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

**First is the technical stuff**

**“Resolved” implies a policy or legislative decision**

Jeff Parcher 1, former debate coach at Georgetown, Feb, http://www.ndtceda.com/archives/200102/0790.html

Pardon me if I turn to a source besides Bill. American Heritage Dictionary: Resolve: 1. To make a firm decision about. 2. To decide or express by formal vote. 3. To separate something into constiutent parts See Syns at \*analyze\* (emphasis in orginal) 4. Find a solution to. See Syns at \*Solve\* (emphasis in original) 5. To dispel: resolve a doubt. - n 1. Firmness of purpose; resolution. 2. A determination or decision. (2) The very nature of the word "resolution" makes it a question. American Heritage: A course of action determined or decided on. A formal statement of a decision, as by a legislature. (3) The resolution is obviously a question. Any other conclusion is utterly inconceivable. Why? Context. The debate community empowers a topic committee to write a topic for ALTERNATE side debating. The committee is not a random group of people coming together to "reserve" themselves about some issue. There is context - they are empowered by a community to do something. In their deliberations, the topic community attempts to craft a resolution which can be ANSWERED in either direction. They focus on issues like ground and fairness because they know the resolution will serve as the basis for debate which will be resolved by determining the policy desirablility of that resolution. That's not only what they do, but it's what we REQUIRE them to do. We don't just send the topic committee somewhere to adopt their own group resolution. It's not the end point of a resolution adopted by a body - it's the preliminary wording of a resolution sent to others to be answered or decided upon. (4) Further context: the word resolved is used to emphasis the fact that it's policy debate. Resolved comes from the adoption of resolutions by legislative bodies. A resolution is either adopted or it is not. It's a question before a legislative body. Should this statement be adopted or not. (5) The very terms 'affirmative' and 'negative' support my view. One affirms a resolution. Affirmative and negative are the equivalents of 'yes' or 'no' - which, of course, are answers to a question.

**“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.

**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.

**Deliberation is the most portable skill—key to all facets of life and advocacy**

**Steinberg**, 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. 9-10)

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military\* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition. Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these\* situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making homes from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all make many decisions even- day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car. what major to select, what to have for dinner, what candidate CO vote for. paper or plastic, all present lis with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? Tlie Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIMI: magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of ''great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs. online networking. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople. academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job oiler, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for out product, or a vote for our favored political candidate.

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

**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.

**Disembodied reason is good – it maintains the opacity necessary for effective deliberation**

**Peters**, 20**00**

(Christopher J., Assistant Professor of Law, Wayne state University Law School, “Assessing the new judicial minimalism,” Columbia Law review, 100 Colum. L. Rev. 1454, October)

