## 1NC F/W

### -- Definitions

#### Affirmative teams should instrumentally defend topical action --- their failure to do so is a voting issue

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

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

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

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

Ericson, 03 (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

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

#### Should indicates obligation or duty

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

should

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

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

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

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

### -- Decision Making

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

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

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

#### Rules and process key

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The process of democratic governance is more than a means to an end. Often, how we deliberate a policy is as important or even more important to the outcome of the debate than the underlying issue itself. Recent history is rife with examples of laws that rose and fell on the mechanics of voting in the legislative body or the parliamentary vehicles in which the legislation was offered. There is a normative element to deliberation in a democracy, and failure to vet an issue sufficiently is often seen as grounds for rejecting the legislation itself (Paroske, 2009). For example, it is routine for legislators of a minority party in Congress to denounce a pending bill because there were not enough hearings on the issue, or that a sufficient number or kind of amendments was not allowed, or even that the time devoted to debate on the floor was insufficient. These questions of process in legislation dominate headlines. Less studied, but perhaps even more interesting, are questions of process in a regulatory framework. Given its complexity, rulemaking is especially prone to process- oriented questions. Far more than legislation, rules must navigate a number of prescribed argumentative hurdles on their way to adoption. This raises the stakes for following proper procedure both logically and practically, as violating protocols makes it likely the rule will be rejected. In addition, the authority of agencies in the federal government is nebulous. Agency power to make rules is delegated by Congress, but there is little consensus on the degree of latitude that those designees hold. Since rulemakers lack constitu- tional warrants for coercing citizen behavior, they are highly susceptible to criticism of their authority and jurisdiction. Asked to act both independently and under the watch of the constitutional branches, rulemakers must pay careful attention to process.

### -- War Powers Good

#### Second - 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.

### -- State

#### Third - Failure to engage the state means the aff fails, coalitions break down, and hawks seize the political – only engagement solves

**Mouffe 2009** (Chantal Mouffe is Professor of Political Theory at the Centre for the Study of Democracy, University of Westminster, “The Importance of Engaging the State”, *What is Radical Politics Today?*, Edited by Jonathan Pugh, pp. 233-7)

