch-side debate: Alternately debating both sides of the same question…inculcates a deep-seated attitude of tolerance toward differing points of view. To be forced to debate only one side leads to an ego-identification with that side…the other side in contrast is seen only as something to be discredited. Arguing as persuasively as one can for completely opposing views is one way of giving recognition to the idea that a strong case can generally be made for the views of earnest and intelligent men, however such views may clash with one’s own…Promoting this kind of tolerance is perhaps one of the greatest benefits debating both sides has to offer. The activity should encourage debating bosh sides of a topic, reasons Thompson, because debaters are “more likely to realize that propositions are bilateral. It is those who fail to recognize this fact who become intolerant, dogmatic, and bigoted.” While Theodore Roosevelt can hardly be said to be advocating bigotry, his efforts to turn out advocates convinced of their rightness is not a position imbued with tolerance. At a societal level, the value of tolerance is more conducive to a fair and open assessment of competing ideas. John Stuart Mill eloquently states the case this way: Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right….the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race….If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of the truth, produced by its collision with error. At an individual level, tolerance is related to moral identity via empathic and critical assessments of differing perspectives. Paul posits a strong relationship between tolerance, empathy, and critical thought. Discussing the function of argument in everyday life, he observes that in order to overcome natural tendencies to reason egocentrically and sociocentrically, individuals must gain the capacity to engage self-reflective questioning, to reason dialogically and dialectically, and to “reconstruct alien and opposing belief systems empathically.” Our system of beliefs is, by definition, irrational when we are incapable of abandoning a belief for rational reasons; that is, when we egocentrically associate our beliefs with our own integrity. Paul describes an intimate relationship between private inferential habits, moral practices, and the nature of argumentation. Critical thought and moral identity, he urges, must be predicated on discovering the insights of opposing views and the weaknesses of our own beliefs. Role playing, he reasons, is a central element of any effort to gain such insight. Only an activity that requires the defense of both sides

#### Academic debate regarding war powers makes checks on excessive presidential authority effective---college students key

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

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a

 fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.

#### Constraints are key to creativity---challenging ourselves to innovate within the confines of rules creates far more creative responses than starting with a blank slate

Mayer 6 – Marissa Ann Mayer, vice-president for search products and user experience at Google, February 13, 2006, “Creativity Loves Constraints,” online: http://www.businessweek.com/print/magazine/content/06\_07/b3971144.htm?chan=gl

When people think about creativity, they think about artistic work -- unbridled, unguided effort that leads to beautiful effect. But if you look deeper, you'll find that some of the most inspiring art forms, such as haikus, sonatas, and religious paintings, are fraught with constraints. They are beautiful because creativity triumphed over the "rules." Constraints shape and focus problems and provide clear challenges to overcome. Creativity thrives best when constrained.¶ But constraints must be balanced with a healthy disregard for the impossible. Too many curbs can lead to pessimism and despair. Disregarding the bounds of what we know or accept gives rise to ideas that are non-obvious, unconventional, or unexplored. The creativity realized in this balance between constraint and disregard for the impossible is fueled by passion and leads to revolutionary change.¶ A few years ago, I met Paul Beckett, a talented designer who makes sculptural clocks. When I asked him why not do just sculptures, Paul said he liked the challenge of making something artistically beautiful that also had to perform as a clock. Framing the task in that way freed his creative force. Paul reflected that he also found it easier to paint on a canvas that had a mark on it rather than starting with one that was entirely clean and white. This resonated with me. It is often easier to direct your energy when you start with constrained challenges (a sculpture that must be a clock) or constrained possibilities (a canvas that is marked).

# 1NR

#### Deleuze doesn’t solve- there is not connection between local action and global change. Alt forces us to passively accept domination of system.

Dean 5

Jodi. “Zizek against Democracy.” Law, Culture and the Humanities. Vol. 1, No. 2, 154-177. (2005).

