# 1nc

**The affirmative’s failure to read a topical plan undermines debate’s transformative potential**

**“United States Federal Government should” means the debate is solely about the outcome of a policy established by governmental means**

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.

**“Federal Government” means the central government in Washington D.C.**

**Encarta ‘2K** (Online Encyclopedia, http://encarta.msn.com)

“The federal government of the United States is centered in Washington DC”

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

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

**The first impact is Deliberation**

**Debate over a clear and specific controversial point of government action creates argumentative stasis – that’s a prerequisite to the negative’s ability to engage in the conversation — that’s critical to deliberation**

**Steinberg 8**, lecturer of communication studies – University of Miami, and Freeley, Boston based attorney who focuses on criminal, personal injury and civil rights law, **‘8**

(David L. and Austin J., Argumentation and Debate: Critical Thinking for Reasoned Decision Making p. 45)

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007. Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

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

Laura K. Donohue 13, 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.

**Debate is a question of skills not content – saying the world is dominated by whiteness is an inherency claim that voting aff can’t resolve – endorsing our political method teaches the tools that have a much better chance of dismantling those power structures**

**Paroske 11 -** Assistant professor of communication, Department of Communication and Visual Arts, University of Michigan ( Argumentation and Federal Rulemaking. Controversia; Fall2011, Vol. 7 Issue 2, p34-53, 20p ebsco)shaw

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.

**The second impact is government knowledge – debate’s key to in-depth governmental knowledge**

**Zwarensteyn 12**, Ellen, Thesis Submitted to the Graduate Faculty of GRAND VALLEY STATE UNIVERSITY In Partial Fulfillment of the Requirements For the Degree of Masters of Science, “High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning,” August, <http://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1034&context=theses>

The first trend to emerge concerns how debate fosters in-depth political knowledge. Immediately, every resolution calls for analysis of United States federal government action. Given that each debater may debate in over a hundred different unique rounds, there is a competitive incentive thoroughly research as many credible, viable, and in-depth strategies as possible. Moreover, the requirement to debate both affirmative and negative sides of the topic injects a creative necessity to defend viable arguments from a multitude of perspectives. As a result, the depth of knowledge spans questions not only of what, if anything, should be done in response to a policy question, but also questions of who, when, where, and why. This opens the door to evaluating intricacies of government branch, committee, agency, and even specific persons who may yield different cost-benefit outcomes to conducting policy action. Consider the following responses: I think debate helped me understand how Congress works and policies actually happen which is different than what government classes teach you. Process counterplans are huge - reading and understanding how delegation works means you understand that it is not just congress passes a bill and the president signs. You understand that policies can happen in different methods. Executive orders, congress, and courts counterplans have all helped me understand that policies don’t just happen the way we learn in government. There are huge chunks of processes that you don't learn about in government that you do learn about in debate. Similarly, Debate has certainly aided [my political knowledge]. The nature of policy-making requires you to be knowledgeable of the political process because process does effect the outcome. Solvency questions, agent counterplans, and politics are tied to process questions. When addressing the overall higher level of awareness of agency interaction and ability to identify pros and cons of various committee, agency, or branch activity, most respondents traced this knowledge to the politics research spanning from their affirmative cases, solvency debates, counterplan ideas, and political disadvantages. One of the recurring topics concerns congressional vs. executive vs. court action and how all of that works. To be good at debate you really do need to have a good grasp of that. There is really something to be said for high school debate - because without debate I wouldn’t have gone to the library to read a book about how the Supreme Court works, read it, and be interested in it. Maybe I would’ve been a lawyer anyway and I would’ve learned some of that but I can’t imagine at 16 or 17 I would’ve had that desire and have gone to the law library at a local campus to track down a law review that might be important for a case. That aspect of debate in unparalleled - the competitive drive pushes you to find new materials. Similarly, I think [my political knowledge] comes from the politics research that we have to do. You read a lot of names name-dropped in articles. You know who has influence in different parts of congress. You know how different leaders would feel about different policies and how much clout they have. This comes from links and internal links. Overall, competitive debaters must have a depth of political knowledge on hand to respond to and formulate numerous arguments. It appears debaters then internalize both the information itself and the motivation to learn more. This aids the PEP value of intellectual pluralism as debaters seek not only an oversimplified ‘both’ sides of an issue, but multiple angles of many arguments. Debaters uniquely approach arguments from a multitude of perspectives – often challenging traditional conventions of argument. With knowledge of multiple perspectives, debaters often acknowledge their relative dismay with television news and traditional outlets of news media as superficial outlets for information.