In both Hardt and Negri, and Virno, there is therefore emphasis upon ‘critique as withdrawal’. They all call for the development of a non-state public sphere. They call for self-organisation, experimentation, non-representative and extra-parliamentary politics. They see forms of traditional representative politics as inherently oppressive. So they do not seek to engage with them, in order to challenge them. They seek to get rid of them altogether. This disengagement is, for such influential personalities in radical politics today, the key to every political position in the world. The Multitude must recognise imperial sovereignty itself as the enemy and discover adequate means of subverting its power. Whereas in the disciplinary era I spoke about earlier, sabotage was the fundamental form of political resistance, these authors claim that, today, it should be desertion. It is indeed through desertion, through the evacuation of the places of power, that they think that battles against Empire might be won. Desertion and exodus are, for these important thinkers, a powerful form of class struggle against imperial postmodernity. According to Hardt and Negri, and Virno, radical politics in the past was dominated by the notion of ‘the people’. This was, according to them, a unity, acting with one will. And this unity is linked to the existence of the state. The Multitude, on the contrary, shuns political unity. It is not representable because it is an active self-organising agent that can never achieve the status of a juridical personage. It can never converge in a general will, because the present globalisation of capital and workers’ struggles will not permit this. It is anti-state and anti-popular. Hardt and Negri claim that the Multitude cannot be conceived any more in terms of a sovereign authority that is representative of the people. They therefore argue that new forms of politics, which are non-representative, are needed. They advocate a withdrawal from existing institutions. This is something which characterises much of radical politics today. The emphasis is not upon challenging the state. Radical politics today is often characterised by a mood, a sense and a feeling, that the state itself is inherently the problem. Critique as engagement I will now turn to presenting the way I envisage the form of social criticism best suited to radical politics today. I agree with Hardt and Negri that it is important to understand the transition from Fordism to post-Fordism. But I consider that the dynamics of this transition is better apprehended within the framework of the approach outlined in the book Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (Laclau and Mouffe, 2001). What I want to stress is that many factors have contributed to this transition from Fordism to post-Fordism, and that it is necessary to recognise its complex nature. My problem with Hardt and Negri’s view is that, by putting so much emphasis on the workers’ struggles, they tend to see this transition as if it was driven by one single logic: the workers’ resistance to the forces of capitalism in the post-Fordist era. They put too much emphasis upon immaterial labour. In their view, capitalism can only be reactive and they refuse to accept the creative role played both by capital and by labour. To put it another way, they deny the positive role of political struggle. In Hegemony and Socialist Strategy: Towards a Radical Democratic Politics we use the word ‘hegemony’ to describe the way in which meaning is given to institutions or practices: for example, the way in which a given institution or practice is defined as ‘oppressive to women’, ‘racist’ or ‘environmentally destructive’. We also point out that every hegemonic order is therefore susceptible to being challenged by counter-hegemonic practices – feminist, anti-racist, environmentalist, for example. This is illustrated by the plethora of new social movements which presently exist in radical politics today (Christian, anti-war, counter-globalisation, Muslim, and so on). Clearly not all of these are workers’ struggles. In their various ways they have nevertheless attempted to influence and have influenced a new hegemonic order. This means that when we talk about ‘the political’, we do not lose sight of the ever present possibility of heterogeneity and antagonism within society. There are many different ways of being antagonistic to a dominant order in a heterogeneous society – it need not only refer to the workers’ struggles. I submit that it is necessary to introduce this hegemonic dimension when one envisages the transition from Fordism to post-Fordism. This means abandoning the view that a single logic (workers’ struggles) is at work in the evolution of the work process; as well as acknowledging the pro-active role played by capital. In order to do this we can find interesting insights in the work of Luc Boltanski and Eve Chiapello who, in their book The New Spirit of Capitalism (2005), bring to light the way in which capitalists manage to use the demands for autonomy of the new movements that developed in the 1960s, harnessing them in the development of the post-Fordist networked economy and transforming them into new forms of control. They use the term ‘artistic critique’ to refer to how the strategies of the counter-culture (the search for authenticity, the ideal of selfmanagement and the anti-hierarchical exigency) were used to promote the conditions required by the new mode of capitalist regulation, replacing the disciplinary framework characteristic of the Fordist period. From my point of view, what is interesting in this approach is that it shows how an important dimension of the transition from Fordism to post- Fordism involves rearticulating existing discourses and practices in new ways. It allows us to visualise the transition from Fordism to post- Fordism in terms of a hegemonic intervention. To be sure, Boltanski and Chiapello never use this vocabulary, but their analysis is a clear example of what Gramsci called ‘hegemony through neutralisation’ or ‘passive revolution’. This refers to a situation where demands which challenge the hegemonic order are recuperated by the existing system, which is achieved by satisfying them in a way that neutralises their subversive potential. When we apprehend the transition from Fordism to post- Fordism within such a framework, we can understand it as a hegemonic move by capital to re-establish its leading role and restore its challenged legitimacy. We did not witness a revolution, in Marx’s sense of the term. Rather, there have been many different interventions, challenging dominant hegemonic practices. It is clear that, once we envisage social reality in terms of ‘hegemonic’ and ‘counter-hegemonic’ practices, radical politics is not about withdrawing completely from existing institutions. Rather, we have no other choice but to engage with hegemonic practices, in order to challenge them. This is crucial; otherwise we will be faced with a chaotic situation. Moreover, if we do not engage with and challenge the existing order, if we instead choose to simply escape the state completely, we leave the door open for others to take control of systems of authority and regulation. Indeed there are many historical (and not so historical) examples of this. When the Left shows little interest, Right-wing and authoritarian groups are only too happy to take over the state. The strategy of exodus could be seen as the reformulation of the idea of communism, as it was found in Marx. There are many points in common between the two perspectives. To be sure, for Hardt and Negri it is no longer the proletariat, but the Multitude which is the privileged political subject. But in both cases the state is seen as a monolithic apparatus of domination that cannot be transformed. It has to ‘wither away’ in order to leave room for a reconciled society beyond law, power and sovereignty. In reality, as I’ve already noted, others are often perfectly willing to take control. If my approach – supporting new social movements and counterhegemonic practices – has been called ‘post-Marxist’ by many, it is precisely because I have challenged the very possibility of such a reconciled society. To acknowledge the ever present possibility of antagonism to the existing order implies recognising that heterogeneity cannot be eliminated. As far as politics is concerned, this means the need to envisage it in terms of a hegemonic struggle between conflicting hegemonic projects attempting to incarnate the universal and to define the symbolic parameters of social life. A successful hegemony fixes the meaning of institutions and social practices and defines the ‘common sense’ through which a given conception of reality is established. However, such a result is always contingent, precarious and susceptible to being challenged by counter-hegemonic interventions. Politics always takes place in a field criss-crossed by antagonisms. A properly political intervention is always one that engages with a certain aspect of the existing hegemony. It can never be merely oppositional or conceived as desertion, because it aims to challenge the existing order, so that it may reidentify and feel more comfortable with that order. Another important aspect of a hegemonic politics lies in establishing linkages between various demands (such as environmentalists, feminists, anti-racist groups), so as to transform them into claims that will challenge the existing structure of power relations. This is a further reason why critique involves engagement, rather than disengagement. It is clear that the different demands that exist in our societies are often in conflict with each other. This is why they need to be articulated politically, which obviously involves the creation of a collective will, a ‘we’. This, in turn, requires the determination of a ‘them’. This obvious and simple point is missed by the various advocates of the Multitude. For they seem to believe that the Multitude possesses a natural unity which does not need political articulation. Hardt and Negri see ‘the People’ as homogeneous and expressed in a unitary general will, rather than divided by different political conflicts. Counter-hegemonic practices, by contrast, do not eliminate differences. Rather, they are what could be called an ‘ensemble of differences’, all coming together, only at a given moment, against a common adversary. Such as when different groups from many backgrounds come together to protest against a war perpetuated by a state, or when environmentalists, feminists, anti-racists and others come together to challenge dominant models of development and progress. In these cases, the adversary cannot be defined in broad general terms like ‘Empire’, or for that matter ‘Capitalism’. It is instead contingent upon the particular circumstances in question – the specific states, international institutions or governmental practices that are to be challenged. Put another way, the construction of political demands is dependent upon the specific relations of power that need to be targeted and transformed, in order to create the conditions for a new hegemony. This is clearly not an exodus from politics. It is not ‘critique as withdrawal’, but ‘critique as engagement’. It is a ‘war of position’ that needs to be launched, often across a range of sites, involving the coming together of a range of interests. This can only be done by establishing links between social movements, political parties and trade unions, for example. The aim is to create a common bond and collective will, engaging with a wide range of sites, and often institutions, with the aim of transforming them. This, in my view, is how we should conceive the nature of radical politics.

#### Yes the government has flawed components but challenging our understanding of government is important and valuable through discussion of federal policies--- Learning that language allows us to confront and challenge those institutions outside of this round and resolves a lot of the impacts they discuss