Zizek’s three arguments against multiculturalism—its failure to call into question the capitalist economy, its speculative identity with irrational violence, and its preclusion of politicization—can be read in terms of divergences from Connolly, Hardt and Negri, and Deleuze and Guattari. So, not only does Connolly’s emphasis on the pluralization of modes of becoming and Hardt and Negri’s account of a multitude of singularities seek to open the political terrain beyond an orthodox focus on class antagonism, say, but Deleuze’s and Guattari’s concepts of becoming machine, the communication of affective intensities, and the rhizomatic structures of being and thinking are effectively the ideology of the “netocracy” or digital elite. For Zizek, the fundamental homology between these concepts and networked technoculture decreases their radicality. Furthermore, Zizek’s emphasis on the speculative identity of toleration and irrational violence contrasts with efforts in behalf of an ethos of generosity or critical responsiveness in Connolly’s work. For Zizek, insofar as such an ethos aims to combat and eliminate dogmatic certainty, it rests on precisely that fundament of irrational, contingent attachment it seeks to erase. And, finally, Zizek’s rejection of a multitude of singularities should be read as an alternative to Hardt and Negri. For Zizek, singular positions are not political. They become political through articulation with other struggles and, in this way, are inseparable from the division of the social. Echoing Badiou, moreover, Zizek argues that emphasis on multitude and diversity masks “the underlying monotony of today’s global life.” He writes, “is there anything more monotonous than the Deleuzian poetry of contemporary life as the decentred proliferation of multitudes, of non-totalizable differences? What occludes (and thereby sustains) this monotony is the multiplicity of resignifications and displacements to which the basic ideological texture is submitted.” The more things change, the more they remain the same. Or, lots of little micro-struggles don’t automatically produce macro-level change. Accordingly, one could say that even though Zizek is an avowed theorist of totality, Deleuze is the totalizing theorist, the theorist whose all inclusive account of the social cannot account for the division necessary for political struggle. Deleuze, and with him Connolly and Hardt and Negri, embraces an ethics of affirmation that eliminates negativity from the political. Politics becomes immanent, part of the nature of things, arising as a force both destructive and productive, deterritorializing and territorializing. And all this teaming activity is ultimately inseparable from the flows and intensities circulating through the networks of global capitalist technoculture. I’ve argued thus far that Zizek rejects the celebration of diversity insofar as he finds it ultimately embedded in global capital and hence incapable of opening up a space for politics. I’ve mentioned as well his specific criticism of multiculturalism on the grounds that it prevents the universalization necessary for politicization. I move now to look more carefully at Zizek’s account of universalization and how it links up with politics. In a nutshell, for Zizek universalization is the key to politicization: without the claim to universality, there simply is no politics. This rendering of the political is a second primary difference between his position and alternative approaches prominent in Left critical cultural and political theory: for Zizek without division and exclusion there can be no politics.

#### Deluze’s attempt to remove chance and personal

**Grace 2000** (Victoria, Professor of Sociology at the University of Canterbury. “Baudrillard’s Challenge: A Feminist Reading.” Publication: London ; New York Routledge, 2000. Page(s) 158)

Baudrillard’s notion of seduction is the point of departure for a critique of the assumptions of both ‘chance’ and ‘desire’. In Deleuze’s ‘ideal game’, these two concepts converge to produce a basis for his **‘nomadic economy of desire’.** In Baudrillard’s view, the attempt to liberate and multiply ‘chance’ as a revolutionary variable **achieves nothing more than reasserting the mirror image of causality**: it assumes that the world is either caused or aleatory. **The hegemonic rule of causality or determinacy** (non-contingency) is, of course, **not subverted** by the assertion of its opposite. Baudrillard condemns the idea that an increased indeterminacy would ‘give rise to the simultaneous play of every series, and, therefore, to the radical expression of becoming and desire’ (SEDN: 144–5). He contests the notion that ‘more’ chance leads to a more intense game, or that greater contingency necessarily provides the basis for a more enlightened view of the world. He notes that many cultures do not have a word or concept that corresponds to ‘chance’, as nothing for them is computed, not even in terms of probabilities. In fact, the more Baudrillard writes about this, the more the idea of an aleatory universe seems repugnant to him: ‘insane’, ‘demented’ (SEDN: 146). The unconditional ‘liberation’ of chance in Deleuze’s framing of a nomadic economy of desire is, in Baudrillard’s analysis, ‘part of the political and mystical economy of residues at work everywhere today, with its structural inversion of weak into strong terms’ (SEDN: 146).

#### Issues like detention are only solved by pragmatic government engagement

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory,

 but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

#### Legal application of principles of detention are necessary to learn HOW TO FREE PEOPLE – the Tsunamic Justice Organization founded by former Prisoner and now legal advocate Kwasi Seitu explains why one cannot simply turn their back on learning how to change the law in 2013

(<http://www.itj-pdn.org/mission.php>, Mission Statement - The Institute for Tsunamic Justice was formed to support the development of the People's Defense Network, a grassroots mobilization of impacted Black communities to counter police abuse and violence, malicious prosecutions, and the racism of the American judiciary. In doing so, we contribute to the dismantling of systems of oppression and the global struggle for justice.)

