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### Abstention

#### The Supreme Court refuses to enforce statutory restraints on the president- causes judicial abstention from all cases involving national security and creates a preemptive default to presidential expertism

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After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention, while unsuccessful in the Supreme Court, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check; arguably leading to judicial abstention in cases involving national security. The consequences of the Kiyemba decision potentially continue today, for example, with passage of the National Defense Authorization Act of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.250 Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights. In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court.251 Unsurprisingly, in so doing, the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power.”252 Also unsurprisingly, the Court’s decisions in this arena “prompted strong reactions from the other two branches.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide constitutional cases if it can avoid doing so, as it did in Kiyemba. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

#### This reluctance provides the statutory framework for imperialism and the military-industrial complex: defense lobbies use deference as an excuse for widening ties between the military and industries- the result is endless intervention

Scales and Spitz 12 (Ann Scales, prof at U Denver law school. Laura Spitz, prof at U Colorado Law School. The Jurisprudence of the Military-Industrial ComplexSeattle Journal for Social Justice Volume 1 | Issue 3 Article 51 10-11-2012)

First, our nation’s history and legitimacy rest upon a separation of military power from democratic governance. For that reason, the armed forces are subject to constitutional constraint. Second, however, as an aspect of separation of powers, courts try not to interfere in areas of foreign policy and military affairs. Often this is referred to as the “political question” doctrine, a determination that a matter is beyond the capabilities of judges. The strongest argument for this deference is that the political branches—or the military itself—have superior expertise in military matters. That may be true in some situations. I am not sure, for example, the Supreme Court would have been the best crowd to organize the invasion of Normandy. But what we now have is an increasingly irrational deference.7 Consider three cases: a. In Korematsu v. United States,8 the Supreme Court said the internment of Japanese-Americans at the beginning of 1942 was constitutional, based upon a military assessment of the possibility of espionage in preparation for a Japanese invasion of the United States. It turns out that the information provided by the military to the Supreme Court was falsified.9 But note two things: (1) the nation was in the midst of a declared world war, and (2) in subsequent less urgent circumstances, Korematsu would seem to argue strongly for military justifications to have to be based upon better, more reliable information than was offered there. b. In the 1981 case of Rostker v. Goldberg,10 the Supreme Court decided that it was constitutional for Congress to exclude women from the peacetime registration of potential draftees, even though both the Department of Defense and the Army Chief of Staff had testified that including women would increase military readiness. But Congress got the benefit of the military deference doctrine as a cover for what I think was a sinister political purpose—to protect the manliness of war—and the Supreme Court felt perfectly free to ignore what those with the real expertise had to say. c. Most recently, in Hamdi v. Rumsfeld,11 the Fourth Circuit held that a U.S. citizen who had been designated an “enemy combatant”12 could be detained indefinitely without access to counsel. In this case, however, not only is there no declared war,13 but also, the only evidence regarding Mr. Hamdi was a two-page affidavit by a Defense Department underling, Mr. Mobbs. Mobbs stated that Mr. Hamdi was captured in Afghanistan, and had been affiliated with a Taliban military unit. The government would not disclose the criteria for the “enemy combatant” designation, the statements of Mr. Hamdi that allegedly satisfied those criteria, nor any other bases for the conclusion of Taliban “affiliation.”14 And that is as good as the evidence for life imprisonment without trial has to be. Deference to the military has become abdication. In other words, what we presently have is not civilian government under military control, but something potentially worse, a civilian government ignoring military advice,15 but using the legal doctrine of military deference for its own imperialist ends. Third, the gigantic military establishment and permanent arms industry are now in the business of justifying their continued existences. This justification is done primarily, as you know, by retooling for post-Cold War enemies—the so-called “rogue states”—while at the same time creating new ones, for example by arming corrupt regimes in Southeast Asia.16 I was reminded of this recently when we went to see comedian Kate Clinton. She thought Secretary Powell had taken too much trouble in his presentation attempting to convince the Security Council that Iraq had weapons of mass destruction.17 Why not, she asked, “just show them the receipts?” Fourth, we have seen the exercise of extraordinary influence by arms makers on both domestic and foreign policy. For domestic pork barrel and campaign finance reasons, obsolete or unproven weapons systems continue to be funded even when the military does not want them!18 And, just when we thought we had survived the nuclear arms race nightmare, the United States has undertaken to design new kinds of nuclear weapons,19 even when those designs have little military value.20 Overseas, limitations on arms sales are being repealed, and arms markets that should not exist are being constantly expanded21 for the sake of dumping inventory, even if those weapons are eventually used for “rogue” purposes by rogue states. This system skews security considerations, and militarizes foreign policy. Force has to be the preferred option because other conduits of policy are not sufficiently well-funded. Plus, those stockpiled weapons have got to be used or sold so that we can build more. Fifth, enlarging upon this in a document entitled The National Security Policy of the United States, we were treated last September to “the Bush doctrine,” which for the first time in U.S. history declares a preemptive strike policy. This document states, “America will act against emerging threats before they are fully formed.”22 If they are only emerging and not fully formed, you may wonder, how will we know they are “threats”? Because someone in Washington has that perception, and when the hunch hits, it is the official policy of this country to deploy the military.23 All options—including the use of nuclear weapons—are always on the table.

#### **Military supremacy causes endless violence at home and abroad**

Bacevich, 5 -- Boston University international relations professor

[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), *The New American Militarism: How Americans Are Seduced by Wa*r, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "**military metaphysics"-a tendency to see international problems as military problems and to discount** the likelihood of findinga **solution except through military means.** To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### Allowing Obama to use statutory justifications for indefinite detention causes an indefinite police state- short-circuits activism and causes unspeakable acts of torture and violence

Stephen Lendman (Research Associate of the Center for Research on Globalization) July 19, 2013 “US Courts Approve Indefinite Detention and Torture” http://www.mathaba.net/news/?x=633237