**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**

**Hoppe 99** Robert Hoppe is Professor of Policy and knowledge in the Faculty of Management and Governance at Twente University, the Netherlands. "Argumentative Turn" Science and Public Policy, volume 26, number 3, June 1999, pages 201–210 works.bepress.com

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.

**Prefer specificity—simulation about war powers is uniquely empowering**

Laura K. Donohue 13, 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

2. Factual Chaos and Uncertainty

One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often under-taught in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to swiftly and efficiently engage in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions related to professional responsibility that will confront them in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the ability to create conditions of learning.

**Our method is empirically successful and spills over**

**Horowitz 10**, Michael, assistant professor of political science at the University of Pennsylvania, “Debating Debate Club,” Entry 5, August 20th, http://www.slate.com/articles/arts/the\_book\_club/features/2010/debating\_debate\_club/can\_debate\_save\_the\_world\_or\_does\_it\_just\_help\_you\_get\_into\_a\_better\_college.html

As for your point about policy debate being hermetically sealed, consider this: The debaters who actually go into their communities and encourage more public dialogue are the policy debaters. They founded the National Association of Urban Debate Leagues, which serves more than 500 schools around the country. Peer-reviewed research shows that participating has helped more than 40,000 inner-city students improve their grades, graduate from high school, and attend college. Policy debaters go to Washington, D.C., and conduct accessible public debates for lay audiences about many topics, including nuclear weapons and environmental policy. They work with prison populations in Georgia and New York as a means of enfranchising those voices. They teach public speaking to kids of all ages in Jamaica, Malaysia, and South Korea. The middle-school policy debate program in the Atlanta Housing Authority has been recognized by the Bureau of Justice Administration as a potential national model for reducing gang participation among inner-city youth. The policy debate community makes these things happen because it believes that more students equipped with speaking and research skills is a good thing, that more knowledge about current events and political decisions is a powerful weapon, and that these benefits shouldn't be restricted to those who are already in positions of privilege.

# Case

You should use optimism as your starting point – their pessimistic account obscures history to justify the black body as dispossessed

Moten 8 (Fred, Helen L. Bevington Prof. of Modern Poetry @ Duke U., “Black Op,” Proceedings of the Modern Language Association of America, pp. 1745)

\*Paleonymic is the deconstruction term for creating new words for old terms

All this—which was always so essentially and authentically clear in its wrought, inventive, righteous obscurity—now often suffers being revealed and reviled in critique that advances by way of what is supposed to be the **closure of authenticity**, essence, **and experience**, all of which continue to be made to share the most precise and predictably easy-to-dismiss name, local habitation, and communal form of life. That blackness is often profiled and found wanting what it is and has, in work that involuntarily falls under the admittedly imprecise rubric of African American studies, is also unsurprising and is due not so much to chauvinistic reactions to real or perceived chauvinism but to the fact that blackness’s **distinction from a specific set of things that are called black remains largely unthought**. **Paraontological resistance** to this particular brand of orthodoxy requires a **paleonymic relation to blackness**, which is not in need of a highlight it already has or an extrachromatic saturation it already is or a rampant internal differentiation it already bears. As such, it need not be uncoupled from the forms that came to stand (in) for blackness, to which they could not be reduced and which could not be reduced to them. What is often **overlooked in blackness** is bound up with what **has often been overseen**. Certain experiences of being tracked, managed, cornered in seemingly open space are inextricably bound to an aesthetically and politically dangerous supplementarity, an **internal exteriority** waiting to get out, as if the prodigal’s return were to leaving itself. Black studies’ concern with what it is to **own one’s dispossession**, to mine what is held in having been possessed, makes it more possible to embrace the underprivilege of being sentenced to the gift of constant escape. The strain of black studies that **strains against this** interplay of itinerancy and identity—whether in the interest of putting down roots or disclaiming them—could be said, also, to constitute a departure, though it may well be into a **stasis more severe** than the one such work **imagines (itself to be leaving).** In contradistinction to such skepticism, one might plan, like Curtis Mayfield, to stay a believer and therefore to avow what might be called a kind of **metacritical optimism**. Such optimism, **black optimism**, is bound up with what it is to claim blackness and the appositional, runaway, phonoptic black operations—expressive of an autopoetic organization in which flight and inhabitation modify each other—that have been thrust upon it. The burden of this paradoxically aleatory goal is our historicity, animating the reality of escape in and the possibility of escape from.