The Institute for Tsunamic Justice was founded and established in 1998 by three social justice worker-activist who sought to serve as a research and planning source for mass struggle, a grassroots think tank. ITJ has worked and made critical contributions to the struggle to end political imprisonment, against mass incarceration, and generally to fight the general racist, corrupt, and unworkable system. ¶ The Institute for Tsunamic Justice is an organic revolutionary formation of the Black struggle for justice and to end oppression, working to build Umoja (Unity) in thought, action, and spirit around strategic tactical initiatives.¶ The Institute for Tsunamic Justice is a think/action tank of, by, and for those directly impacted by systemic racist injustice in the U.S. and its European partners who violate our right to Kujichagulia (self-determination).¶ The Institute for Tsunamic Justice is committed to Ujima, building opportunities to advance collective work that makes it all our responsibility to liberate ourselves .¶ The Institute for Tsunamic Justice supports economic development that benefits all people equally, that exploits no person or animal, that respects Mother Earth, based on Ujamaa (cooperative economics).¶ The Institute for Tsunamic Justice is a membership based organization powered from the bottom-up with the overriding purpose (Nia) to work toward the total liberation of Black people and all people ultimately. ¶ The Institute for Tsunamic Justice uses every resource at its disposal to help create (Kuumba) a genuine liberation movement. ¶ The Institute for Tsunamic Justice has and maintains faith (Imani) in the righteousness of the struggles and the ultimate victory of all oppressed peoples over their oppressors. I am Kwasi Seitu. I am a true Black Native born and raised in the impoverished and segregated black working class communities of George Washington's Dentention Center (Washington , D.C. and all of America). I am not an "African-American," I am off the chain, so that makes me an Afrikan in AmeriKKKa. ¶ I am fifth-generation great grandson of Frederick Douglass, I am the father of three, the grandfather of four, and struggling with the continous truama inflicted by this system of perfecting aparthied. I am the uncle to many near and far, blood and spirit, a brother, and a Revolutionary; and ain't afraid to say it.¶ I am a former political prisoner of the war on black people , I was held for over a decade in Misissippi, behind demanding justice in the police murder of a young pregnat black woman named Dorothy Brown. I found myself confronted not only with a hostile white-dominated southern police force, but the local Klan and racist powers that be, including the "State Soverienty Commission." ¶ While held, I educated, encouraged, and organized; which earned me a total 7 1/2 years in the hole, including a six-month stint on death row., the "white boy" tier (yep, death row was still racially segregated). I did not have a formal death sentence, this was a state move to have me assassinated, which evidently completely failed and I was not afrain to come out of my cage - they were. I was eventually discharged straignt from deep within a supermax unti to the street with $50 .¶ However, I also left with a wealth of knowledge and experience not only of law and American jurisprudence, but a keen understanding of the system from the state court all the way to the "Supreme" court. For over a decade I was allowed to test the system not only on my own behalf, but others because the state did not want to provide atorneys for "post-conviction" actions. I had to learn how to investigate between he lines, think outside the box, and that is where I would find the truth.¶ The "truth" is that the American judicial system is no less racist, corrupt, and unworkable than the rest of the American government. It has no more legitimacy as a moral authority than the rest of the white-settler aparthied nation-state. Thus, II quickly came to understand that my great grandfather was no different from Dred Scott¶ different story when it came to experiencing Kwasia founder and the lead of ITJ. He is a former political prisoner with a long history of work in the Black struggle for justice and liberty. ¶ Kwasi Seitu has worked on issues of systemic racial injustice in ten states and DC from political imprisonment to environmental justice. His work has long made him a specified target of efforts by the government to suppress and repress resistance to injustice.Kwasi Seitu is available as a presenter for panels, to conduct workshop Affordable Services to Individuals¶ case assessments¶ legal research¶ Investigative assistance ¶ legal coaching ¶ trial prep counseling ¶ document preparation¶ Pro Se Instruction¶ strategic case planning OUR HISTORY ¶ Beginning in 2001, ITJ has experienced a number of set backs and government attacks, including the repeat kidnapping and hostage holding of a key founder by the government designed and intended to disrupt, discredit, and destroy the work and membership.¶ The government has never terminated the Counter Intelligents Program (COINTELPRO), which was created and implemented beginning in the 1960s for the purpose of waging low intensity warfare against progressive social change organizations and leadership primarily within the Black movement. Today, COINTELPRO has been incorporated into the Patriot Act.¶