Fundamental freedoms are illusory. They're vanishing. They lie in history's dustbin. National Defense Authorization Act (NDAA) provisions let federal troops arrest and imprison US citizens and foreign nationals. They can do it at home or abroad. They can do it anywhere. They can be held indefinitely uncharged and untried. They can be tortured. They can be forced to admit crimes they didn't commit. They can be murdered on Obama's say. Police state lawlessness rules. It's the law of the land. Obama's a tinpot despot. He's judge, jury and executioner. Fundamental rights are gone. They don't apply. Anyone can be arrested, imprisoned, held indefinitely and tortured for doing the right thing. Protesting imperial lawlessness, social injustice, corporate crime, government corruption, or political Washington run of, by and for rich elites can be criminalized. So can free speech, assembly, religion, or anything challenging America's right to kill, destroy and pillage with impunity. It's official. Tyranny rules. America's unsafe to live in. There's no place to hide. Challenging diktat power's criminalized. Police state ruthlessness targets anyone trying. Military dungeons or secret FEMA concentration camps await victims. America's no democracy. It's not beautiful. It's a battleground. It's nightmarish for countless numbers affected. Law Professor Jonathan Turley called NDAA authority ruthlessness "that would have horrified the Framers." "Indefinitely detaining citizens is something (they) were intimately familiar with and expressly sought to bar in the Bill of Rights." Other legal experts agree. Habeas, due process, and other fundamental rights are too precious to lose. They're now quaint artifacts. They're gone. They lie in history's dustbin. Tyranny replaced them. America's no different from other totalitarian states. It's ruthless. It's militarized for control. It's concentrated money power running things. It's fascism writ large. It's wrapped in the American flag. It's scapegoating challengers. It's out-of-control militarism. It's national security justification to brutalize and oppress. It's controlling the message. It's convincing people fundamental rights are abolished for their own good. It's getting most people to believe it. It's stripping off America's mask. It's showing its true face. It's menacing, cruel and unjust. Federal court decisions explain. In 2012, Hedges et al v. Obama challenged NDAA provisions. Last September, Southern District of New York federal Judge Katherine B. Forrest blocked Obama's indefinite detention law. She's the exception, not the rule. She called it "facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient definitional structure and protections to meet the requirements of due process." She added that: "If, following issuance of this permanent injunctive relief, the government detains individuals under theories of ‘substantially or directly supporting’ associated forces, as set forth in” the National Defense Authorization Act, “and a contempt action is brought before this court, the government will bear a heavy burden indeed." At issue is section 1021 of the 2012 National Defense Authorization Act (NDAA). It states in part: "Congress affirms that the authority of the president to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (AUMF) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war." "Covered persons" are defined as: Anyone "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces." Plaintiffs argued that broad, ambiguous language like "substantially supported," "associated forces" and "directly supported" leaves them and others vulnerable to lawless indefinite detention. Legally meeting someone rightly or wrongly called a terrorist, staying in their homes, inviting them to speak at conferences or in panel discussions, interviewing them, or socializing with them can be called dealing with the enemy. So can writing anti-imperial articles, exposing and/or discussing US crimes of war and against humanity, and participating in anti-war protests. Hedges et al won. Obama officials appealed. On Wednesday, the New York Second Circuit Court of Appeals overturned Judge Forrest's ruling. Three judges did so unanimously. They did it shamelessly. They called indefinite detention uncharged and untried OK. They said Hedges et al lacked standing. It's because federal law "says nothing at all about the president's authority to detain American citizens." False! NDAA covers everyone. US citizens are as vulnerable as foreign nationals. Appeals Court Judge Lewis Kaplan said non-citizens "failed to establish standing because they have not shown a sufficient threat that the government will detain them." Plaintiffs' lawyer Carl Mayer said "(w)e're reviewing what our options are, but I strongly suspect that we will appeal to the Supreme Court." The ruling came on the same day the District of Columbia Court of Appeals overturned a lower court ruling. At issue are oppressive Guantanamo prisoner genital area searches. District Court Judge Royce Lamberth ordered them stopped. Appeals Court judges overruled him. They authorized what's conducted to degrade, harass and humiliate. They're unrelated to security. Separately on July 16, Washington, DC District Court Judge Rosemary Collyer ruled against three Guantanamo hunger strikers. They sued to stop force-feeding. It's lawless. It's medically unethical. It's excruciatingly painful. It's torture as international law defines it. Collyer supports it. Her ruling ignored inviolable laws. She's contemptuously dismissive. She said: "There is nothing so shocking or inhumane in the treatment of petitioners - which they can avoid at will - to raise a constitutional concern that might otherwise necessitate review." "Although framed as a motion to stop feeding via nasograstric tube, Petitioners' real complaint is that the United States is not allowing them to commit suicide by starvation." According to the World Federation of Right to Die Societies: "All competent adults - regardless of their nationalities, professions, religious beliefs, and ethical and political views - who are suffering unbearably from incurable illnesses should have the possibility of various choices at the end of their life." "Death is unavoidable. We strongly believe that the manner and time of dying should be left to the decision of the individual, assuming such demands do not result in harm to society other than the sadness associated with death." Brutalizing indefinite Guantanamo detention constitutes an "incurable disease." It includes hopelessness and unbearable suffering. It prevents any chance for freedom. It denies all rights. Death's unavoidable. It'll come sooner, not later. Dying with dignity's excluded. Permitting it is fundamentally right. Not according to kangaroo federal court justice. Collyer's ruling replicated Judge Glady Kessler's July 10 decision. On the one hand, she called force-feeding "painful, humiliating and degrading." On the other, she abstained from ruling responsibly. She wrongfully claimed federal courts have no authority over Guantanamo. Obama alone has "authority to address the issue," she said. False! Kessler doesn't know the law. Maybe she does but spurned it. She ignored High Court rulings. In Rasul v. Bush (June 2004), the Supreme Court held that Guantanamo detainees may challenge their detention in civil court. In response, Congress enacted the 2005 Detainee Treatment Act. It subverted the ruling. In Hamdan v. Rumsfeld (June 2006), the High Court held that federal courts retain jurisdiction over habeas cases. It ruled against military commissions. It said they lack "the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions." In response, Congress passed the 2006 Military Commissions Act (MCA). In updated form, it's the law of the land. Supreme Court justices can challenge it. They can strike it down. They haven't done so. Perhaps a future court will. In Boumediene v. Bush (June 2008), it affirmed habeas rights for Guantanamo detainees. It let them petition for release from lawlessly imposed custody. Justice Anthony Kennedy wrote the majority opinion. He said America maintains complete jurisdiction over Guantanamo regardless of its offshore location. He opposed political branches "govern(ing) without legal restraint." He expressed concerns about usurping "power to switch the Constitution on or off at will." Doing so "lead(s) to a regime in which they, not this Court, say 'what the law is.' " "Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the Constitution.' " He called habeas "an indispensable mechanism for monitoring the separation of powers." "The test for determining (its) scope must not be subject to manipulation by those whose power it is designed to restrain." This bedrock right has no adequate substitute. It doesn't matter. Justice in America no longer exists. Diktat power replaced it. Perhaps NDAA enactment was when freedom in America died. Post-9/11, it's been on the chopping block for elimination altogether. Tyranny's the law of the land. It's institutionalized. Fundamental rights don't matter. Democracy's a four-letter word. Out-of-control power runs things. It's unaccountable. Nonbelievers aren't tolerated. The worst is yet to come.

#### Judicial Review is key to preventing torture

Amnesty 5 (Amnesty International USA, Guantanamo, and Beyond: The Continuing Pursuit of Unchecked Executive Power, May 13, 2005, http://web.amnesty.org/library/Index/ENGAMR510632005)

Judicial review of the lawfulness of detentions is a fundamental safeguard against arbitrary detention, torture and ill-treatment, and "disappearance". Unsurprisingly, then, with the US courts having been kept out of reviewing the cases for more than three years, there is evidence that all these categories of abuse have occurred at the hands of US authorities in the "war on terror". Indeed, Amnesty International believes that abuses have been the result of official policies and policy failures and linked to the executive decision to leave detainees unprotected by not only the courts, but also by the prohibition on torture and other cruel, inhuman or degrading treatment as defined under international humanitarian and human rights treaties binding on the USA. The US administration still does not believe itself legally bound by the Geneva Conventions in relation to the detainees in Guantánamo, Afghanistan and in secret locations, by customary international law, or by the human rights treaty prohibition on the use of cruel, inhuman or degrading treatment in the case of foreign detainees in US custody held outside of US sovereign territory. Nor has it expressly abandoned the notion that the President may in times of war ignore all the USA’s international legal obligations and order torture, or that torturers may be exempted from criminal liability by entering a plea of "necessity" or "self-defence" (see below).

#### Torture is a deontological evil that must be rejected

Gross 4 (Oren Gross, Professor, Law, University of Minnesota, MINNESOTA LAW REVIEW, June 2004, p. 1492-1493.)

Absolutists - those who believe that an unconditional ban on torture ought to apply without exception regardless of circumstances - often base their position on deontological grounds. For adherents of the absolutist view of morality, torture is intrinsically wrong. It violates the physical and mental integrity of the person subjected to it, negates her autonomy, and deprives her of human dignity. It reduces her to a mere object, a body from which information is to be extracted; it coerces her to act in a manner that may be contrary to her most fundamental beliefs, values, and interests, depriving her of any choice and controlling her voice. Torture is also wrong because of its depraving and corrupting effects on individual torturers and society at large. Moreover, torture is an evil that can never be justified or excused. Under no circumstances should the resort to torture be morally acceptable or legally permissible. It is a reprehensible action whose wrongfulness may never be assuaged or rectified morally even if the consequences of taking such action in any particular case are deemed to be, on the whole, good. Indeed, one may argue that the inherent wrongfulness of torture and possible good consequences are incommensurable, i.e., they cannot be measured by any common currency and therefore cannot be compared, or balanced, one against the other. The conclusion drawn from such a claim is that "the wrong of torture can be taken as a trump or side constraint on welfare maximization in all possible cases."

#### Obama has used indefinite detention powers to suppress social justice movements at home and abroad- statutory authority creates a state of exception in regards to detention policy.