#### In 1960 the government developed the COINTELL program against groups that actively speak out against the state – They pay government officials to infiltrate movements – The more powerful your movement gets – the more likely it is to be infiltrated – MLK was killed by Cointellpro agents and they stopped the BLACK NATIONALIST movements in their tracks

Carolyn **Baker**, Ph.D., October **2006**

<http://www.fromthewilderness.com/members/100306_war_you1.shtml> “THe War on You: the US Government targeting of American dissidents”

In 1956 a special program was designed by the FBI—the Counter Intelligence Program or COINTELPRO, which lasted “officially”, until 1971. In the words of Ward Churchill and Jim Vander Wall, authors of [THE COINTELPRO PAPERS](http://www.southendpress.org/2004/items/COINTELPRO), “it involved a unique experiment. Though covert operations have been employed throughout FBI history, the COINTELPRO’s were the first to be both broadly targeted and centrally directed.” [Churchill and Vander Wall’s book is strongly recommended and contains a treasure-trove of copies of original FBI documents.] While overall operations were centrally directed from Washington, day-to-day operations involved local field offices and required a great deal of communication back and forth from Washington to those offices. COINTELPRO generated an enormous paper trail which was largely kept hidden until the Freedom Of Information Act (FOIA) brought the paper trail to light, at which time, the FBI discontinued all of its formal domestic counter-intelligence programs, but did not cease its covert activities against U.S. dissidents. In fact, when J. Edgar Hoover died in 1972, the FBI “re-packaged” itself as a “new FBI”, but its COINTELPRO operations continued covertly. In the mid-1970s, the Church Committee, named after its founding Chair, Idaho Senator Frank Church, released volumes of documentation of FBI and CIA abuses. Church and his successor were driven from office, and then-National Security Advisor to Richard Nixon, Henry Kissinger, was instrumental in blocking the flow of information from the Church Committee to the public.[4](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn4#_ftn4) Although the original objective of COINTELPRO in 1956 was to “increase factionalism, cause disruption and win defections” inside the Communist Party, USA, it soon expanded to include disruption of the Socialist Workers Party, the Ku Klux Klan, African American nationalist groups, the Black Panther Party (BPP), the New Left, and the American Indian Movement (AIM). While many arrests of members of these groups were made over the decades, it is important to understand that even in cases where crimes had actually been committed, and those cases are few, the FBI policy of neutralizing these groups was in place prior to the arrests. For example, in 1919, J. Edgar Hoover wrote a letter proposing a strategy to neutralize African American nationalist leader, Marcus Garvey. In the proposal, Hoover recommends that the federal government invest vast legal resources to contrive a case against Garvey in order to make him appear guilty of a crime. As Churchill and Vander Hall note, “The key to understanding what really happened in the Garvey case lies squarely in appreciation of the fact that the decision to bring about his elimination had been made at the highest level of the Bureau long before any hint of criminal conduct could be attached to him.”[5](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn5#_ftn5) On August 25, 1967, J. Edgar Hoover, Director of the FBI, wrote a top-priority memo to all field offices clearly defining the purpose of COINTELPRO: The purpose of this new counterintelligence endeavor is to expose, disrupt, misdirect, discredit or otherwise neutralize the activities of black nationalist hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters, and to counter their propensity for violence and civil disorder…No opportunity should be missed to exploit through counterintelligence techniques the organizational and personal conflicts of the leadership of the groups and where possible an effort should be made to capitalize upon existing conflicts between competing black nationalist organizations.[*6*](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn6#_ftn6) Included in “black nationalist hate-type organizations” were the National Association For the Advancement Of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC) under the direction of Martin Luther King, Jr. Increasingly, attention was focused on King of whom Charles Brennan, FBI counter-intelligence specialist, stated: “We must mark [King] now, if we have not before, as the most dangerous Negro in the future of this Nation from the standpoint of communism, the Negro, and national security…it may be unrealistic to limit [our actions against King] to legalistic proofs that would stand up in court or before Congressional Committees.”