**Deliberation is not** necessarily **promoted by transparency**; indeed, **it is** frequently **hindered by it**. This is a point that Sunstein himself has made quite powerfully in the past. In The Partial Constitution, Sunstein sides with Madison against Jefferson in favor of the closing of the Constitutional Convention in 1787: On Madison's view, it was best "to sit with closed doors, because opinions were so various and at first so crude that it was necessary they should be long debated before any uniform system of opinion could be formed. Meantime the minds of the members were changing, and much was to be gained by a yielding and accommodating spirit... By secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of argument." [n187](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n187) Indeed, the **Federalists thought that opacity was necessary for true democratic deliberation**. They distrusted open public discussion and, as James Martin has written, "believed that the public interactions and debates that are a part of any democracy should take place via the representative mechanisms that operate through the legal institutions of the state." [n188](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n188) The relationship between the opacity and the quality of deliberation recently surfaced in the debate over whether the Senate, sitting as a court of impeachment in the trial of President Clinton, should deliberate publicly or behind closed doors. Some, like Iowa Senator Tom Harkin, opposed deliberations in "secret session" and argued that opening the debate "would send an important message. The public has a right to know how the Senate reaches its final decision on the removal or acquittal of the President." [n189](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n189) Others, like Alabama Senator Richard Shelby, held a different view: "I think we explain[] to our constituents how we're going to vote as we vote and afterwards... But I believe that the **deliberations** ought to be like every jury in America, they **ought to be behind closed** [\*1497]  **doors where we can be candid**...." [n190](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n190) In the end, those advocating open-door deliberations failed to achieve the two-thirds majority necessary to waive the Senate rule requiring secret debate. [n191](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n191) Madison, Senator Shelby, and Sunstein himself have recognized that the glare of the public spotlight is not conducive to the candidness and open-mindedness necessary to true deliberation. This is so for the same reasons that support representative rather than direct democracy: Public opinion may be raw, "based on inadequate information and on popular passions that are insufficiently influenced by reason-giving and understanding of context." [n192](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n192) **Exposing important decisions, and the processes of making them, to instantaneous and continuous public scrutiny threatens to infect representative democracy with the sorts of emotional, knee-jerk tendencies** it was designed to avoid. [n193](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n193) **This is especially so when the decisions** to be made **involve** not simply policy issues, but questions of **individual rights** against the majority. Writing of the dangers of referenda in the affirmative action context, Sunstein notes the risk that "outcomes will not be based on a careful assessment of facts and values, but instead on crude 'we-they' thinking." [n194](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n194) This point can be generalized across all decisions involving individual rights. Questions of individual rights are inherently "we-they" affairs: The majoritarian "we" is pitted against the individual or minority "they." True deliberation about such questions - decisionmaking characterized by reason-giving, openness to opposing arguments, consideration of various relevant perspectives, and willingness to compromise - is made difficult from the start in the political system, where the ultimate decisionmakers, the citizens, by definition have something to gain or to lose. **Deliberation is made all the more difficult when representatives are constantly bombarded**, through public opinion polls and the ever-more-massive media, **by the self-interests they are supposed to be filtering**. [n195](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n195)  [\*1498]  The increasing transparency of politics stands in stark contrast to the opaque process of adjudicative decisionmaking. Only very rarely, as in the O.J. Simpson case, does the actual process of adjudication attract significant public attention. What publicity adjudication does draw invariably goes to the trial process, not to the appellate process, where law is made. Appellate court and **Supreme Court proceedings are not televised**, and only the results of those proceedings tend to receive publicity (and then only when they decide high-profile issues). And of course the actual **deliberations** of appellate courts invariably **take place behind closed doors**. It is true, and important, that the tools of Supreme Court deliberation - briefs filed by the parties, and transcripts or recordings of oral arguments - and the results of that deliberation - written opinions - usually are made public, more frequently and quickly than ever these days. But these sources only confirm the extent to which adjudication is meticulously deliberative. Legal briefs, oral arguments, and court opinions, unlike arguments made in the political realm, typically eschew entreaties to "public opinion" or "the public interest," instead replacing them with arguments based on the interpretation of legal authorities. Briefs, arguments, and opinions also typically address the reasoning both for and against the results they espouse. They are not allowed to be "supported by self-interest or force" [n196](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n196) or to rely on "'naked preferences.'" [n197](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n197) They are models of "reason-giving in the public domain." [n198](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n198) The quoted phrases in the previous paragraph are taken from Sunstein's description of "deliberative democracy" in One Case at a Time. Remarkably, though, they describe the everyday adjudicative process much more accurately than they describe the everyday political process. [n199](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n199) This is because **the adjudicative process is**, in these important ways, **far more "deliberative" than politics typically can be**. Part of the reason for this is the much-maligned isolationism of the law - its insulation from worldly affairs, its persistent formalism, its self-referential reliance only on appropriately pedigreed authorities. [n200](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n200) Law in our system takes place behind  [\*1499]  closed doors, away from the public spotlight and with little regard for it. And this **opacity may work to the judiciary's advantage in attracting public trust**; a recent survey indicates that the public has more "respect" for the Supreme Court than for the political branches. [n201](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.585686.2802477118&target=results_DocumentContent&reloadEntirePage=true&rand=1237695429413&returnToKey=20_T6102959465&parent=docview#n201) It is strange, then, that Sunstein sees judicial review primarily as a tool for increasing the deliberativeness of the political branches. Much of the point of judicial review is that it is more deliberative than the political process, and thus better constituted to produce decisions that require deliberation above all else. As I explain in the next section, the adjudicative brand of deliberation does not lend itself to many kinds of decisionmaking that the political branches are good at. But it does lend itself to decisionmaking about individual rights - when they exist, what they look like, how far they ultimately extend. Decisions about individual rights are particularly poorly made in the spotlight, where they can be distorted by the very pressures that rights are meant to stand against. They are better made by courts, which can, in the current phrase, "fly under the radar" of public scrutiny.

### 1nc

#### Interp – the resolution mandates an increase in restrictions on presidential war powers authority

### 1nc

**The focus on ­­­­­­­­­­­­­­indefinite detention becomes an alibi for acquiescence of class struggles – they obscure the logic of capital and ensure repetition of oppression**

**Zavarzadeh 94** (Mas'Ud, The Stupidity That Consumption Is Just as Productive as Production": In the Shopping Mall of the Post-al Left," College Literature, Vol. 21, No. 3, The Politics of Teaching Literature 2 (Oct., 1994),pp. 92-114)