Ford 11 (Glen, Black Action Radio. “The Racist Roots of Obama’s Preventative Detention” http://blackagendareport.com/content/racist-roots-obama%E2%80%99s-preventive-detention)

With his claim to the right to kill and indefinitely detain American citizens without charge or trial, President Obama “has crossed a Constitutional Rubicon that would have been beyond the capacity of George Bush or any white Republican.” The groundwork for Obama’s nullification of the rule of law was laid through federal “prosecutions whose sole purpose has been to establish that there exists an ‘enemy within’ U.S. borders, that it is largely Black as well as Muslim, and which requires a greatly expanded police state with extraordinary powers.” It should have been clear that the United States was on the road to [preventive detention](http://www.salon.com/2009/05/22/preventive_detention/) of U.S. citizens back in 2006, when the federal government went after the so-called Liberty City Seven, Black men from Miami’s poorest ghetto who were charged with plotting terrorist attacks. With unrelenting zeal, the U.S. Justice Department pressed the case that men who were too poor to escape their own devastated neighborhood – some of whom were actually homeless – represented a grave danger to the United States. They were charged with plotting to bring down the Sears Tower, even though only one of them had ever been to Chicago, and none knew anything about explosives. It took three trials to convict five of the Liberty City Seven, who were sent to prison during President Obama’s first year in office. They have since been joined by the Newburgh 4 and many others, in prosecutions whose sole purpose has been to establish that there exists an “enemy within” U.S. borders, that it is largely Black as well as Muslim, and which requires a greatly expanded police state with extraordinary powers. Before one can successfully eviscerate the Constitution in the name of national security, one must first demonstrate to the public that there exists a class of people for whom the new laws are intended, fellow citizens whose presence is such a danger to society that the rule of law as previously understood should no longer apply. Under George Bush and Barack Obama, the FBI has dedicated vast resources to conjuring up the specter of dark and dangerous internal enemies – with an emphasis on “dark.” The FBI chose to troll its informants and their fishhooks dangling with money among the poor of the Liberty Citys and Newburgh New York’s of the nation, creating a profile of the kind of people that the law should not protect. Under both Republicans and Democrats, the national security state has proven adept at using race, ethnicity and class like battering rams to demolish Constitutional protections. “ It is a great historical irony that the election of the First Black President has vastly accelerated the assault on the most elementary rights to due process – rights without which the rule of law simply disappears. A man who looks like the ethnic group that is most opposed to abuses of state power, a constitutional lawyer from the group that has suffered the most from arbitrary imprisonment, is leading the charge towards indefinite preventive detention of U.S. citizens. Barack Obama announced his principled support for preventive detention only a few months into his term, in the [spring of 2009](http://www.youtube.com/watch?feature=player_embedded&v=IwjCsBQGozM). He didn’t specifically include U.S. citizens in his framework of detention, back then, but once Obama took unto himself the power to assassinate his fellow Americans without trial or charge, preventive detention of citizens became inevitable. Obama has crossed a Constitutional Rubicon that would have been beyond the capacity of George Bush or any white Republican. He is, by these deeds alone, the most effective evil on the political scene, today. But Obama's nullification of the rule of law was ultimately made possible because this country remains so eager to deny Constitutional protections to Black and poor people, like the Liberty City Seven. Its citizens will sacrifice their own freedoms, just to spite the rights of darker people. And that is how they will lose those freedoms.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain without the Third Geneva Conventions Article Five rights.

### 1AC Solvency

#### The plan is part of an intersectional battle to combat violations of habeas rights- but engaging the courts are key to prevent unchecked military force and violence

Chris Hedges (senior fellow at The Nation Institute in New York City. He spent nearly two decades as a foreign correspondent in Central America, the Middle East, Africa and the Balkans. He has reported from more than fifty countries, and has worked for The Christian Science Monitor, National Public Radio, The Dallas Morning News, and The New York Times, where he was a foreign correspondent for fifteen years (1990–2005). In 2002, Hedges was part of the team of reporters at The New York Times awarded the Pulitzer Prize for the paper's coverage of global terrorism. He has taught at Columbia University, New York University, Princeton University and The University of Toronto) February 11, 2013 “The NDAA and the Death of the Democratic State” http://www.truthdig.com/report/page2/the\_ndaa\_and\_the\_death\_of\_the\_democratic\_state\_20130211/

On Wednesday a few hundred activists crowded into the courtroom of the Second Circuit, the spillover room with its faulty audio feed and dearth of chairs, and Foley Square outside the Thurgood Marshall U.S. Courthouse in Manhattan where many huddled in the cold. The fate of the nation, we understood, could be decided by the three judges who will rule on our lawsuit against President Barack Obama for signing into law Section 1021(b)(2) of the National Defense Authorization Act (NDAA). The section permits the military to detain anyone, including U.S. citizens, who “substantially support”—an undefined legal term—al-Qaida, the Taliban or “associated forces,” again a term that is legally undefined. Those detained can be imprisoned indefinitely by the military and denied due process until “the end of hostilities.” In an age of permanent war this is probably a lifetime. Anyone detained under the NDAA can be sent, according to Section (c)(4), to any “foreign country or entity.” This is, in essence, extraordinary rendition of U.S. citizens. It empowers the government to ship detainees to the jails of some of the most repressive regimes on earth. Section 1021(b)(2) was declared invalid in September after our first trial, in the Southern District Court of New York. The Obama administration appealed the Southern District Court ruling. The appeal was heard Wednesday in the Second Circuit Court with Judges Raymond J. Lohier, Lewis A. Kaplan and Amalya L. Kearse presiding. The judges might not make a decision until the spring when the Supreme Court rules in Clapper v. Amnesty International USA, another case in which I am a plaintiff. The Supreme Court case challenges the government’s use of electronic surveillance. If we are successful in the Clapper case, it will strengthen all the plaintiffs’ standing in Hedges v. Obama. The Supreme Court, if it rules against the government, will affirm that we as plaintiffs have a reasonable fear of being detained. If we lose in Hedges v. Obama—and it seems certain that no matter the outcome of the appeal this case will reach the Supreme Court—electoral politics and our rights as citizens will be as empty as those of Nero’s Rome. If we lose, the power of the military to detain citizens, strip them of due process and hold them indefinitely in military prisons will become a terrifying reality. Democrat or Republican. Occupy activist or libertarian. Socialist or tea party stalwart. It does not matter. This is not a partisan fight. Once the state seizes this unchecked power, it will inevitably create a secret, lawless world of indiscriminate violence, terror and gulags. I lived under several military dictatorships during the two decades I was a foreign correspondent. I know the beast. “The stakes are very high,” said attorney Carl Mayer, who with attorney Bruce Afran brought our case to trial, in addressing a Culture Project audience in Manhattan on Wednesday after the hearing. “What our case comes down to is: Are we going to have a civil justice system in the United States or a military justice system? The civil justice system is something that is ingrained in the Constitution. It was always very important in combating tyranny and building a democratic society. What the NDAA is trying to impose is a system of military justice that allows the military to police the streets of America to detain U.S. citizens, to detain residents in the United States in military prisons. Probably the most frightening aspect of the NDAA is that it allows for detention until ‘the end of hostilities.’ ” Five thousand years of human civilization has left behind innumerable ruins to remind us that the grand structures and complex societies we build, and foolishly venerate as immortal, crumble into dust. It is the descent that matters now. If the corporate state is handed the tools, as under Section 1021(b)(2) of the NDAA, to use deadly force and military power to criminalize dissent, then our decline will be one of repression, blood and suffering. No one, not least our corporate overlords, believes that our material conditions will improve with the impending collapse of globalization, the steady deterioration of the global economy, the decline of natural resources and the looming catastrophes of climate change. But the global corporatists—who have created a new species of totalitarianism—demand, during our decay, total power to extract the last vestiges of profit from a degraded ecosystem and disempowered citizenry. The looming dystopia is visible in the skies of blighted postindustrial cities such as Flint, Mich., where drones circle like mechanical vultures. And in an era where the executive branch can draw up secret kill lists that include U.S. citizens, it would be naive to believe these domestic drones will remain unarmed. Robert M. Loeb, the lead attorney for the government in Wednesday’s proceedings, took a tack very different from that of the government in the Southern District Court of New York before Judge Katherine B. Forrest. Forrest repeatedly asked the government attorneys if they could guarantee that the other plaintiffs and I would not be subject to detention under Section 1021(b)(2). The government attorneys in the first trial granted no such immunity. The government also claimed in the first trial that under the 2001 Authorization to Use Military Force Act (AUMF), it already had the power to detain U.S. citizens. Section 1021(b)(2), the attorneys said, did not constitute a significant change in government power. Judge Forrest in September rejected the government’s arguments and ruled Section 1021(b)(2) invalid. The government, however, argued Wednesday that as “independent journalists” we were exempt from the law and had no cause for concern. Loeb stated that if journalists used journalism as a cover to aid the enemy, they would be seized and treated as enemy combatants. But he assured the court that I would be untouched by the new law as long as “Mr. Hedges did not start driving black vans for people we don’t like.”