[7](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn7#_ftn7) As we know Martin Luther King was assassinated in April, 1968 with very few answers regarding his murder and multitudinous questions left behind. The best analysis of King’s murder, in my opinion, is [William Pepper](http://en.wikipedia.org/wiki/William_F._Pepper)’s Orders To Kill and his later analysis, An Act Of State. The racist J. Edgar Hoover, whose own closeted, bizarre sexuality leaves many unanswered questions about his prurient curiosities regarding King’s personal life, ordered surveillance of King’s social activities and friendships, whispering incessantly of King’s purported infidelity to his wife. In a 1968 memo to field offices, Hoover details the strategy for neutralizing black liberation activists. Among them: “Prevent militant black nationalist groups and leaders from gaining respectability by discrediting them to three separate segments of the community. The goal of discrediting black nationalists must be handled tactically in three ways. You must discredit these groups and individuals to, first, the responsible Negro community. Second, they must be discredited to the white community, both the responsible community and to ‘liberals’ who have vestiges of sympathy for militant black nationalists simply because they are Negroes. Third, these groups must be discredited in the eyes of Negro radicals, the followers of the movement….” Before King’s death the Black Panther Party was organizing in major cities across America, and in late 1967 the Panthers initiated a free breakfast program for black children and offered free health care to many ghetto residents. By mid-1968 these measures had been augmented by a community education project and an anti-heroin campaign. The party was offering a viable strategy to improve the overall spiritual and material well being of ghetto life. Black community perceptions of the BPP were extremely positive and vastly different from the perceptions of the white police establishment. In a September, 1968 memo to COINTELPRO Director, William Sullivan, the FBI office in Washington ordered that, “…the counter-intelligence program against this organization [Black Panther Party] be accelerated and that each office submit concrete suggestions as to future action to be taken against the BPP.”[8](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn8#_ftn8) The memo continues: These suggestions are to create factionalism between not only the national leaders but also local leaders, steps to neutralize all organizational efforts of the BPP as well as create suspicion amongst the leaders as to each others’ spouses and suspicion as to who may be cooperating with law enforcement. In addition, suspicion should be developed as to who may be attempting to gain control of the organization for their own private betterment, as well as suggestions as to the best method of exploiting the foreign visits made by BPP members. We are also soliciting recommendations as to the best method of creating opposition to the BPP on the part of the majority of the residents of the ghetto area.[*9*](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn9#_ftn9) The ultimate tactic of “neutralization” was outright assassination. In late 1968, William O’Neal, working with COINTELPRO had infiltrated the BPP and become the bodyguard of a key member of the Chicago Black Panthers, Fred Hampton. O’Neal supplied the Chicago police and the FBI with the floor plan of Hampton’s apartment, and on the evening of December 3, slipped a dose of secobarbital into a glass of Kool-Aid consumed by Hampton who was comatose in his bed when a fourteen-man police team slammed into his home at 4 AM on the morning of December 4. Hampton was shot three times in the chest and twice more in the head at point-blank range. One year later, December 8, 1969 in Los Angeles, the target was Geronimo Pratt who unbeknownst to police decided to sleep on the floor that night rather than in his bed. A barrage of gunfire burst into Pratt’s apartment but missed him entirely. This time, the Panthers decided to defend themselves, and for four hours fought off police refusing to surrender until the press and the public were on the scene. A U.S. Attorney in San Francisco concluded that, “Whatever they are doing, they are out to get the Panthers.”[10](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn10#_ftn10) In 1971, George Jackson, celebrated prison author and honorary BPP Field Marshall, was assassinated in San Quentin Prison, an event which not only eliminated Jackson but neutralized attorney Angela Davis, head of Jackson’s defense organization and a leading spokesperson for the Panthers. In Sacramento the FBI used an infiltrator to have the Sacramento chapter of the BPP print a racist and violence-oriented coloring book for children. When it was brought to the attention of Bobby Seale and other Panther members, it was immediately ordered destroyed, but the Bureau mailed copies to companies such as Safeway, Mayfair Markets, and the Jack-In-The-Box Corporation which had been contributing food to the Breakfast for Children Program in order to cause the withdrawal of support for that program. The FBI has admitted that during the COINTELLPRO era it ran some 295 distinct COINTELPRO operations against individuals and organizations which were broadly or narrowly considered parts of the black liberation movement.[11](http://www.fromthewilderness.com/members/100306_war_you1.shtml#_ftn11#_ftn11) It is important to understand that during the so-called COINTELPRO era--and as we shall learn in subsequent segments of this series, that era never really ended, one strategy used then and now is that of plausible deniability. That is, in case assassinations or other illegal or disrespectable and unpopular activities committed by high-ranking officials become public, those officials may deny connection to or awareness of those acts or the agents used to carry out such acts. As noted by Mike Ruppert in [“By The Light Of A Burning Bridge”](http://www.fromthewilderness.com/free/ww3/081606_burning_bridge.shtml) FTW over the years has frequently been victimized by attacks that appeared to have the fingerprints of COINTELPRO all over them, down to the use of convicted felons to commit those acts, in which case, the FBI or whatever agency(ies) are involved can plausibly deny connection with such individuals.