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ACCORDING TO LASSWELL (1971), policy science is about the production and application of knowledge of and in policy. Policy-makers who desire to tackle problems on the political agenda successfully, should be able to mobilise the best available knowledge. This requires high-quality knowledge in policy. Policy-makers and, in a democracy, citizens, also need to know how policy processes really evolve. This demands precise knowledge of policy. There is an obvious link between the two: the more and better the knowledge of policy, the easier it is to mobilise knowledge in policy. Lasswell expresses this interdependence by defining the policy scientist's operational task as eliciting the maximum rational judgement of all those involved in policy-making. For the applied policy scientist or policy analyst this implies the development of two skills. First, for the sake of mobilising the best available knowledge in policy, he/she should be able to mediate between different scientific disciplines. Second, to optimise the interdependence between science in and of policy, she/he should be able to mediate between science and politics. Hence Dunn's (1994, page 84) formal definition of policy analysis as an applied social science discipline that uses multiple research methods in a context of argumentation, public debate [and political struggle] to create, evaluate critically, and communicate policy-relevant knowledge. Historically, the differentiation and successful institutionalisation of policy science can be interpreted as the spread of the functions of knowledge organisation, storage, dissemination and application in the knowledge system (Dunn and Holzner, 1988; van de Graaf and Hoppe, 1989, page 29). Moreover, this scientification of hitherto 'unscientised' functions, by including science of policy explicitly, aimed to gear them to the political system. In that sense, Lerner and Lasswell's (1951) call for policy sciences anticipated, and probably helped bring about, the scientification of politics. Peter Weingart (1999) sees the development of the science-policy nexus as a dialectical process of the scientification of politics/policy and the politicisation of science. Numerous studies of political controversies indeed show that science advisors behave like any other self-interested actor (Nelkin, 1995). Yet science somehow managed to maintain its functional cognitive authority in politics. This may be because of its changing shape, which has been characterised as the emergence of a post-parliamentary and post-national network democracy (Andersen and Burns, 1996, pages 227-251). National political developments are put in the background by ideas about uncontrollable, but apparently inevitable, international developments; in Europe, national state authority and power in public policy-making is leaking away to a new political and administrative elite, situated in the institutional ensemble of the European Union. National representation is in the hands of political parties which no longer control ideological debate. The authority and policy-making power of national governments is also leaking away towards increasingly powerful policy-issue networks, dominated by functional representation by interest groups and practical experts. In this situation, public debate has become even more fragile than it was. It has become diluted by the predominance of purely pragmatic, managerial and administrative argument, and under-articulated as a result of an explosion of new political schemata that crowd out the more conventional ideologies. The new schemata do feed on the ideologies; but in larger part they consist of a random and unarticulated 'mish-mash' of attitudes and images derived from ethnic, local-cultural, professional, religious, social movement and personal political experiences. The market-place of political ideas and arguments is thriving; but on the other hand, politicians and citizens are at a loss to judge its nature and quality. Neither political parties, nor public officials, interest groups, nor social movements and citizen groups, nor even the public media show any inclination, let alone competency, in ordering this inchoate field. In such conditions, scientific debate provides a much needed minimal amount of order and articulation of concepts, arguments and ideas. Although frequently more in rhetoric than substance, reference to scientific 'validation' does provide politicians, public officials and citizens alike with some sort of compass in an ideological universe in disarray. For policy analysis to have any political impact under such conditions, it should be able somehow to continue 'speaking truth' to political elites who are ideologically uprooted, but cling to power; to the elites of administrators, managers, professionals and experts who vie for power in the jungle of organisations populating the functional policy domains of post-parliamentary democracy; and to a broader audience of an ideologically disoriented and politically disenchanted citizenry.

### -- Legal good for aff

#### It is best to discuss legal solutions while still taking a disenchanted view of the law - we recognize the futulity of the legal system; but we also know our words alone cannot solve structural problems – there are day to day struggles and suffering that require legal change

Angela P Harris, self described race and feminist scholar who teaches law at UC Davis in 1994 (**Angela P. Harris** (born c. 1959) is a [legal scholar](http://en.wikipedia.org/wiki/Law_professor) at [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), in the fields of [critical race theory](http://en.wikipedia.org/wiki/Critical_race_theory), [feminist legal scholarship](http://en.wikipedia.org/wiki/Feminist_legal_theory), and [criminal law](http://en.wikipedia.org/wiki/Criminal_law). She held the position of Professor of Law at [UC Berkeley School of Law](http://en.wikipedia.org/wiki/UC_Berkeley_School_of_Law), joining the faculty in 1988. In 2009, Professor Harris joined the faculty of the [State University of New York at Buffalo](http://en.wikipedia.org/wiki/University_at_Buffalo%2C_The_State_University_of_New_York) Law School as a Visiting Professor. In 2010, she also assumed the role of Acting Vice Dean for Research & Faculty Development.[[1]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-1) In 2011, she accepted an offer to join the faculty at the [UC Davis School of Law](http://en.wikipedia.org/wiki/UC_Davis_School_of_Law), and began teaching as a Professor of Law in the 2011-2012 academic year.[[2]](http://en.wikipedia.org/wiki/Angela_P._Harris#cite_note-2)California Law Review¶ July, 1994¶ 82 Calif. L. Rev. 741¶ LENGTH: 21949 words Foreword: The Jurisprudence of Reconstruction NAME: Angela P. Harris BIO: Professor of Law, University of California, Berkeley, Boalt Hall School of Law. My thanks to Sheila Foster, Ed Rubin, Marjorie Shultz, and Jan Vetter for their helpful comments on previous versions of this essay. Thanks also to the editors at the California Law Review for their patience and persistence. Last, but not least, thanks to Jorge Sanchez for exemplary research assistance and thoughtful, searching commentary. All mistakes, misunderstandings, and misjudgments, of course, are mine. A picture of her can be found here <http://law.scu.edu/socialjustice/women-law-stories-book-chapter-one/>)