#### the affs introduction of detention to the public consciousness creates effective political movements for change

Cole 12 (David Cole is a Professor of Law, Georgetown University Law Center, “Legal Affairs: Dreyfus, Guantanamo, and the Foundation of the Rule of Law, 29 Touro L. Rev. 43)

Moreover, while district courts exercising habeas corpus jurisdiction initially ruled in favor of the detainees in the large majority of cases they heard, the United States Court of Appeals for the D.C. Circuit has consistently sided with the government on its appeals, and has eased the government's burden to demonstrate that a detainee is lawfully held. n69 The Supreme Court has repeatedly denied petitions for certiorari from these D.C. Circuit decisions. n70 Meanwhile, the Supreme Court's other post-9/11 national security decisions have all been decided in the government's favor. n71 [\*54] The Court rejected two lawsuits seeking damages against Attorney General John Ashcroft for alleged unconstitutional detentions in the roundups that occurred in the wake of 9/11. n72 And the Court rejected a First Amendment challenge to the criminalization of pure speech advocating peace and human rights under the "material support" statute. n73 The Court's record on protecting human rights, in short, while better than in previous crises, is mixed. Moreover, most of the Bush administration's curtailments of its aggressive initiatives enumerated above were not ordered by a court. No court ordered the abandonment of the first torture memo, an end to extraordinary rendition, the suspension of the NSA warrantless wiretapping program, the release of the secret torture memos, or the closure of the CIA's black sites. n74 Approximately 600 men have been released from Guantanamo, but the vast majority was released without a court order, and none have been released under a non-appealable court order. While several district courts have ordered the release of Guantanamo detainees, every time the administration has appealed to the District of Columbia Circuit ("D.C. Circuit"), it has prevailed. n75 No court ordered the administration to abandon the Article II Commander-in-Chief theory of uncheckable executive power. Additionally, as noted above, when the D.C. Circuit ruled that international law did not play any role in constraining the president's detention authority, President Obama in effect objected that the court had granted him too much unchecked authority, and insisted that his actions were bound by international law. What, then, caused the United States, specifically the executive branch, to change course? In my view, they were much the same sorts of forces that worked to vindicate Alfred Dreyfus: not the formal separation of powers, but informal nongovernmental resistance in the name of upholding the rule of law. As in the Dreyfus affair, this resistance took the form of individuals, acting on their own and [\*55] in association with others, speaking out, issuing critical reports, organizing protests, filing lawsuits, and generally challenging perceived abuses of power. n76 As in the Dreyfus affair, the media played a critical role, by disclosing secret rights abuses and writing countless editorials espousing the importance of adhering to the rule of law and the Constitution. Were it not for leaks reported in the media, we would not know about the torture at Abu Ghraib, the torture memo, the NSA warrantless wiretapping program, secret CIA prisons, and extraordinary renditions to torture. In addition, international voices played a major role. Guantanamo, after all, held nationals from forty-two countries, and some of those countries objected strongly to the way their countrymen were treated there. A former United Kingdom Law Lord, Lord Steyn, dubbed Guantanamo a "legal black hole," and 175 members of the Houses of Parliament filed an amicus brief on the Guantanamo detainees' behalf in the Supreme Court. n77 Together, these informal forces are responsible, as much as the formal separation of powers, for reining in the United States' "war on terror" in important ways. What lessons, then, can we draw from the Dreyfus affair and the first post-9/11 decade? The first is that the rule of law and individual rights are all too vulnerable to fear and demagoguery in times of crisis. Designed to constrain short-sighted decision making by insisting on adherence to basic principles of fairness, constitutional rights often seem inconvenient obstacles in a crisis. For Dreyfus and many Arabs and Muslims after 9/11, the law was initially unable to offer much, if any, protection. But both affairs also suggest that the rule of law is more resilient than many cynics might think. Alfred Dreyfus was eventually exonerated. The rule of law recovered in significant measure from its hasty dismissal in the aftermath of the 9/11 terrorist attacks. However, in both instances, the tide turned only because individuals, associations, and nongovernmental organizations [\*56] mobilized behind the cause of justice for the vulnerable. When it comes to the reality of rights protections, much depends on the mobilization of the polity. But as the other "affair" under examination in this conference - the lynching of American Jewish businessman Leo Frank - chillingly demonstrates, popular mobilization can go either way. n78 When, in 1915, Georgia's governor commuted Frank's death sentence for murder to life without imprisonment, based on substantial concerns with the fairness of the trial and the accuracy of the verdict, a mob gathered, abducted Frank from his cell, and lynched him. n79 Popular mobilization does not always take the side of human rights, and it can easily overwhelm legal bulwarks through brute force and terror. Precisely because they help to establish and reinforce a culture of respect for equality and the rule of law, the assessments and reassessments of the "Dreyfus affair" that continue to this day in France are critically important for sustaining contemporary commitments to the rule of law. The fact that the case has become an "affair," a narrative widely known, exhaustively studied, and frequently invoked is crucial, for the history of the "affair" reminds us of what can go wrong when we depart from principles of fairness and justice. Whether the story of the United States' response to 9/11 will similarly become an "affair" from which the United States and others draw lessons about resisting the temptation to sacrifice our fundamental commitments on the backs of the most vulnerable, remains to be seen. As was the case with Dreyfus for many years, the particular lessons to be drawn from the post-9/11 era are a matter of deep contestation. President Bush, Vice-President Cheney, and their supporters have sought to portray their actions as tough, but necessary and reasonable, decisions to recalibrate security and liberty. n80 Others, myself included, have insisted that the principal lesson [\*57] of the first post-9/11 decade is that sacrifices in the rule of law are all too easy to make, generally unnecessary, and come at a great cost to the legitimacy and long-term success of a democracy's struggle against terrorism. The fact that Guantanamo has become one of the world's leading symbols for "lawlessness" suggests that the latter narrative has taken hold, at least in the rest of the world. The struggle over its meaning within the United States, however, continues. n81 At stake is nothing less than the nature of our constitutional culture. Whether, after the next attack, we repeat our mistakes or respond in a more resilient and rights-respecting manner depends ultimately on the lessons we learn as a nation from our recent past. Those who are committed to the protection of civil liberties and the rule of law must continue to work to ensure that the "Guantanamo affair" takes on the character of the "Dreyfus affair" in popular consciousness. At the end of the day, the strength of our legal protections turns on our culture's engaged commitment to the values of the Constitution, the rule of law, and human rights.

#### This can only occur by engaging the law

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Unlike the majoritarian electoral politics Posner and Vermeule imagine, the work of civil society cannot be segregated neatly from the law. On the contrary, it will often coalesce around a distinctly legal challenge, objecting to departures from specific legal norms, often but not always heard in a court case, as with civil society's challenge to the treatment of detainees at Guantanamo. Congress's actions on that subject make clear that had Guantánamo been left to the majoritarian political process, there would have been few if any advances. The litigation generated and concentrated pressure on claims for a restoration of the values of legality, and, as discussed above, that pressure then played a critical role in the litigation's outcome, which in turn contributed to a broader impetus for reform.

#### Solely acting outside the realm of the law fails to provide a solution- institutions are key

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

#### Adopting legal tactics are vital for movements that seek to promote the rights of the disempowered

Hair 01

(Penda D Louder than Words:Lawyers, Communities and the Struggle for Justice, <http://www.racialequitytools.org/resourcefiles/hair.pdf>, Penda D. Hair is Co-Director of the Advancement Project at the Rockafeller Foundation, The many lawyers, clients, community organizations and activists whose visionary work in the field is reflected herein generously shared their time, experiences, lessons and mistakes, as well as triumphs. This is their report. I have tried to be an accurate and thoughtful recorder. Dayna L. Cunningham, Associate Director of the Rockefeller Foundation’s Working Communities Division, conceived this project and brought together the people and the resources to bring it to fruition. Her penetrating ideas on race and lawyering infuse every page of the Report. As important, her strong belief in the project and her incredible determination inspired the author and the advisers, and pushed this work to completion. Susan P. Sturm, Professor of Law, Columbia Law School, and Lani Guinier, Professor of Law, Harvard Law School, were participants from the inception, helping to frame the project, identify case studies and put together the larger group of advisers. Angela Glover Blackwell, then Vice President of the Rockefeller Foundation (now President of PolicyLink, a national organization working to identify, support and promote local policy innovation), played a critical role in initiating and supporting this project and provided many valuable insights. Fifteen advisers guided the development of this report. Coming from national civil rights organizations, local public-interest law centers, universities and foundations, all of the advisers in their separate capacities have been deeply involved in the struggle for justice for many years. Their commitment to this project has been unwavering. )