# 2nc

**assuming the law can’t be receptive to poetics naturalizes that state**

Swyngedouw 2009

Erik, School of Environment and Development, Manchester University, The Antinomies of the Postpolitical City: In Search of a Democratic Politics of Environmental Production, International Journal of Urban and Regional Research, Volume 33, Issue 3, pages 601–620

Therefore, the political act (intervention) proper is ‘not simply something that works well within the framework of existing relations, but something that changes the very framework that determines how things work . . . [A]uthentic politics . . . is the art of the impossible— it changes the very parameters of what is considered “possible” in the existing constellation’ (original emphasis) (Žižek, 1999b: 199). This is a call for a de-sublimation and a decolonization of the political from the social or, in other words, to re-invent the proper political gesture from the plainly depoliticizing effects of postpolitical and postdemocratic policing. (Urban) environmental justice movements, for example, indicate exactly such procedure of the colonization of the political by the social — and thereby displacing or rendering inoperative the proper political field). Their ‘politicization’ is structured by the blatantly race or class bias of the socio-technical-managerial distribution of environmental goods or bads. Their mobilization is about seeking redress, thereby fully acknowledging the race and/or class relations that subvert the democratic promise of equality, yet drawing on this promise (as enshrined in the law) to fight for greater equality. The ‘scandal of democracy’, i.e. the necessary totalitarian moment inherent in the institutionalization of democracy, is hereby disavowed and the proper political moment of radical antagonism predicated upon dissensus is displaced onto the terrain of the socio-technical-legal (onto society). Something similar is at work in the micropolitics of local environmental struggles, dispersed resistances and alternative practices. These are the spheres where an environmental activism dwells as some form of ‘placebo’-politicalness (Marchart, 2007: 47). This anti-political impulse works through colonization of the political by the social through sublimation. It elevates ruptures, disagreements, contestations and fractures that inevitably erupt out of the incomplete saturation of the social world by the police order. For example, the variegated, dispersed and often highly effective — on their own terms — forms of (urban) environmental activism that emerge within concrete socio-spatial interventions, such as, among others, land-use protests, local pollution problems, road proposals, airport noise or expansions, the felling of trees or forests, the construction of incinerators, industrial works, etc.3 elevates localized communities, particular groups and/or organizations (like NGOs), etc. to the level of the political. They become imbued with political significance. The space of the political is thereby ‘reduced to the seeming politicization of these groups or entities . . . Here the political is not truly political because of the restricted nature of the constituency’ (Marchart, 2007: 47). In sum, particular socio-environmental conflict is elevated to the status of the political. Rather than politicizing, such social colonization of the political, in fact, erodes and outflanks the proper political dimension of egalibertarian universalization. The latter cannot be substituted by a proliferation of identitarian, multiple and ultimately fragmented communities. Moreover, such expressions of protest, which are framed fully within the existing practices and police order (in fact, these protests — as well as their mode of expression — are exactly called into being through the practices of the existing order) are, in the current postpolitical arrangement, already fully acknowledged and accounted for. They become either instituted through public–private stakeholder participatory forms of governance, succumbing to the ‘tyranny of participation’ (Cooke and Kothari, 2001) or are radically marginalized and framed as ‘radicals’ or ‘fundamentalist’ and, thereby, relegated to a domain outside the consensual postdemocratic arrangement. The more radical forms of environmental activism become ‘an unending process which can destabilize, displace, and so on, the power structure, without ever being able to undermine it effectively’ (Žižek, 2002: 101) and are, as such, doomed to failure. The problem with such tactics is not only that they leave the symbolic order intact and, at best, ‘tickle’ the police order (see Critchley, 2007), but also, as Žižek (1999b: 264) puts it, ‘these practices of performative reconfiguration/displacement ultimately support what they intend to subvert, since the very field of such “transgressions” are already taken into account, even engendered by the hegemonic form’.

# 1nr

**Only optimistic imaginative strategies can produce a better future – they lock in status quo oppression by being overly-fatalistic**

Moten 8 (Fred, Helen L. Bevington Prof. of Modern Poetry @ Duke U., “Black Op” Proceedings of the Modern Language Association of America, pp. 1746-1747)