B. Jurisprudence and Disenchantment ¶ In the previous Section, I identified the development of a theory of the racialized subject as one way in which a jurisprudence of reconstruction might aspire toward a more sophisticated modernism. Another message of the clash between modernism and its discontents, however, is that a jurisprudence of reconstruction should aspire to disenchantment. Both the postmodern critique and the history of "race relations" cast doubt on the ability of newer and more enlightening theories to vanquish racism. In their commitment to anti-subordination, race-crits should not abandon rationalist reason; but rationalism may come to represent just one among many tools of social change.¶ Disenchantment also entails giving up a certain romanticism about the rhetorical apparatus of modernism: the belief in liberation, in the efficacy of "revolution," [n184](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n184) and in racial communities as unproblematic, harmonious "homes." A disenchanted jurisprudence of reconstruction focuses instead on the moment to moment struggles to alleviate suffering and alienation.¶ 1. The Disenchanted Intellectual ¶ One response to the postmodernist reduction of knowledge to power is a new - and disenchanted - attention to the function of professional intel [\*779] lectuals as a class. The post-colonialist theorist Gayatri Spivak, for example, is careful to examine the double effects of her own intellectual practices. Writing about a conference of humanist scholars that she attended, Spivak comments, "I thought the desire to explain might be a symptom of the desire to have a self that can control knowledge and a world that can be known." [n185](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n185) The scholar's zeal for providing explanations is itself a modernist symptom: "the possibility of explanation carries the presupposition of an explainable (even if not fully) universe and an explaining (even if imperfectly) subject. These presuppositions assure our being." [n186](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n186) In this way, Spivak calls attention to the conflict between postmodernist intellectual theories and modernist intellectual practices.¶ Spivak goes on to argue that the academic humanist project of providing explanations for everything serves a particular function in contemporary capitalist society: "Our role is to produce and be produced by the official explanations in terms of the powers that police the entire society, emphasizing a continuity or a discontinuity with past explanations, depending on a seemingly judicious choice permitted by the play of this power." [n187](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n187) Spivak's response is to propose that the pedagogy of the humanities become self-critical and enter "the arena of cultural explanations that questions the explanations of culture." [n188](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n188)¶ This awareness of the role of universities and professional academics in keeping a particular set of political and economic relations in place is one effect of postmodernist disenchantment, and it brings us back to the critique of normativity. As Gerald Wetlaufer has noted, the pressure of legal normativity - the demand that legal academics propose solutions that can be implemented within the existing legal system - impels legal scholars to take the law as their client. [n189](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n189) A disenchanted jurisprudence of reconstruction would not conclude that providing legal answers to legal questions is therefore futile or "counterrevolutionary"; but as Spivak suggests, it would put on the agenda the need to keep in mind the larger political and economic context of law professing as race-crits continue their theory-building.¶ One consequence might be a reconsideration of the "race for theory" itself. If the price for admission to the academy (say, the admission by Richard Posner that CRT really does have an idea or two to offer, after all) [n190](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n190) is a hyperabstract theorizing that makes a public debate about race and racism impossible, race-crits may want to hold assimilation into the [\*780] bureaucracy of the university at arm's length. Here CRT's engagement in the politics of difference may help keep it suspended in creative balance. A jurisprudence of reconstruction cannot afford to become enchanted with either "theory" or "practice"; its work instead is to refuse that dichotomy.¶ 2. The Politics of Joy ¶ Another symptom of disenchantment might be a healthy recognition of rationalism's limitations in anti-racist struggle. One consequence of this recognition is an appreciation of scholarship as an aesthetic practice, and the positive role that emotion, joined with reason, can play in intellectual work. A second consequence of recognizing rationalism's limitations is a greater focus on empowerment as a goal in itself, rather than simply a step toward emancipation. The third and broadest consequence of greater attention to the limitations of rationalism might be a greater acknowledgement of the importance of spirituality in human life generally and in racial struggle in particular. Cornel West has argued that despite the conflicts between modernism and postmodernism, both the "bourgeois" and the "Foucaultian" models of intellectual life keep intellectuals safely away from insurgent change. [n191](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n191) West urges black intellectuals to reject this self-image, and instead to articulate "a new "regime of truth' linked to, yet not confined by, indigenous institutional practices permeated by the kinetic orality and emotional physicality, the rhythmic syncopation, the protean improvisation and the religious, rhetorical and antiphonal repetition of African American life." [n192](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n192)¶ One way to unpack this statement is to read West as blurring the traditional line between mind and body: between intellectuals, who work only "in the head," and artists, who are sensitive to the needs of emotions, the body, and the spirit. [n193](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n193) A serious disenchantment with rationalism might mean an expansion of what it means to be an "intellectual," to embrace music, art, dance, and preaching as equally honorable as traditional "theorizing."¶ Legal storytelling contains possibilities for this kind of expansion. Part of the power of storytelling lies in its capacity to create pleasure and other emotions. Stories can be told that do more than inform the reader of "what really happened," or challenge the reader's assumptions about truth [\*781] and objectivity. As Martha Nussbaum has argued, literature is prized not only because of the rational information it imparts, but because it speaks to the emotions and to the soul. [n194](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n194) Legal storytelling thus has the capacity not just to engage the rational faculty, but other faculties as well. [n195](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n195)¶ The concept of empowerment is a second avenue to disenchantment with reason. A key word within the politics of difference has been "empowerment": a shift of focus away from conceptions of "power" as power over someone toward power as ability or capacity, the power to do something. [n196](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n196) Barbara Christian argues that "one must distinguish the desire for power from the need to become empowered - that is, seeing oneself as capable of and having the right to determine one's life." [n197](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n197)¶ Empowerment is crucial within the politics of difference because of its function in resisting what Cornel West calls nihilism: "the lived experience of coping with a life of horrifying meaninglessness, hopelessness, and (most important) lovelessness." [n198](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n198) Legal concepts such as rights "empower" at least in part by creating and reinforcing a collective subject, an action through which subordinated groups resist their subordination. [n199](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n199) Through collective action in the name of the law and through literature, individuals who are members of subordinated groups can come to understand that they are not crazy, that they are not alone, that they have the capacity to act in the world. Empowerment in this context is an end in itself, not a way station on the path to modernist emancipation. The