THE CONTINUING IMPORTANCE OF STRATEGIC LITIGATION Even with judicial cutbacks in legal protections for minorities and the poor, litigation—particularly when carried out in connection with a broader social movement—can effectively build communities’ capacity to confront inequitable power structures. Community-linked litigation can function as “both symbolic and actual political activity: first, it can provide actual educational, participatory experiences for poor groups; second, it is the vehicle through which a community coheres and mobilizes.” 1 Litigation can frame issues powerfully, influence public perceptions and, ultimately, restructure unfair institutions. The courtroom can be an important space for making public the often-hidden stories of marginalized people and for connecting those stories to disputed policies. A well-placed tactical intervention, be it a successful restraining order or discovery motion, can defend a movement against attack, keep it from closing down or remove obstacles that undercut its effectiveness. In the Los Angeles MTA and the El Monte garment-worker struggles, the litigation process provided a platform for activism that helped marginalized people mobilize themselves. They developed a better understanding of the forces shaping their circumstances, of the heightened efficacy of group action, and of the ways that pressure can force local government and institutions to be more responsive. In each of these cases, through their participation, marginalized people actively shaped both the local government decision-making process and the outcomes that had fundamental impact on their lives. MAKING USE OF THE ENTIRE ARRAY OF LEGAL TOOLS In a 1992 report for the Rockefeller Foundation titled “Sustaining the Struggle for Justice,” Professor Charles Lawrence concluded that minorities and the poor ought to have access to 1 See, Lois H. Johnson, “The New Public Interest Law: From Old Theories to a New Agenda,” 1 Public Interest Law Journal, at 169, 185 (1991). 142

#### **Even if the legal sphere is inaccessible, legal education builds community capacity- critical for the struggle towards justice**

Hair 01

(Penda D Louder than Words:Lawyers, Communities and the Struggle for Justice, <http://www.racialequitytools.org/resourcefiles/hair.pdf>, Penda D. Hair is Co-Director of the Advancement Project at the Rockafeller Foundation, The many lawyers, clients, community organizations and activists whose visionary work in the field is reflected herein generously shared their time, experiences, lessons and mistakes, as well as triumphs. This is their report. I have tried to be an accurate and thoughtful recorder. Dayna L. Cunningham, Associate Director of the Rockefeller Foundation’s Working Communities Division, conceived this project and brought together the people and the resources to bring it to fruition. Her penetrating ideas on race and lawyering infuse every page of the Report. As important, her strong belief in the project and her incredible determination inspired the author and the advisers, and pushed this work to completion. Susan P. Sturm, Professor of Law, Columbia Law School, and Lani Guinier, Professor of Law, Harvard Law School, were participants from the inception, helping to frame the project, identify case studies and put together the larger group of advisers. Angela Glover Blackwell, then Vice President of the Rockefeller Foundation (now President of PolicyLink, a national organization working to identify, support and promote local policy innovation), played a critical role in initiating and supporting this project and provided many valuable insights. Fifteen advisers guided the development of this report. Coming from national civil rights organizations, local public-interest law centers, universities and foundations, all of the advisers in their separate capacities have been deeply involved in the struggle for justice for many years. Their commitment to this project has been unwavering. )

Louder Than Words“the full range of problem-solving tasks that lawyers traditionally employ to enhance the political and economic capacity of their paying clients.” Lawyers possess key technical and transactional skills for building community capacity. They can advise clients about vehicles for structuring organizations and transactions. They can identify sources of capital, analyze regulatory schemes, negotiate on the client’s behalf, structure relationships, draft agreements and navigate procedural obstacles. 2 By defining problems in ways that target structural obstacles and providing research that highlights structural elements of exclusion, lawyers can also explore with community members the importance of democracy and engagement as a means of achieving more responsive policies. For example in the Boston Chinatown case, the attorneys researched and publicized, then challenged, the 34-year history of land-use decisions by the local, state and federal authorities that led to the virtual disappearance of open space in Chinatown. In Greensboro, activists focused on local incentives that were enacted to prevent corporate flight but rewarded companies that paid lower wages. In the Texas Ten Percent Plan case, the lawyers drafted creative legislation that targeted educational-system failure and provided research to demonstrate the linkages between systematic barriers and student performance. Attorney/Client Relationships Legal options are important tools in the fight for racial inclusion. But lawyers will be most effective if they are connected and responsive to constituencies. In the traditional representation model, lawyers are the chief problem solvers. They frame the claims and legal theories and generally neither cultivate nor rely on the prvoblem-solving skills of their clients. They tell clients what is possible and give voice to client concerns through pleadings and formal proceedings that may marginalize or compartmentalize local knowledge and expertise. Clients can become dependent on lawyers as problem solvers. Leadership development within the community takes low priority. Legitimate protest may get discouraged in favor of “respectable” legal channels. Given the procedural nature of litigation, in the traditional representation model, high priority is placed on technical indicia of success. It is hard to assess impact on a community with the traditional tools of the lawyer. By contrast, under a community-based approach, the particularized knowledge and skills of lawyers retains its critically important role. But when the ultimate goal is working with clients or a community to exercise their voice, changes occur in the nature of relationships, the definition of problems, the ways lawyers perform their tasks and the way they evaluate success. By drawing on local resources the attorneys can “bring together different fragments and patterns of local community know-how to bear on their work.” 3 Significantly, many of the best models of this approach first emerged within the civil rights movement, when lawyers were called to assist activists such as the Freedom Riders in local communities. 2 See, e.g., Ann Southworth, “Taking the Lawyer Out of Progressive Lawyering,” 46 Progressive Lawyering, at 213, 223 (1993). One of many practical examples of such transactional contributions is found in the creative argument by a Brooklyn Legal Services attorney that a New York statute governing tax-exempt bond financing for hospital expansion permitted a local medical clinic to utilize such bonds. See, “So Goes a Nation,” supra. 3 Gerald Lopez, Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice, (Westview Press, 1992), at 53. 143 Chapter 7Many racial-justice innovators are driven to adopt more participatory approaches by the necessity of understanding changing forms of racial exclusion today. To protect against exploitation of low-wage and immigrant workers, to respond to the assault on affirmative action, to combat massive shifts of resources from cities to expanding suburbs, to halt environmental degradation in minority communities, and to win incorporation of increasingly diverse noncitizen populations requires thoroughgoing knowledge of the impacts on people’s lives. Lawyers and clients must collaboratively engage in problem-solving efforts to make this knowledge available. New approaches that stress engagement may build upon the traditional role of legal counselor/adviser by interpreting and applying legal standards. However, in the case studies, lawyers were most effective when they functioned as part of a broader problem-solving process, working to mediate between the role of the law and the goals of organized and cohesive community members. This is particularly important when community aspirations are not easily translated within the existing paradigms of justice. In this role, lawyers continuously ask how the law can be interpreted and applied to advance community goals. When possible, they reject abstract legal theories in favor of appeals to community values and for concrete practical needs. They also assist clients in drawing on their own problem-solving skills, demystifying the law and lawyering, and encouraging people to handle routine legal problems on their own. It requires special attention to avoid a hasty resort to more structured and familiar legal procedures that can overtake the slower, less-scripted process of community-centered lawyering. Significantly different skills are needed than the litigation and transactional approaches taught in law school. The lawyer’s inquiry begins by looking at the concrete needs and values of community members. The goal is to frame claims within a larger moral vision rather than principally in terms of a formal legal theory. Thus, in Greensboro, the formal claim of the Kmart workers came under Title VII employment discrimination and several employees brought a successful lawsuit on these grounds. But the community-centered vision of the ministers was larger, putting the workers’ claims for fair individual treatment within the larger context of a community struggling to defend its declining living standard against irresponsible corporate behavior. At the same time, the ministers connected their vision to legitimate local economic and business needs. Kmart’s motion for a restraining order to stop the protests might have silenced the ministers. The lawyers intervened at a critical moment in their struggle, converting the lawsuit from a device to stifle the community’s voice to an additional opportunity to tell the workers’ story. Attorney James Ferguson joined the ministers, union representatives and community members at press conferences and other public activities. Rather than present very tight legal arguments focused on specific procedural issues, they filed expansive papers to surface the underlying issues of racism and exploitation that concerned community members. They worked 144 Louder Than Wordsclosely with community members, listening to what they were trying to accomplish. They involved them in the court proceedings so that community members could grasp the connections between the legal work and their struggles. The lawyers also measured their success in terms of community objectives, rather than in terms of procedural outcomes.