Finally, one might plan to continue to believe that there is **such a thing as blackness** and that blackness has an essence given in striated, ensemblic, authentic experience (however much a certain natural bend is amplified by the force of every kind of event, however productive such constant inconstancy of shape and form must be of new understandings of essence and experience). It is obvious (particularly after the recent lessons of Lindon Barrett, Herman Bennett, Daphne Brooks, Nahum Chandler, Denise Ferreira da Silva, Brent Edwards, Saidiya Hartman, Sharon Holland, and Achilles Mbembe, among others) that blackness has always emerged as nothing other than the richest possible combination of dispersion and permeability in and as the mass improvisation and protection of the very idea of **the human.** Thus, concern over the supposedly stultifying force of authenticity exerted by supposedly restrictive and narrow conceptions of blackness, or worry over the supposed intranational dominance of blackness broadly and unrigorously conceived (in ways that presuppose its strict biological limitation within an unlimited minoritarian field), or anxiety over the putatively intradiasporic hegemony of a certain mode of blackness (which presumes national as well as biological determinations that are continually over- and underdetermined) indexes some other trouble, which we would do well to investigate. Such investigation is best accompanied by vigilant remembrance of and commitment to the fact that blackness is present (as E. P. Thompson said of the English working class) at its own making and that all the people who are called black are given in and to that presence, which exceeds them (in an irrevocable, antenational combination of terror and enjoyment, longing and rejection, that Hartman, in particular, illuminates). Ultimately, the paraontological force that is transmitted in the long chain of life and death performances that are the concern of black studies is horribly misunderstood if it is **understood as exclusive**. Everyone whom blackness claims, which is to say everyone, can claim blackness. That claim is neither the first nor the last anticipatory reorientation but is, rather, an irreducible element of the differentially repeating plane that intersects and animates the comparativist sphere.

In this regard, black studies might best be described as a location habitually lost and found within a moving tendency where one looks back and forth and wonders how utopia came to be submerged in the interstices and on the outskirts of the fierce and urgent now. The temporal paradox of optimism—that it is, on the one hand, a necessarily futurial attitude while being, on the other hand, in its proper Leibnizian formulation, an assertion of the necessity, rightness, and timelessness of the always already existing—resonates in the slim gap between analytic immersion and deictic reserve. This bitter earth is the best of all possible worlds, a fact that necessitates the renewed, reconstructed, realization of imaginative intensities that move through the opposition of voluntary secrecy and forced exposure in order to understand how the underground operates out in, and as, the open. What’s the relation between the limit and the open? Between blackness and the limit? Between a specific and materially redoubled finitude called blackness and the open? The new critical discourse on the relation between blackness and death has begun to approach these questions. That discourse reveals that optimism doesn’t require—indeed, it cannot persist within—the repression of that relation; rather, it always lives (which is to say, escapes) in the faithful, postfatal assertion of a right to refuse, in the prenatal instantiation of a collective negative tendency to differ, and in the resistance to the regulative powers that resistance, differing, and refusal call into being. The general insistence that we don’t mind leaving here is inseparable from the fact that it’s all right. Black optimism persists in thinking that we have what we need, that we can get there from here, that there’s nothing wrong with us or even, in this regard, with here, even as it also bears an obsession with why it is that difference calls the same, that resistance calls regulative power, into existence, thereby securing the simultaneously vicious and vacant enmity that characterizes here and now, forming and deforming us. However much trouble stays in mind and, therefore, in the light of a certain interest that the ones who are without interests have in making as much trouble as possible, there is cause for optimism as long as there is a need for optimism. Cause and need converge in the bent school or marginal church in which we gather together to be in the name of being otherwise.

Their arguments about social death is based off of a flawed methodology which interrupts the transformative potential of the African Diaspora

BÂ 2011 – Portsmouth University (SAËR MATY, “The US Decentred: From Black Social Death to Cultural Transformation,” Cultural Studies Review, volume 17 number 2 September 2011)