search [\*782] for empowerment thus draws not only on the capacity for reason, but also on the capacity for joy. [n200](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n200)¶ A third possible outcome of a disenchanted jurisprudence of reconstruction is an acknowledgement of the role of spirituality in human life. Anthony Cook argues that CRT can avoid "the charybdis of postmodern nihilism and the scylla of modern universalism" by drawing on the legacy of Dr. Martin Luther King, Jr. [n201](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n201) Cook calls for theory that is inspired by "prophetic vision" and that in particular draws on humility and love, arguing that these qualities enable intellectuals to draw on postmodernist critique without being overwhelmed by it, and to draw on modernist conceptions while still being aware of their flaws. [n202](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n202)¶ Cook argues that humility is a postmodernist value: "The arrogance and potential dominance associated with knowing the right answer and knowing what is best for the oppressed must be tempered with the postmodern contingency, relativity and potential deconstruction of our own foundations of knowledge." [n203](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n203) Love, however, is a value that transcends both modernism and postmodernism. Love in the sense of the Greek term agape, "the responsibility that accompanies being our brother's keeper," [n204](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n204) is the necessary ingredient for reconstructive transformation.¶ CRT for Cook, and for West, is part of a larger movement toward spiritual wholeness for the self and for the beloved community, a movement that cannot be ultimately achieved by human effort and struggle alone. This movement toward wholeness, however, is not a conventionally religious one reserved for Christians. Rather, as Cook explains:¶ Spirituality is the sincere striving for unalienated and unfractured human connection. Spirituality is understanding the limits of our knowledge and allowing the humility fostered by such understanding to open us to the possibilities of knowledge once impeded by the arrogance of our self-contained worlds. The spirituality that flows from a critical and open engagement with the hyphenated space is one that focuses our attention and concern on those less fortunate - [\*783] the least of these, the wretched of the earth, the despised, dejected, and downtrodden. In understanding our own marginality, we are prompted to understand the marginality of others who, because they are not forgotten in our critiques, are not forgotten in our visions of a better tomorrow. [n205](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n205) ¶ Here both the promise and the peril of "disenchantment" are stark. The history of religious intolerance reminds us that the arrogance of modernism in presuming that rationalist reason is superior to every other human faculty can easily reappear in an arrogance that presumes one's actions to be sanctified by one's spirituality. Mindful of this danger, Cook insists that King's humility and willingness to revise his own beliefs demonstrates that spirituality need not entail demagoguery or tyranny. [n206](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n206) It remains to be seen, however, whether race-crits will adopt Dr. King's particular Christian spirituality along with his concern for social justice.¶ 3. The End of the Innocence? ¶ Finally, one aspect of a disenchanted jurisprudence of reconstruction is a disenchantment with the romance of "race" itself. One of the comforts of belonging to a racially subordinated community has often been the sense of being "home," the sense that everyone in the community shares a unified perspective on the world. Modernist narratives that speak of "people of color" or subgroups thereof as a unified force draw on this powerful yearning for home. In a postmodern world, however, it is clear that no such unity exists. How, then, can race-crits and others speak of racial communities in ways that acknowledge this disunity?¶ Regina Austin's disenchanted vision of the black community provides one glimpse. Austin consistently places the phrase "the black community" in quotes, in a postmodernist acknowledgement that to speak of one unified community is problematic. As she points out, "though the ubiquitous experience of racism provides the basis for group solidarity, differences of gender, class, geography, and political affiliations keep blacks apart." [n207](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n207)¶ Nevertheless, Austin does not reject the concept of the black community altogether. Rather, she asserts that though there may not be one black community, there are black communities, consisting of "blacks who are bound by shared economic, social, and political constraints, and who pursue their freedom through affective engagement with each other." [n208](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n208) Even these bonds do not create an automatic utopia of racial harmony. Rather, the members of black communities must practice a "politics of identification." Quoting Stuart Hall, Austin describes the politics of identification as [\*784] ¶ [a] politics ... which works with and through difference, which is able to build those forms of solidarity and identification which make common struggle and resistance possible but without suppressing the real heterogeneity of interests and identities, and which can effectively draw the political boundary lines without which political contestation is impossible, without fixing those boundaries for eternity. [n209](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n209) ¶ Practicing a politics of identification recognizes that the dream of perfect unity is only a dream. It also emphasizes that racial communities, like other human communities, are the products of invention, not discovery. There are no "people of color" waiting to be found; we must give up our romance with racial community. [n210](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n210) Abandoning romance, however, does not mean ending commitment. If any lesson of the politics of difference can yet be identified, it is that solidarity is the product of struggle, not wishful thinking; and struggle means not only political struggle, but moral and ethical struggle as well.¶ Conclusion ¶ In Derrick Bell's book, Faces at the Bottom of the Well, Bell adopts the position that "racism is a permanent component of American life." [n211](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n211) Surprisingly, however, Bell does not intend to counsel despair to anti-racist activists. Rather, he looks to African American slavery as a model for the attitude he wishes us to adopt. "Knowing there was no escape, no way out, the slaves nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of selfhood. Their lives were brutally shackled, certainly - but not without meaning despite being imprisoned." [n212](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n212)¶ Similarly, Bell urges contemporary anti-racists to struggle against racism in order to make their lives meaningful rather than in the hope of someday magically sweeping racism away. The logic Bell uses in this argument is not the familiar "either/or" logic, but a "both and" logic:¶ It is not a matter of choosing between the pragmatic recognition that racism is permanent no matter what we do, or an idealism based on the long-held dream of attaining a society free of racism. Rather, it is a question of both, and. Both the recognition of the futility of action - where action is more civil rights strategies destined to fail - and the unalterable conviction that something must be done, that action must be taken. [n213](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n213) [\*785] ¶ Bell's urgings fit with the religious orientation of Anthony Cook and Cornel West. They also fit with the reconstruction jurisprudence I have been imagining in this Foreword. Reconstructing modernism requires both sophistication and disenchantment - both a commitment to building intellectual structures that are strong, complex, capacious, and sound, and a knowledge that reason and logic alone will never end racism, that words alone can never break down the barrier between ourselves and those we set out to persuade. [n214](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.88594.86935853821&target=results_DocumentContent&returnToKey=20_T18851471715&parent=docview&rand=1386904628450&reloadEntirePage=true" \l "n214) The jurisprudence of reconstruction, like the world the slaves made, is only one of meaning - neither magic nor the abyss.