#### Third - A NATIONAL focus is valuable – it enhances local efforts by creating a common rallying cry and provides NETWORKS necessary for collaboration – local justice efforts will be ineffective on their own

Hair 01

(Penda D Louder than Words:Lawyers, Communities and the Struggle for Justice, <http://www.racialequitytools.org/resourcefiles/hair.pdf>, Penda D. Hair is Co-Director of the Advancement Project at the Rockafeller Foundation, The many lawyers, clients, community organizations and activists whose visionary work in the field is reflected herein generously shared their time, experiences, lessons and mistakes, as well as triumphs. This is their report. I have tried to be an accurate and thoughtful recorder. Dayna L. Cunningham, Associate Director of the Rockefeller Foundation’s Working Communities Division, conceived this project and brought together the people and the resources to bring it to fruition. Her penetrating ideas on race and lawyering infuse every page of the Report. As important, her strong belief in the project and her incredible determination inspired the author and the advisers, and pushed this work to completion. Susan P. Sturm, Professor of Law, Columbia Law School, and Lani Guinier, Professor of Law, Harvard Law School, were participants from the inception, helping to frame the project, identify case studies and put together the larger group of advisers. Angela Glover Blackwell, then Vice President of the Rockefeller Foundation (now President of PolicyLink, a national organization working to identify, support and promote local policy innovation), played a critical role in initiating and supporting this project and provided many valuable insights. Fifteen advisers guided the development of this report. Coming from national civil rights organizations, local public-interest law centers, universities and foundations, all of the advisers in their separate capacities have been deeply involved in the struggle for justice for many years. Their commitment to this project has been unwavering. )

However, local justice work is built on a scaffolding of racial-justice laws, policies and practices erected and maintained by the national civil rights organizations. Despite devolution, this is a nation closely knit together by media and communications links. Local efforts are greatly enhanced by the efforts of national groups dealing with Congress, federal administrative agencies and the media. Many of the most visible efforts against racial equity have been mounted and/or orchestrated by a handful of national organizations as part of a coordinated nationwide offensive. 6 Such efforts necessitate a coordinated, nationwide response, which is best pursued by national organizations. For example, when the Office of Civil Rights released a new set of educational testing guidelines, a barrage of negative editorials and op-ed pieces were released in The Wall Street Journal, The Washington Post and other publications. No locally based legal or organizing effort could effectively and consistently respond to such attacks, which can have significant influence in national policy debates. However, because of working relationships between local litigators and national organizations, groups like the Leadership Conference on Civil Rights, LDF and others have effectively worked to counter attacks on the new guidelines. Three basic elements comprise the civil rights legal scaffolding: • The statutory and administrative framework of federal rights protection including Title VI, 7 the Voting Rights Act, Title I, 8 Title VII, 9 and a host of agency regulations and enforcement mechanisms. In an ongoing way, these structures provide a legal basis for creative and innovative racial-justice claims; • The network of national organizations that monitor and respond to major national trends in civil rights and collaborate with local efforts to address rights violations; • The national opinion leaders who provide an alternative to the majority narrative on public issues of interest to minorities. Many legal controversies end up in the Supreme Court, the federal appellate courts or the U.S. Congress. Lawyers from national organizations specialize in dealing with issues in these national venues in a way that local lawyers cannot. Activists and local lawyers in the Texas Ten Percent Plan case, the Los Angeles MTA case and the El Monte garment-workers case had partnerships with MALDEF, LDF and NAPALC— all national organizations that provided a range of resources to these local struggles. For many local organizations, partnership with a national organization gives them access to the Department of Justice and other national enforcement agencies, to members of Congress, national media, large law firms and other resources. All of this can heighten their leverage with local power structures. With their broader platforms and access, national organizations can help to highlight important local issues. Many local offenders fear the consequences of having a national spotlight thrown on them. Indeed, they rely on the invisibility of racial injustice to ensure the continued marginalization of minority communities. The involvement of national groups can serve as an important prod to public officials who ignore or abandon the goals of equity and justice in their policies, programs and conduct. Improvements in communication and accessibility of information, as well as advances in educational opportunity over the past several generations, have resulted in a dramatic surge in the number of advocates, organizers and attorneys “in the field.” Many, while not formally on the staffs of national groups, have ongoing relationships with them. Particularly if these advocates and activists have adequate support on technical issues, they can be more effective in community capacity building and organizing than has traditionally been the case for national organization staff. For both national and local groups there is growing understanding of the power of strategies that combine the strengths of local and national work. For example, NAACP LDF and the Lawyers’ Committee for Civil Rights Under Law have supported amendments to strengthen Title VI, have monitored Supreme Court and lower-court decisions construing this statute, and have filed briefs in and litigated important cases—all to ensure that this law remains available to protect victims of discrimination. Without this work, lawsuits and settlements such as the MTA case would not be possible in the future.

## 2AC

### 2AC- Role of Ballot

#### 2) Agency and Activism- 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.

#### 3) Incrementalism- Emancipatory politics must be methodical, incremental, and committed to process. Failure to do so in favor of a radical politics destroys value to life and risks extinction

**Dietz 94**

(Mary G. Dietz, Professor of Political Science and Gender Studies Program at Northwestern University, “’THE SLOW BORING OF HARD BOARDS’: METHODICAL THINKING AND THE WORK OF POLITICS”, American Political Science Review, Vol. 88, No. 4 December 1994, <http://www.jstor.org/stable/pdfplus/2082713.pdf>)

We do disservice to these moments of Arendtian action, however (and hence to politics itself) if we stake acting together solely on "sheer momentum" or the "spontaneity" of rare movements that burst out against the dark backdrop of modernity. To render as truly political only events that are public, spontane- ous, and momentous is to underestimate the full complexity (and sometimes the brutality)30 of human conduct in such events themselves-to see them, as Vaclev Havel puts it, "from the outside" and perhaps "chiefly from the vantage point of the system and its power structure" (1985, 49). Charter 77 "came as a surprise" and appeared as a "bolt out of the blue", but, as Havel reminds us, it was neither a bolt out of the blue nor the result of a spontaneous political event. Its initial impetus was a small protest against the impending trial of the rock group The Plastic People of the Universe, whose music displeased the communist authorities. The protest began with a campaign planned in detail and with "modest, internal steps" that culminated in the signing of a petition by 70 people (Havel 1990, 130-38). The action group Charter 77 eventually emerged out of the opposition circles that the campaign for The Plastics had informally organized. As a document, the charter took form slowly during the late months of 1976, not in the merciless glare of the public but in what Havel calls "that semi-darkness where things are difficult to chart or analyse" (1985, 49). Its history has as much to do with the laborious organization of meetings, the meticulous crafting of language, the arduous collection of signatories, and the repeated drafting of copies of the original document as with the "explosion" that followed its release in the public realm. Even then, as Havel understands it, the charter was neither a "one-shot manifesto" nor by any means a prepolitical act of legislation but rather a commitment "to participate in ongoing work" (1990, 139). Like Havel and in the spirit of Arendt's instruction that we must "think what we are doing," I have been thinking about what it means to consider politics as a kind of ongoing, methodical work in the world. I raise the example of Charter 77 not to diminish the beauty of an Arendtian politics of spontaneity but in order to propose a public realm theory that is better able to coordinate political action as purposeful and hence open to a broader range of significance "in the whole way of life" (Weber 1946, 77). In thinking about the same sort of things, Havel warns that the global automatism of technological civilization poses a "planetary challenge" to the position of human beings in the world (1985, 90). If he is right, then those of us who take the project of emancipation seriously must do no less than face the challenge with all the means at our disposal and endeavor, in Simone Weil's words, "to introduce a little play into the cogs of the machine that is grinding us down" (1973, 121). As citizens, in other words, we must think methodically about what is to be done.