Post-al logic is marked above all by its erasure of "production" as the determining force in organizing human societies and their institutions, and its insistence on "consumption" and "distribution" as the driving force of the social.5 The argument of the post-al left (briefly) is that "labor," in advanced industrial "democracies," is superseded by "information," and consequently "knowledge" (not class struggle over the rate of surplus labor) has become the driving force of h[er]story. The task of the post-al left is to deconstruct the "metaphysics of labor" and consequently to announce the end of socialism and with it the "outdatedness" of the praxis of abolishing private property (that is, congealed alienated labor) in the post-al moment. Instead of abolishing private property, an enlightened radical democracy which is to supplant socialism (as Laclau, Mouffe, Aronowitz, Butler, and others have advised) should make property holders of each citizen. The post-al left rejects the global objective conditions of production for the local subjective circumstances of consumption, and its master trope is what R-4 [France] so clearly foregrounds: the (shopping) "mall"?the ultimate site of consumption "with all latest high-tech textwares" deployed to pleasure the "body." In fact, the post-al left has "invented" a whole new interdiscipline called "cultural studies" that provides the new alibi for the regime of profit by shifting social analytics from "production" to "consumption." (On the political economy of "invention" in ludic theory, see Transformation 2 on "The Invention of the Queer.") To prove its "progressiveness," the post-al left devotes most of its energies (see the writings of John Fiske, Constance Penley, Michael Berube, Henry Louis Gates, Jr., Andrew Ross, Susan Willis, Stuart Hall, Fredric Jameson), to demonstrate how "consumption" is in fact an act of production and resistance to capitalism and a practice in which a Utopian vision for a society of equality is performed! The shift from "production" to "consumption" manifests itself in post-al left theories through the focus on "superstructural" cultural analysis and the preoccupation not with the "political economy" ("base") but with "representation"? for instance, of race, sexuality, environment, ethnicity, nationality, and identity. This is, for example, one reason for [Hill's] ridiculing the "base" and "superstructure" analytical model of classical Marxism (Marx, A Contribution to the Critique of Political Economy) with an anecdote (the privileged mode of "argument" for the post-al left) that the base is really not all that "basic." To adhere to the base/superstructure model for [him] is to be thrown into an "epistemological gulag." For the post-al left a good society is, therefore, one in which, as [France] puts it, class antagonism is bracketed and the "surplus value" is distributed more evenly among men and women, whites and persons of color, the lesbian and the straight. It is not a society in which "surplus value"?the exploitative appropriation of the other's labor-is itself eliminated by revolutionary praxis. The post-al left's good society is not one in which private ownership is obsolete and the social division of labor (class) is abolished. Rather it is a society in which the fruit of exploitation of the proletariat (surplus labor) is more evenly distributed and a near-equality of consumption is established. This distributionist/consumptionist theory that underwrites the economic interests of the (upper)middle classes is the foundation for all the texts in this exchange and their pedagogies. A good pedagogy in these texts therefore is one in which power is distributed evenly in the classroom: a pedagogy that constructs a classroom of consensus not antagonism (thus opposition to "politicizing the classroom" in OR-1 [Hogan]) and in which knowledge (concept) is turned through the process that OR-3 [McCormick] calls "translation"?into "consumable" EXPERIENCES. The more "intense" the experience, as the anecdotes of [McCormick] show, the more successful the pedagogy. In short, it is a pedagogy that removes the student from his/her position in the social relations of production and places her/him in the personal relation of consumption: specifically, EXPERIENCE of/as the consumption of pleasure. The post-al logic **obscures** the laws of motion of capital by very specific assumptions and moves-many of which are rehearsed in the texts here. I will discuss some of these, mention others in passing, and hint at several more. (I have provided a full account of all these moves in my "Post-ality" in Transformation 1.) I begin by outlining the post-al assumptions that "democracy" is a never-ending, open "dialogue" and "conversation" among multicultural citizens; that the source of social inequities is "power"; that a post-class hegemonic "coalition," as OR-5 [Williams] calls it-and not class struggle-is the dynamics of social change; that truth (as R-l [Hill] writes) is an "epistemological gulag"? a construct of power and thus any form of "ideology critique" that raises questions of "falsehood" and "truth" ("false consciousness") does so through a violent exclusion of the "other" truths by, in [Williams'] words, "staking sole legitimate claim" to the truth in question. Given the injunction of the post-al logic against binaries (truth/falsehood), the project of "epistemology" is displaced in the ludic academy by "rhetoric." The question, consequently, becomes not so much what is the "truth" of a practice but whether it "works." (Rhetoric has always served as an alibi for pragmatism.) Therefore, [France] is not interested in whether my practices are truthful but in what effects they might have: if College Literature publishes my texts would such an act (regardless of the "truth" of my texts) end up "cutting our funding?" [he] asks. A post-al leftist like [France], in short, "resists" the state only in so far as the state does not cut [his] "funding." Similarly, it is enough for a cynical pragmatist like [Williams] to conclude that my argument "has little prospect of effectual force" in order to disregard its truthfulness. The post-al dismantling of "epistemology" and the erasure of the question of "truth," it must be pointed out, is undertaken to protect the economic interests of the ruling class. If the "truth question" is made to seem outdated and an example of an orthodox binarism ([Hill]), any conclusions about the truth of ruling class practices are excluded from the scene of social contestation as a violent logocentric (positivistic) totalization that disregards the "difference" of the ruling class. This is why a defender of the ruling class such as [Hill] sees an ideology critique aimed at unveiling false consciousness and the production of class consciousness as a form of "epistemological spanking." It is this structure of assumptions that enables [France] to answer my question, "What is wrong with being dogmatic?" not in terms of its truth but by reference to its pragmatics (rhetoric): what is "wrong" with dogmatism, [he] says, is that it is violent rhetoric ("textual Chernobyl") and thus Stalinist. If I ask what is wrong with Stalinism, again (in terms of the logic of [his] text) I will not get a political or philosophical argument but a tropological description.6 The post-al left is a New Age Left: the "new new left" privileged by [Hill] and [Williams]- the laid-back, "sensitive," listening, and dialogic left of coalitions, voluntary work, and neighborhood activism (more on these later). It is, as I will show, anti-intellectual and populist; its theory is "bite size" (mystifying, of course, who determines the "size" of the "bite"), and its model of social change is anti-conceptual "spontaneity": May 68, the fall of the Berlin Wall, and, in [Hill's] text, Chiapas. In the classroom, the New Age post-al pedagogy inhibits any critique of the truth of students' statements and instead offers, as [McCormick] makes clear, a "counseling," through anecdotes, concerning feelings. The rejection of "truth" (as "epistemological gulag"?[Hill]), is accompanied by the rejection of what the post-al left calls "economism." Furthermore, the post-al logic relativizes subjectivities, critiques functionalist explanation, opposes "determinism," and instead of closural readings, offers supplementary ones. It also celebrates eclecticism; puts great emphasis on the social as discourse and on discourse as always inexhaustible by any single interpretation? discourse (the social) always "outruns" and "exceeds" its explanation. Post-al logic is, in fact, opposed to any form of "explanation" and in favor of mimetic description: it regards "explanation" to be the intrusion of a violent outside and "description" to be a respectful, caring attention to the immanent laws of signification (inside). This notion of description which has by now become a new dogma in ludic feminist theory under the concept of "mimesis" (D. Cornell, Beyond Accommodation)?regards politics to be always immanent to practices: thus the banalities about not politicizing the classroom in [Hogan's] "anarchist" response to my text7 and the repeated opposition to binaries in all nine texts. The opposition to binaries is, in fact, an **ideological alibi for erasing class struggle**, as is quite clear in [France's] rejection of the model of a society "divided by two antagonistic classes" (see my Theory and its Other).