## Case

### -- T Version / State / Prag

#### Embracement of the state, and pragmatic state actions are key to solve

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

#### This is an ineffective cite for counter-recruitment- voting aff does not change how the larger community perceives recruitment- NONE OF US ARE BEING RECRUITED- why does your ballot create any sort of movement

#### Discussions of the Judiciary are superior starting points for their movement- The Judiciary does not fall trap to the corruption you critique

Borislavov 2005

Rad, Ph.D. Candidate at Syracuse, August 2005, Debatte, Vol. 13, No. 2, p. 181-183

I would like to take a step back and consider what Agamben has implicitly silenced in this overarching and totalizing genealogy of modernity. In a recent article in the Boston Review, Larry Kramer points to the falling fortunes of popular constitutionalism in the US. While the history of popular constitutionalism in the US is quite rich and complex it also allows us to glimpse at how liberal constitutionalism deals with the problem of sovereignty. The division of powers in the liberal state notwithstanding, in recent years it has become the rule that the Supreme Court has assumed the role of interpreting the constitution for everyone else. In Kramer’s words, ‘‘The president, Congress, the states, and ordinary citizens can all express opinions about the meaning of the Constitution. But the Justices decide whether those opinions are right or wrong, and the Justices’ judgments are supposed to settle matters for everyone’’ (14). The doctrine of judicial supremacy, which was historically opposed to the departmentalist view, summarizes this state of affairs, and might be usefully approximated to what Schmitt defined as the effective and only apparent emptying out of the political in liberal democracy while the need for eminently political decisions remains very much in force. The fundamental question is: Who interprets the constitution? Kramer points out that the debates about the relative advantages of departmentalism and judicial supremacy go back to the 1790s and only recently has judicial supremacy come to dominate interpretations of the constitution. If we assume that, barring Agamben’s fundamentally new ontology, sovereignty still plays an important role, then we need to attend to the difficulties associated with this predicament. The more mundane question would be who and how exercises power. Liberalism is certainly not toothless, nor is it incapable of decision (as US interventions amply show), it simply presents its intentions in the garb of universalism and good will but the problem of sovereignty is by no means wished away in the doctrine of the separation of powers. That no social order can sustain itself without a sovereign was clear enough to conservative thinkers since the Enlightenment. Thus, in an effort to put in perspective Agamben’s teleology and his apocalyptic messianic language, we might offer the following objection: ‘‘a liberal theory of sovereign power understands full well the paradoxical relation between law and fact, norm and exception; and, precisely in light of such an understanding constructs an institutional system that cannot resolve the paradox but nonetheless attempts to prevent it from reaching an intensified and catastrophic conclusion’’ (501). Agamben will insist, of course, as Nasser Hussain rightly observes, that we are stuck with the very same assumption with which we began: ‘‘the source of the problem is not the institutional operation of sovereign power, but its object—bare life—so too the solution is not a proliferation of institutional safeguards but a rethinking of that mode of being’’ (501). My argument so far has been informed by the assumption that we need to read Schmitt both selectively and against many of his assertions, and despite the efforts of critics like Heinrich Meier who have attempted to present an essentially religious Schmitt, Schmitt retains only a very attenuated form of theology in his conceptual framework. For the Schmitt of Political Theology and the Verfassungslehre, it is of utmost importance who makes the decision on the exception, and not the ontological structure of the decision that Agamben tries to explicate. The necessity for a strong sovereign in Schmitt is indeed buttressed on a theological reference that acts by analogy (the miracle as analogous to the sovereign decision) but the thrust of the argument is concerned with the prosaic and immediate effects of power. It is conceivable that the rulings of the Supreme Court, to the extent that they remain unchallenged, approximate the decisions of a sovereign, of the one who decides on the exception, behind the veil of a broadly determined consensus, or Schmitt’s favorite image of the bourgeoisie as the clasa discutidora, the class that endlessly discusses. Agamben himself would not be averse to such a view because the rulings certainly bring out the zone of indistinction between law and fact, as well as the groundlessness of decision making constitutive of modernity. The question, however, is what is to be done about it? In his zeal to reveal the essence of potentiality and the role of constituting power, to bare the origins of an ontology that has defined the experience of power in the West but also to work toward the coming of a new one, Agamben inadvertently casts himself in the role of a philosopher king. The paradoxical conclusion, given Agamben’s insistence on ontology (he complains about ‘‘the meager propensity of our time for ontology’’) (The Coming Community 89) and the equation of ontology with biopolitics, is that we must make the guardians philosophers after they have duly internalized Agamben’s delphic pronouncements. How else is one to move from the oppression of ubiquitous sovereignty to whatever singularity without invoking the compromised potentiality of constituting power as revolution? It is interesting, and again paradoxical, that Agamben’s philosopher appeals to a sovereign on behalf of his new ontology, that is, to the developed Western democracies. If power continues to be exercised sovereignly what difference would a new ontology really make? Isn’t that what Heidegger attempted to do in his Rectoral address, although of course with a completely different political purpose? But for Agamben, a thinker who has chosen to dwell in uncertainties and ambiguities, the proximity of a disastrous outcome authorized by a possible new ontology and a truly new beginning is what is most intellectually satisfying.

#### Method doesn’t come first

Light 5 (Andrew, Environmental Philosophy @ NYU, “What is Pragmatic Philosophy”, http://faculty.washington.edu/alight/papers/Light.What%20Pragmatic.pdf. P. 349-351)

I have no easy answer to this question of how practical or “do-able” reform proposals made by philosophers should be. As suggested above, it is a question that has obvious important implications for the application of philosophical principles to environmental policy. My intuition though is that the pragmatist ought to have a long-term end in view while at the same time she must have at the ready viable alternatives which assume current political or economic systems and structures whenever possible. This is not to say that the pragmatic philosopher gives up on the tasks of defending alternatives to current structures, and the pursuit of those alternatives in democratic debates on the reallocation of resources. It only means that our position may require, for consistency sake to our pragmatic intentions at least, that we not rely exclusively on such changes in articulating our preferred ends for better public policies. In this context, there are at least two senses in which one could understand the meaning of “pragmatic” philosophy as discussed so far. (1) Philosophy that has practical intent, anchored to practical problems, and (2) Philosophy which aids in the development of policy solutions that can actually achieve support and consensus. While Young’s approach certainly encompasses (1) the question is whether she also does (2). My own pragmatist approach assumes that there is a connection between (1) and (2) (indeed, that (1) implies (2)). Assuming a successful argument that (1) and (2) are related in this way (for some this may take some argument, for others it will be obvious) then a question remains concerning how to go about achieving (2). Let me make just one suggestion for how the pragmatist could go about reconciling her desire to change systems with the need to make achievable policy recommendations. As is suggested by my approach, my view is that if a pragmatic philosophy in the end is in the service of an argument to create better polices, then in our democratic society it must be prepared to argue its case before the public, and perhaps sometimes only before policy makers. As Said puts it, the public intellectual not only wants to express her beliefs but also wants to persuade others—meaning the public at large—of her views (1994, p. 12). This raises the critical issue of how such appeals to the public are to be made. It raises the issue of how important persuasion is to the creation of pragmatic arguments. All philosophy is in some sense about persuasion, though to differentiate ourselves from rhetoricians (if we are interested in making such distinctions, which I still am) we must restrict ourselves to persuasion through some form of argument given more or less agreed upon (and revisable) standards for what counts as a good argument. But the pragmatic philosopher is not simply concerned with per- suading other philosophers. She is also interested in persuading the public either directly (in hopes that they will in turn influence policy makers) or indirectly, by appealling to policy makers who in turn help to shape public opinion. The work of a public philosophy is not solely for intramural philosophical discussion; it is aimed at larger forums. But as I suggested before, such a task requires some attention to the question of what motivates either the public, policy makers, or both to act. Our bar is set higher than traditional philosophical standards of validity and abstractly conceived soundness. For if we are to direct our philosophy at policies in a context other than a hypothetical philosophical framework, we must also make arguments which will motivate our audiences to act. Since we are dealing in ethi- cal and political matters, the question for pragmatic philosophers like Young and myself is how much we must attend to the issue of moral motivation in forming our pragmatic arguments. If we agree that the issue of moral motivation is always crucial for a pragmatic philosophy then at least two issues arise. First, as I suggested before, we must be prepared to embrace a theoretical or conceptual pluralism which allows us to pick and choose from a range of conceptual frameworks in making our arguments without committing to the theoretical monism which may be assumed in some versions of these frameworks. The reason is that we need to be able to make arguments that will appeal to the conceptual frameworks of our audiences while recognizing that these frameworks can change from audience to audience. So, if we think a utilitarian argument will be useful for talking to economists in decision making positions, then we should be allowed to engage such a framework without completely committing ourselves to utilitarianism.