#### Taking solely individual approaches fails to change macro-level societal trends that replicates the impacts

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of *habitus*. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the *habitus* can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A *habitus* (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the *habitus* can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the *habitus* and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the *habitus*. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### This impact is unique to our role of the ballot

Lantis 8 (Jeffrey S. Lantis is Professor in the Department of Political Science and Chair of the

International Relations Program at The College of Wooster, “The State of the Active Teaching and Learning Literature”, <http://www.isacompss.com/info/samples/thestateoftheactiveteachingandlearningliterature_sample.pdf>**)**

**Simulations, games, and role-play represent** a third important set of **active teaching and learning approaches**. Educational objectives include **deepening conceptual understandings of** a particular phenomenon, **sets of interactions, or socio-political processes by using student interaction to bring abstract concepts to life**. **They provide students with a real or imaginary environment within which to act out a given situation** (Crookall 1995; Kaarbo and Lantis 1997; Kaufman 1998; Jefferson 1999; Flynn 2000; Newmann and Twigg 2000; Thomas 2002; Shellman and Turan 2003; Hobbs and Moreno 2004; Wheeler 2006; Kanner 2007; Raymond and Sorensen 2008). The aim is to **enable students to actively experience, rather than read or hear about, the “constraints and motivations for action (or inaction) experienced by real players**” (Smith and Boyer 1996:691), or **to think about what they might do in a particular situation** that the instructor has dramatized for them. As Sutcliffe (2002:3) emphasizes, “Remote theoretical concepts can be given life by placing them in a situation with which students are familiar.” **Such exercises capitalize on the strengths of active learning techniques: creating memorable experiential learning events** that tap into multiple senses and emotions by utilizing visual and verbal stimuli. Early examples of simulations scholarship include works by Harold Guetzkow and colleagues, who created the Inter-Nation Simulation (INS) in the 1950s. This work sparked wider interest in **political simulations as teaching and research tools**. By the 1980s, scholars had accumulated a number of **sophisticated simulations of international politics, with names like “Crisis,” “Grand Strategy,”** “ICONS,” and “SALT III.” More **recent literature on simulations stresses opportunities to reflect dynamics faced in the real world by individual decision makers**, by small groups like the US National Security Council, **or** even global summits organized around **international issues, and provides for a focus on contemporary global problems** (Lantis et al. 2000; Boyer 2000). Some of the most popular simulations involve modeling international organizations, in particular United Nations and European Union simulations (Van Dyke et al. 2000; McIntosh 2001; Dunn 2002; Zeff 2003; Switky 2004; Chasek 2005). **Simulations may be** employed in one class meeting, through one week, or even over an entire semester. Alternatively, they may be **designed to take place outside of the classroom in** local, national, or international **competitions**. The scholarship on the use of games in international studies sets these approaches apart slightly from simulations. For example, Van Ments (1989:14) argues that games are structured systems of competitive play with specific defined endpoints **or solutions that incorporate** the **material to be learnt. They** are similar to simulations, but contain specific structures or rules that dictate what it means to “win” the simulated interactions. **Games place the participants in positions to make choices that** 10 **affect outcomes**, but do not require that they take on the persona of a real world actor. Examples range from interactive prisoner dilemma exercises to the use of board games in international studies classes (Hart and Simon 1988; Marks 1998; Brauer and Delemeester 2001; Ender 2004; Asal 2005; Ehrhardt 2008) A final subset of this type of approach is the role-play. **Like simulations, roleplay places students within a structured environment and asks them to take on a specific role**. Role-plays differ from simulations in that rather than having their actions prescribed by a set of well-defined preferences or objectives, **role-plays provide more leeway for students to think about how they might act when placed in the position of their slightly less well-defined persona** (Sutcliffe 2002). Role-play allows students to create their own interpretation of the roles because of role-play’s less “goal oriented” focus. **The primary aim of** the **role-play is to dramatize for the students the relative positions of the actors involved and**/or **the challenges facing them** (Andrianoff and Levine 2002). This dramatization can be very simple (such as roleplaying a two-person conversation) or complex (such as role-playing numerous actors interconnected within a network). **The reality of the scenario and its proximity to a student’s personal experience is** also **flexible**. While few examples of effective roleplay that are clearly distinguished from simulations or games have been published, some **recent work has laid out** some **very useful role-play exercises with clear procedures for use in the international studies classroom** (Syler et al. 1997; Alden 1999; Johnston 2003; Krain and Shadle 2006; Williams 2006; Belloni 2008). Taken as a whole, the applications and procedures for simulations, games, and role-play are well detailed in the active teaching and learning literature. **Experts recommend a set of core considerations that should be taken into account when designing effective simulations** (Winham 1991; Smith and Boyer 1996; Lantis 1998; Shaw 2004; 2006; Asal and Blake 2006; Ellington et al. 2006). These include **building the simulation design around specific educational objectives, carefully selecting the** situation or **topic to be addressed, establishing the needed roles to be played by both students and instructor, providing clear rules, specific instructions and background material, and having debriefing and assessment plans in place** in advance. There are also an increasing number of simulation designs published and disseminated in the discipline, whose procedures can be adopted (or adapted for use) depending upon an instructor’s educational objectives (Beriker and Druckman 1996; Lantis 1996; 1998; Lowry 1999; Boyer 2000; Kille 2002; Shaw 2004; Switky and Aviles 2007; Tessman 2007; Kelle 2008). Finally, there is growing attention in this literature to assessment. Scholars have found that these methods are particularly effective in bridging the gap between academic knowledge and everyday life. Such exercises also lead to enhanced student interest in the topic, the development of empathy, and acquisition and retention of knowledge.

#### **4) “Me-search”-** Their call for us solely to discuss our personal experiences creates an ignorance for the world around us that is ultimately net-worse for everyone

**Chandler 2009** (David Chandler is Professor of International Relations at the University of Westminster, “Questioning Global Political Activism”, *What is Radical Politics Today?,* Edited by Jonathan Pugh, pp. 81-2)

Today more and more people are ‘doing politics’ in their academic work. This is the reason for the boom in International Relations (IR) study and the attraction of other social sciences to the global sphere. I would argue that the attraction of IR for many people has not been IR theory but the desire to practise global ethics. The boom in the IR discipline has coincided with a rejection of Realist theoretical frameworks of power and interests and the sovereignty/anarchy problematic. However, I would argue that this rejection has not been a product of theoretical engagement with Realism but an ethical act of rejection of Realism’s ontological focus. It seems that our ideas and our theories say much more about us than the world we live in. Normative theorists and Constructivists tend to support the global ethical turn arguing that we should not be as concerned with ‘what is’ as with the potential for the emergence of a global ethical community. Constructivists, in particular, focus upon the ethical language which political elites espouse rather than the practices of power. But the most dangerous trends in the discipline today are those frameworks which have taken up Critical Theory and argue that focusing on the world as it exists is conservative problem-solving while the task for critical theorists is to focus on emancipatory alternative forms of living or of thinking about the world. Critical thought then becomes a process of wishful thinking rather than one of engagement, with its advocates arguing that we need to focus on clarifying our own ethical frameworks and biases and positionality, before thinking about or teaching on world affairs. This becomes ‘me-search’ rather than research. We have moved a long way from Hedley Bull’s (1995) perspective that, for academic research to be truly radical, we had to put our values to the side to follow where the question or inquiry might lead. The inward-looking and narcissistic trends in academia, where we are more concerned with our reflectivity – the awareness of our own ethics and values – than with engaging with the world, was brought home to me when I asked my IR students which theoretical frameworks they agreed with most. They mostly replied Critical Theory and Constructivism. This is despite the fact that the students thought that states operated on the basis of power and self-interest in a world of anarchy. Their theoretical preferences were based more on what their choices said about them as ethical individuals, than about how theory might be used to understand and engage with the world. Conclusion I have attempted to argue that there is a lot at stake in the radical understanding of engagement in global politics. Politics has become a religious activity, an activity which is no longer socially mediated; it is less and less an activity based on social engagement and the testing of ideas in public debate or in the academy. Doing politics today, whether in radical activism, government policy-making or in academia, seems to bring people into a one-to-one relationship with global issues in the same way religious people have a one-to-one relationship with their God. Politics is increasingly like religion because when we look for meaning we find it inside ourselves rather than in the external consequences of our ‘political’ acts. What matters is the conviction or the act in itself: its connection to the global sphere is one that we increasingly tend to provide idealistically. Another way of expressing this limited sense of our subjectivity is in the popularity of globalisation theory – the idea that instrumentality is no longer possible today because the world is such a complex and interconnected place and therefore there is no way of knowing the consequences of our actions. The more we engage in the new politics where there is an unmediated relationship between us as individuals and global issues, the less we engage instrumentally with the outside world, and the less we engage with our peers and colleagues at the level of political or intellectual debate and organisation.

### 2AC Permutation

#### B) Singular Focus is bad- Multiplicity of perspectives is more productive and more emancipatory

**Bohlin 8 -** Dr. Phil. in theoretical philosophy (Stockholm University, 1997) ¶ Senior lecturer (docent) in philosophy, lecturer in history of ideas ¶ Member of the faculty board, chair of the faculty committee for teacher education and educational research (Henrik Bohlin Perspective-dependence and Critical Thinking EBSCO)shaw

Suppose that we are trying to understand and morally assess the customs of a people with a very different culture. In the case of some of their practices and beliefs, we find that the others react just the way we ourselves would find it reasonable to react in the same circumstances; they are hungry, and they eat; they are insulted, and they get angry, etc. Thus, we can make perfect sense of what they do and say from within our own perspective, or so it seems. (Such impressions can of course be deceptive if the others do what we would, but for quite incompatible reasons.) In other cases, however, we find that the others do and say things that seem clearly unjustified according to our norms of speech and behaviour. For example, we find that they have the custom of instructing their children to play war games where stones are thrown at the opponents, that children are occasionally killed in these games, and that the adults, although they mourn those killed in this way, continue to encourage the games. Here, it seems impossible to understand and agree with the others while remaining within the perspective of our own culture; given our moral standards and what we know of the circumstances, it seems that nothing can justify such a practice. To assess it, it seems, a critic must shift perspective, or at least somehow take the difference in perspectives into account. What can this mean?