A few pages into Red, White and Black, I feared that it would just be a matter of time before **Wilderson’s black‐as‐social‐death idea** and multiple attacks on issues and scholars he disagrees with **run** (him) **into (theoretical) trouble**. This happens in chapter two, ‘The Narcissistic Slave’, where he critiques black film theorists and books. For example, Wilderson declares that Gladstone Yearwood’s Black Film as Signifying Practice (2000) ‘betrays a kind of conceptual anxiety with respect to the historical object of study— ... it clings, anxiously, to the film‐as‐text‐as‐legitimateobject of Black cinema.’ (62) He then quotes from Yearwood’s book to highlight ‘just how vague the aesthetic foundation of Yearwood’s attempt to construct a canon can be’. (63) And yet Wilderson’s highlighting is problematic because it overlooks the ‘Diaspora’ or ‘African Diaspora’, a key component in Yearwood’s thesis that, crucially, neither navel‐gazes (that is, at the US or black America) nor pretends to properly engage with black film. Furthermore, Wilderson separates the different waves of black film theory and approaches them, only, in terms of how a most recent one might challenge its precedent. Again, his approach is problematic because it does not mention or emphasise the inter‐connectivity of/in black film theory. As a case in point, Wilderson does not link Tommy Lott’s mobilisation of Third Cinema for black film theory to Yearwood’s idea of African Diaspora. (64) Additionally, of course, Wilderson seems unaware that Third Cinema itself has been fundamentally questioned since Lott’s 1990s’ theory of black film was formulated. Yet another consequence of **ignoring the African Diaspora** is that it **exposes Wilderson’s corpus of films as unable to carry the weight of the transnational argument he attempts to advance.** Here, **beyond the US‐centricity** or ‘social **and political specificity of [his] filmography’**, (95) I am talking about Wilderson’s choice of films. For example, Antwone Fisher (dir. Denzel Washington, 2002) is attacked unfairly for failing to acknowledge ‘a grid of captivity across spatial dimensions of the Black “body”, the Black “home”, and the Black “community”’ (111) while films like Alan and Albert Hughes’s Menace II Society (1993), overlooked, do acknowledge the same grid and, additionally, problematise Street Terrorism Enforcement and Prevention Act (STEP) policing. The above examples expose the fact of Wilderson’s dubious and questionable conclusions on black film. **Red, White and Black is particularly undermined by Wilderson’s** propensity for **exaggeration and blinkeredness**. In chapter nine, ‘“Savage” Negrophobia’, he writes: The philosophical anxiety of Skins is all too aware that through the Middle Passage, African culture became Black ‘style’ ... Blackness can be placed and displaced with limitless frequency and across untold territories, by whoever so chooses. Most important, there is nothing real Black people can do to either check or direct this process ... Anyone can say ‘nigger’ because anyone can be a ‘nigger’. (235)7 Similarly, in chapter ten, ‘A Crisis in the Commons’, Wilderson addresses the issue of ‘Black time’. Black is irredeemable, he argues, because, at no time in history had it been deemed, or deemed through the right historical moment and place. In other words, the black moment and place are not right because they are ‘the ship hold of the Middle Passage’: ‘the most coherent temporality ever deemed as Black time’ but also ‘the “moment” of no time at all on the map of no place at all’. (279) Not only does Pinho’s more mature analysis expose this point as preposterous (see below), **I** also **wonder what Wilderson makes of the countless** historians’ and sociologists’ **works on slave ships, shipboard insurrections and/during the Middle Passage**,8 or of groundbreaking jazz‐studies books on cross‐cultural dialogue like The Other Side of Nowhere (2004). Nowhere has another side, but **once Wilderson theorises blacks as socially and ontologically dead while dismissing jazz as ‘belonging nowhere** and to no one, simply there for the taking’, (225**) there seems to be no way back.** It is therefore hardly surprising that Wilderson ducks the need to provide a solution or alternative to both his sustained bashing of blacks and anti‐ Blackness.9 Last but not least, Red, White and Black ends like a badly plugged announcement of a bad Hollywood film’s badly planned sequel: ‘How does one deconstruct life? Who would benefit from such an undertaking? The coffle approaches with its answers in tow.’ (340)

This logic of social death replicates the violence of the middle passage – rejection is necessary to honor the dead

Brown 2009 – professor of history and of African and African American Studies specializing in Atlantic Slavery (Vincent, “Social Death and Political Life in the Study of Slavery,” http://history.fas.harvard.edu/people/faculty/documents/brown-socialdeath.pdf)

But this was not the emphasis of Patterson’s argument. As a result, those he has inspired have often conflated his exposition of slaveholding ideology with a description of the actual condition of the enslaved. Seen as a state of being, the concept of **social death is** ultimately **out of place in the political history of slavery. If studies** of slavery would **account for the** outlooks and **maneuvers of the enslaved as** an **important** part of that history, **scholars would do better to keep in view** the struggle against alienation rather than alienation itself. To see social death as a productive peril entails a subtle but significant shift in perspective, from seeing slavery as a condition to viewing enslavement as a predicament, in which **enslaved Africans and their descendants never ceased to pursue a politics of belonging, mourning, accounting, and regeneration**. In part, the usefulness of social death as a concept depends on what scholars of slavery seek to explain—black pathology or black politics, resistance or attempts to remake social life? For too long, debates about whether there were black families took precedence over discussions of how such families were formed; disputes about whether African culture had “survived” in the Americas overwhelmed discussions of how particular practices mediated slaves’ attempts to survive; and scholars felt compelled to prioritize the documentation of resistance over the examination of political strife in its myriad forms. But of course, because slaves’ social and political life grew directly out of the violence and dislocation of Atlantic slavery, these are false choices. And we may not even have to choose between tragic and romantic modes of storytelling, for history tinged with romance may offer the truest acknowledgment of the tragedy confronted by the enslaved: it took heroic effort for them to make social lives. There is romance, too, in the tragic fact that although scholars may never be able to give a satisfactory account of the human experience in slavery, they nevertheless continue to try. If scholars were to emphasize the efforts of the enslaved more than the condition of slavery, **we might at least tell richer stories about how the endeavors of the weakest and most abject have at times reshaped the world. The history of their** social and political **lives lies between resistance and oblivion, not in the nature of their condition but in their continuous struggles to remake it. Those struggles are slavery’s bequest to us.**