### 1NC Cooption

**Claims of Cooptation isn’t offense—the aff is equally at risk for cooptation—you should affirm an optimistic outlook towards the law to reform and redefine it for positive purposes**

Lobel 7, Assistant Professor of Law

[February, 2007; Orly Lobel is an Assistant Professor of Law, University of San Diego. LL.M. 2000 (waived), Harvard Law School; LL.B. 1998, Tel-Aviv University, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 120 Harv. L. Rev. 937]

**A critique of cooptation often takes an uneasy path. Critique has** always **been and remains not simply an intellectual exercise but a political and moral act. The question we must constantly pose is how critical accounts of social reform models contribute to our ability to produce scholarship and action that will be constructive. To critique the ability of law to produce social change is inevitably to raise the question of alternatives.** In and of itself, **the exploration of the limits of law and the search for new possibilities is an insightful field of inquiry.** However, **the contemporary message that emerges from critical legal consciousness analysis has often resulted in the distortion of the critical arguments themselves.** **This distortion denies the potential of legal change in order to illuminate what has yet to be achieved or even imagined**. Most importantly, **cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement**. **When claims of legal cooptation are compared to possible alternative forms of activism, the false necessity embedded in the contemporary** [\*988] **story emerges - a story that privileges informal extralegal forms as transformative while assuming that a conservative tilt exists in formal legal paths.** In the triangular conundrum of "law and social change," **law is regularly the first to be questioned, deconstructed, and then critically dismissed.** The other two components of the equation - social and change - are often presumed to be immutable and unambiguous. **Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need**, in any effort for social reform, **to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action.** Despite its weaknesses, however, **law is an optimistic discipline**. It operates both in the present and in the future. Order without law is often the privilege of the strong. **Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories**. **Rather than experiencing a disabling disenchantment with the legal system, we can learn from both the successes and failures of past models, with the aim of constantly redefining the boundaries of legal reform and making visible law's broad reach.**

**Giving up on connecting to conventional democratic institutions creates a higher level of cooptation and complacency.**

Lobel 07 (Orly Lobel, Assistant Professor of Law, University of San Diego, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, Harvard Law Review, 2007, Vol. 120)

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

### Legal Restraints Work

#### Pragmatic approach is critical to productive change---the aff fails

William J Novak 8, Associate Professor of History at the University of Chicago and Research Professor at the American Bar Foundation, “The Myth of the “Weak” American State”, June, http://www.history.ucsb.edu/projects/labor/speakers/documents/TheMythoftheWeakAmericanState.pdf

There is an alternativeIn the early twentieth century, amid a first wave of nation- state and economic consolidation and assertiveness, American social science generated some fresh ways of looking at power in all its guises—social, economic, political, and legalOvershadowed to some extent by exuberant bursts of American exceptionalism that greeted confrontations with totalitarianism and then terrorism, the pragmatic, critical, and realistic appraisal of American power is worth recoveringFrom Lester Frank Ward and John Dewey to Ernst Freund and John Commons to Morris Cohen and Robert Lee Hale, early American socioeconomic theorists developed a critique of a thin, private, and individualistic conception of American liberalism and interrogated the location, organization, and distribution of power in a modernizing United StatesAll understood the problem of power in America as complex and multifaceted, not simple or one-dimensional, especially as it concerned the relationship of state and civil societyRather than spend endless time debating the proper definition of law or the correct empirical measure of the state, they concentrated instead on detailed investigations of power in action in the everyday practices and policies that constituted American public lifeRather than confine the examination of power to the abstract realm of political theory or the official political acts of elites, electorates, interest groups, or social movements, these analysts instead embraced a more capacious conception of governance as “an activity which is apt to appear whenever men are associated together.”35 More significantly, these political and legal realists never forgot, amid the rhetoric of law and the pious platitudes that routinely flow from American political life, the very real, concrete consequences of the deployment of legal and political powerThey never forgot the brutal fact that Robert Cover would later state so provocatively at the start of his article “Violence and the Word” that legal and political interpretation take place “in a field of pain and death.” 36 The real consequences of American state power are all around usIn a democratic republic, where force should always be on the side of the governed, writing the history of that power has never been more urgent.

#### Legal restraints work---exception theory is self-serving and wrong

William E Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the PoliticalTo be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical meansBut the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to themThe claim also suffers from a certain vagueness and lack of conceptual precisionAt times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflictThe former argument is surely stronger than the latterAfter all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonismsIn the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fightersHis view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian modelBy broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal frameworkWhy is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international lawWe cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawedEvery modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian momentsThe same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sourcesIn short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to failMoreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt assertsIn some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12)Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50)Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of warThe Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field“Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universeTo be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date lawInstead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### Your evidence is about Bush not Obama- the affs abandonment of the state makes future atrocities inevitable- rhetorical changes are insufficient

Cole 10 (David Cole is a professor at Georgetown University Law Center, “Breaking Away,” http://www.newrepublic.com/article/magazine/politics/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror)

To dismiss the changes Obama has introduced as merely rhetorical, however, as Goldsmith and others have done, is to miss the critical difference between lawless and law-abiding exercises of state power. The Constitution, domestic law, and international law permit democracies to take aggressive action to defend themselves against attacks like the ones we suffered on September 11. But they insist that when the state employs coercion to achieve security, it must abide by rules designed to forestall government abuse and respect human rights. Bush blatantly disregarded this principle; Obama has embraced it. It is true that, by the end of his term, Bush had been compelled to curtail his most aggressive assertions of power. Waterboarding was out, many of the disappeared prisoners had been transferred to Guantánamo and identified, the military commissions had been improved, and courts were reviewing Guantánamo detentions. But Bush adopted these changes grudgingly, after losing before the courts, Congress, and public opinion. And as the declassified torture memos illustrate, his administration continued to obstinately reinterpret the laws against torture and cruel, inhuman, and degrading treatment in order to permit the CIA to do precisely what Congress, the courts, and international law had forbade. By contrast, Obama has willingly accepted the limits of law. Critics on all sides undermine their credibility if they fail to acknowledge the significant differences between Obama and Bush. Liberals risk sounding as if no national security policy short of ordinary criminal law enforcement will suffice, while conservatives and moderates appear tone-deaf to the difference that the rule of law makes to the legitimacy of state power. For both advocates of civil liberties and defenders of Bush, it is tempting to accuse the Obama administration of being no better than its predecessor. But if we fail to recognize the changes he has instituted, we run the risk of contributing to a misleading historical narrative that will support future presidents who might choose to repeat Bush’s errors. On issues of executive power, history can play an important role. Even if Obama himself is unlikely to unleash the tactics of the previous administration, a future president might justify doing so by pointing to the fact that observers from across the political spectrum agreed that both Bush and Obama had embraced the same policy. There are, however, two areas in which Obama has come up painfully short, and that is on issues of transparency and accountability. These failures threaten to undermine the good that Obama has otherwise done, because if U.S. counterterrorism policy is to succeed, it is critical to restore the trust that Bush’s policies so recklessly squandered.