First, it is conceivable that by learning more about the people we are trying to understand, we find that the particular circumstances under which they live in fact makes the practice justifiable, even according to our moral standards—say, because they inhabit an overpopulated area with constant wars over territory going on between rival tribes, where it is of crucial importance for the survival of each tribe that their young ones develop fearlessness and insensitivity to pain from an early age, and where the practice of encouraging realistic war games among children is, to everyone’s regret, the only means to achieve this. Seeing things from the other’s perspective in this case means taking time, place, and other relevant facts of the matter into account. This could be called conservative perspective shift, since it does not require us, as critics, to change or in any way abandon our own moral principles or standards of extra-moral rationality.

Suppose now instead that taking all relevant facts into account is not sufficient to make the custom we are trying to understand justifiable according to the moral standards of our own culture, but that the attempt to interpret the other culture and the careful weighing of arguments for and against it has the effect of making us question and revise some of our own general moral standards and factual beliefs that made the custom unacceptable to us. We thus recognise a genuine conflict between our own culture and that of the others, and admit that the others are right. Hence, we may say that we learn from the others. Let us call this dialogical change of perspective, since what happens resembles a conversation or dialogue where one of the parties, or both, revise their beliefs as a result of the dialogue. A genuine conflict is found to exist between the cultures of the interpreter and the other, and as a consequence, the critic changes his own perspective (in this case, his moral background assumptions). (It may be difficult to distinguish dialogical and conservative perspective shifts since the demarcation line between beliefs on particular facts on the one hand and more general and fundamental moral principles and factual beliefs on the other is not sharp.)

#### E) Commodification- Trading narrative for the ballot commodifies one’s identity and has limited impact on the culture that one attempt’s to reform – when autobiographical narrative “wins,” it subverts its own most radical intentions by becoming an exemplar of the very culture under indictment

Coughlin 95—associate Professor of Law, Vanderbilt Law School. (Anne, REGULATING THE SELF: AUTOBIOGRAPHICAL PERFORMANCES IN OUTSIDER SCHOLARSHIP, 81 Va. L. Rev. 1229)

Although Williams is quick to detect insensitivity and bigotry in remarks made by strangers, colleagues, and friends, her taste for irony fails her when it comes to reflection on her relationship with her readers and the material benefits that her autobiographical performances have earned for her. n196 Perhaps Williams should be more inclined to thank, rather than reprimand, her editors for behaving as readers of autobiography invariably do. When we examine this literary faux pas - the incongruity between Williams's condemnation of her editors and the professional benefits their publication secured her - we detect yet another contradiction between the outsiders' use of autobiography and their desire to transform culture radically. Lejeune's characterization of autobiography as a "contract" reminds us that autobiography is a lucrative commodity. In our culture, members of the reading public avidly consume personal stories, n197 which surely explains why first-rate law journals and academic presses have been eager to market outsider narratives. No matter how unruly the self that it records, an autobiographical performance transforms that self into a form of "property in a moneyed economy" n198 and into a valuable intellectual [\*1283] asset in an academy that requires its members to publish. n199 Accordingly, we must be skeptical of the assertion that the outsiders' splendid publication record is itself sufficient evidence of the success of their endeavor. n200

Certainly, publication of a best seller may transform its author's life, with the resulting commercial success and academic renown. n201 As one critic of autobiography puts it, "failures do not get published." n202 While writing a successful autobiography may be momentous for the individual author, this success has a limited impact on culture. Indeed, the transformation of outsider authors into "success stories" subverts outsiders' radical intentions by constituting them as exemplary participants within contemporary culture, willing to market even themselves to literary and academic consumers. n203 What good does this transformation do for outsiders who are less fortunate and less articulate than middle-class law professors? n204 Although they style themselves cultural critics, the [\*1284] storytellers generally do not reflect on the meaning of their own commercial success, nor ponder its entanglement with the cultural values they claim to resist. Rather, for the most part, they seem content simply to take advantage of the peculiarly American license, identified by Professor Sacvan Bercovitch, "to have your dissent and make it too." n205

#### Performance is not a mode of resistance - it gives too much power to the audience because the performer is structurally blocked from controlling the (re)presentation of their representations. Appealing to the ballot is a way of turning over one’s identity to the same reproductive economy that underwrites liberalism

Phelan 96—chair of New York University's Department of Performance Studies (Peggy, Unmarked: the politics of performance, ed published in the Taylor & Francis e-Library, 2005, 146

Performance’s only life is in the present. Performance cannot be saved, recorded, documented, or otherwise participate in the circulation of representations of representations: once it does so, it becomes something other than performance. To the degree that performance attempts to enter the economy of reproduction it betrays and lessens the promise of its own ontology. Performance’s being, like the ontology of subjectivity proposed here, becomes itself through disappearance.

The pressures brought to bear on performance to succumb to the laws of the reproductive economy are enormous. For only rarely in this culture is the “now” to which performance addresses its deepest questions valued. (This is why the now is supplemented and buttressed by the documenting camera, the video archive.) Performance occurs over a time which will not be repeated. It can be performed again, but this repetition itself marks it as “different.” The document of a performance then is only a spur to memory, an encouragement of memory to become present.

#### F) No reason to vote neg- androcentraism doesn’t control our impacts

Hooper 1-Hooper, Research Associate @ Bristol, 1

Charlotte, University of Bristol research associate in politics, Manly States: Masculinities, International Relations, and Gender Politics pp 45-46.

Spike Peterson and Anne Sisson Runyan (1993), in their discussion of gendered dichotomies, appear to drop Lacanian psychoanalytic discourse as an explanation for gendered dichotomies in favor of a more straightforward- ly political account.14Gendered dichotomies, rather than uniformly con- structing gendered social relations through universal psychoanalytic mecha- nisms, are seen more ambiguously, as playing a dual role. Where gendered dichotomies are used as an organizing principle of social life (such as in the gendered division of labor) they help to construct gender differences and in- equalities and thus are constitutive of social reality, but in positing a grid of polar opposites, they also serve to obscure more complex relationships, commonalties, overlaps, and intermediate positions (Peterson and Runyan 1993, 24–25). Elaborating on this view, it can be argued that gendered dichotomies are in part ideological tools that mystify, masking more complex social realities and reinforcing stereotypes. On one level, they do help to produce real gen- der differences and inequalities, when they are used as organizing principles that have practical effects commensurate with the extent that they become embedded in institutional practices, and through these, human bodies. They constitute one dimension in the triangular nexus out of which gender identities and the gender order are produced. But at the same time, **institutional practices are** not always completely or unambiguously **informed by such dichotomies, which may then operate to obscure more complex relationships. It is a** mistake to see the language **of gendered dichotomies as a uniﬁed and totalizing discourse that dictates every aspect of social practice to the extent that we are coherently produced as subjects in its dualistic image. As well as the disruptions and discontinuities engendered by the** inter- sections and interjections **of other discourses (race, class, sexuality, and so on) there is always room for evasion, reversal, resistance, and dissonance be- tween rhetoric, practice, and embodiment, as well as reproduction of the symbolic order, as identities are negotiated in relation to all three dimen- sions, in a variety of complex and changing circumstances**. On the other hand, the symbolic gender order does inform practice, and our subjectivi- ties are produced in relation to it, so to dismiss it as performing only an ide- ological or propagandistic role is also too simplistic.

#### No single cause of violence

Muro-Ruiz 2 (Diego, London School of Economics, “The Logic of Violence”, Politics, 22(2), p. 116)

Violence is, most of the time, a wilful choice, especially if it is made by an organisation. Individuals present the scholar with a more difficult case to argue for. Scholars of violence have now a wide variety of perspectives they can use – from sociology and political science, to psychology, psychiatry and even biology – and should escape easy judgements. However, the fundamental difficulty for all of us is the absence of a synthetic, general theory able of integrating less complete theories of violent behaviour. In the absence of such a general theory, researchers should bear in mind that violence is a complex and multifaceted phenomenon that resists mono-causal explanations. Future research on violence will have to take in account the variety of approaches, since they each offer some understanding of the logic of violence.