This is an apriori question

Brown 2009 – professor of history and of African and African American Studies specializing in Atlantic Slavery (Vincent, “Social Death and Political Life in the Study of Slavery,” http://history.fas.harvard.edu/people/faculty/documents/brown-socialdeath.pdf)

African American history has grown from the kinds of people’s histories that emphasize a progressive struggle toward an ultimate victory over the tyranny of the powerful. Consequently, studies that privilege the perspectives of the enslaved depend in some measure on the chronicling of heroic achievement, and historians of slave culture and resistance have recently been accused of romanticizing their subject of study.42 Because these scholars have done so much to enhance our understanding of slave life beyond what was imaginable a scant few generations ago, the allegation may seem unfair. Nevertheless, some of the criticisms are helpful. As the historian Walter Johnson has argued, **studies of slavery conducted within the terms of social history** have often **taken “agency**,” or the self-willed activity of choice-making subjects, **to be their starting point**.43 Perhaps it was inevitable, then, that many historians would find themselves charged with depicting slave communities and cultures that were so resistant and so vibrant that the social relations of slavery must not have done much damage at all. Even if this particular accusation is a form of caricature, it contains an important insight, that **the agency of the weak and the power of the strong have too often been viewed as simple opposites.** The anthropologist David Scott is probably correct to suggest that for most scholars, the power of slaveholders and the damage wrought by slavery have been “pictured principally as a negative or limiting force” that “restricted, blocked, paralyzed, or deformed the transformative agency of the slave.”44 In this sense, scholars who have emphasized slavery’s corrosive power and those who stress resistance and resilience share the same assumption. However, the violent **domination of slavery generated political action; it was not antithetical to it. If one sees** power as productive and the **fear of social death not as incapacity but as** a **generative force**—a peril that motivated enslaved activity— **a different image of slavery slides into view, one in which the object of slave politics is not** simply the **power of slaveholders, but the very terms and conditions of social existence.**

This applies a snapshot picture of antebellum slavery to justify its assertion and is as useful as Phrenology

Brown 2009 – professor of history and of African and African American Studies specializing in Atlantic Slavery (Vincent, “Social Death and Political Life in the Study of Slavery,” http://history.fas.harvard.edu/people/faculty/documents/brown-socialdeath.pdf)

Having emerged from the discipline of sociology, “**social death” fit** comfortably **within a** scholarly **tradition** that had generally been more **alert to deviations** in patterns **of black life from** prevailing **social norms than to** the **worldviews**, strategies, and social tactics of people in **black communities**. Together with Patterson’s work on the distortions wrought by slavery on black families, “social death” reflected sociology’s abiding concern with “social pathology”; the “pathological condition” of twentieth-century black life could be seen as an outcome of the damage that black people had suffered during slavery. University of Chicago professor Robert Park, the grand-pe`re of the social pathologists, set the terms in 1919: “the Negro, when he landed in the United States, left behind almost everything but his dark complexion and his tropical temperament.”8 **Patterson’s distillation** also **conformed to the** nomothetic **imperative of social science**, which has traditionally aimed to discover universal laws of operation that would be true regardless of time and place, making the synchronic study of social phenomena more tempting than more descriptive studies of historical transformation. **Slavery and Social Death took shape during a period when largely synchronic studies of antebellum slavery in the U**nited **S**tates **dominated the scholarship** on human bondage, and Patterson’s expansive view was meant to situate U.S. slavery in a broad context rather than to discuss changes as the institution developed through time. **Thus one might see “social death” as an obsolete product of its time and tradition**, an academic artifact **with limited purchase for contemporary scholarship**, were it not for the concept’s reemergence in some important new studies of slavery.9