## 2NC

### -- F/W Cards

#### Switching sides allows for a dialogical change in perspectives that resolve the affs impacts and foster sympathy

**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.)

**Smith et al 2001 -** JACKIE SMITH, State University of New York at Stony Brook JOHN D. MCCARTHY, Pennsylvania State University¶ CLARK MCPHAIL, University of Illinois at Urbana BOGUSLAW AUGUSTYN, Catholic University of America (From Protest to Agenda Building:¶ Description Bias in Media Coverage of Protest Events in Washington, D.C.\* Social Forces, Volume 79, Number 4, June 2001, pp. 1397-1423 (Article) Project muse)

Since Lipsky’s seminal statement, there has been tremendous growth in the use of public protests as a form of political action, particularly in Washington D.C. There are several paradoxes in this growth. While the number of protests has increased over the past several years — police and permit records reveal that more than 1,000 occur annually in the nation’s capitol — the amount of disorder attached to protest events has almost disappeared. This paradox is due in large part to the “routinization” of procedures for managing public protests (McPhail, Schweingruber & McCarthy 1998; McCarthy & McPhail 1998; McCarthy, McPhail & Crist 1999).3 Some scholars argue (Everett 1992) that protest activity, its increase notwithstanding, has become less effective as a political resource for powerless groups. Whether or not this is the case, social movement organizations continue to advocate or oppose social change by means of public demonstrations. Protests are daily fixtures in the capitol city of the U.S., and their numbers do not appear to be declining. This trend also continues despite the fact that social movements have developed other methods of communicating directly with a mass audience — such as door-to-door or telephone canvassing, direct mail, and the Internet — that do not depend on the sympathies of the mass media. Indeed, the importance of the mass media for social movement actors in the U.S. may be further enhanced by the greater reliance of citizens on mass media news sources — especially televised ones — and the declining influence of locally published newspapers (Iyengar & Kinder 1986).

Our research (McCarthy, McPhail & Smith 1996; McCarthy et al. 1998) has investigated how the mass media package the images of protest they project to the general public, including those third parties Lipsky views as vital to protest success. Our analysis suggests that social movement organizers who adopt Lipsky’s analysis cannot assume that mass media attention will necessarily represent their protest event(s) in ways that are consistent with social movement organization interests; to the contrary, mass media representation may complicate their efforts to convey the messages they seek to send to policy and decision makers. One reason for this complication is that media institutions operate under logics that are independent of and often contradictory to movement agendas

For example, Gitlin (1980) documents the effects of the media’s need for centralized organization and charismatic leaders on the internal cohesiveness and mutual trust and support of participants in the U.S. student movement of the 1960s. The contradictions between movement and media agendas are most dramatic for movements that directly challenge the economic system on which the corporate mass media depend, and here we can expect media coverage of protest to undermine the potential policy impact of movements. The illumination of relationships between media routines and social movements is therefore crucial to our understanding the processes of social change.

## 1NR

### -- F/W

#### Discussion of specific policy-questions is crucial for skills development--- government policy discussion is vital to force engagement with and resolution of competing perspectives to improve social outcomes, and, it breaks out of traditional pedagogical frameworks by positing students as agents of decision-making

**Esberg & Sagan 12** \*Jane Esberg is special assistant to the director at New York University's Center on. International Cooperation. She was the winner of 2009 Firestone Medal, AND \*\*Scott Sagan is a professor of political science and director of Stanford's Center for International Security and Cooperation “NEGOTIATING NONPROLIFERATION: Scholarship, Pedagogy, and Nuclear Weapons Policy,” 2/17 The Nonproliferation Review, 19:1, 95-108

These government or quasi-government think tank simulations often provide very similar lessons for high-level players as are learned by **students in educational simulations**. Government participants learn about the **importance of understanding foreign perspectives,** the need to practice internal coordination, and the necessity to compromise and coordinate with other governments in negotiations and crises. During the Cold War, political scientist Robert Mandel noted how crisis exercises and war games forced government officials to **overcome ‘‘bureaucratic myopia**,’’ moving beyond their normal organizational roles and **thinking more creatively** about how others might react in a crisis or conflict.6 The **skills of imagination** and the subsequent ability to **predict foreign interests** and reactions remain **critical for real-world** foreign **policy makers**. For example, simulations of the Iranian nuclear crisis\*held in 2009 and 2010 at the Brookings Institution’s Saban Center and at Harvard University’s Belfer Center, and involving former US senior officials and regional experts\*highlighted the dangers of misunderstanding foreign governments’ preferences and misinterpreting their subsequent behavior. In both simulations, the primary criticism of the US negotiating team lay in a failure to predict accurately how other states, both allies and adversaries, would behave in response to US policy initiatives.7 By **university age**, **students** often have a **pre-defined view of international affairs**, and the literature on simulations in education has long emphasized how such exercises **force students to challenge their assumptions** **about how other governments behave and how their own government works**.8 Since simulations became more common as a teaching tool in the late 1950s, **educational literature has expounded on their benefits**, **from encouraging engagement by breaking from the typical lecture format**, **to improving communication skills**, to promoting teamwork.9 More broadly, simulations can deepen understanding by asking students to link fact and theory, providing a context for facts while bringing theory into the realm of practice.10 These exercises are particularly valuable in teaching international affairs for many of the same reasons they are useful for policy makers: they force participants to ‘‘grapple with the issues arising from a world in flux.’’11 Simulations have been used successfully to teach students about such disparate topics as European politics, the Kashmir crisis, and US response to the mass killings in Darfur.12 **Role-playing exercises** certainly encourage students to learn political and technical facts\* but they learn them in a **more active style**. Rather than sitting in a classroom and merely receiving knowledge, **students actively research ‘‘their’’ government’s positions and actively argue, brief, and negotiate with others**.13 Facts can change quickly; simulations teach students **how to contextualize and act on information.**14

#### Critical Theory destroys the ability to engage in productive debates and political solutions. It is wishful thinking that produces only “me-search” and not “research”.

**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.

### -- Case

**Giving up on connecting to conventional democratic institutions creates a higher level of cooptation and complacency.**

Lobel 07 (Orly Lobel, Assistant Professor of Law, University of San Diego, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, Harvard Law Review, 2007, Vol. 120)

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