**The denial of the objective suffering that capitalism naturalizes violence and makes us indifferent toward limitless annihilation**

**Zavarzadeh 94** (Mas'Ud, The Stupidity That Consumption Is Just as Productive as Production": In the Shopping Mall of the Post-al Left," College Literature, Vol. 21, No. 3, The Politics of Teaching Literature 2 (Oct., 1994),pp. 92-114)

What is **obscured** in this representation of the non-dialogical is, of course, the violence of the dialogical. I leave aside here the violence with which these advocates of non-violent conversations attack me in their texts and cartoon. My concern is with the practices by which the post-al left, through dialogue, **naturalizes** (and eroticizes) the violence that keeps capitalist democracy in power. What is violent? Subjecting people to the **daily terrorism** of layoffs in order to maintain high rates of profit for the owners of the means of production or redirecting this violence (which gives annual bonuses, in addition to multi-million-dollar salaries, benefits, and stock options, to the CEOs of the very corporations that are laying off thousands of workers) against the ruling class in order to end class societies? What is violent? Keeping millions of people in poverty, hunger, starvation, and homelessness, and deprived of basic health care, at a time when the forces of production have reached a level that can, in fact, provide for the needs of all people, or trying to overthrow this system? What is violent? Placing in office, under the alibi of "free elections," post fascists (Italy) and allies of the ruling class (Major, Clinton, Kohl, Yeltsin) or struggling to end this farce? What is violent? Reinforcing these practices by "talking" about them in a "reasonable" fashion (that is, within the rules of the game established by the ruling class for limited reform from "within") or marking the violence of conversation and its complicity with the status quo, there by breaking the frame that represents "dialogue" as participation, when in fact it is merely a formal strategy for legitimating the established order? Any society in which the labor of many is the source of wealth for the few-all class societies-is a **society of violence**, and no amount of "talking" is going to change that **objective fact.** "Dialogue" and "conversation" are aimed at arriving at a consensus by which this violence is made more **tolerable, justifiable, and naturalized.**

#### Vote negative to endorse a political strategy that withdraws from capitalist relations

#### Universal Rejection is key – it’s the only way to hollow out capitalist structures – the debate should be a question of competing methodologies – The primary question of the ballot should be affirming an ethical orientation that best organizes against capitalist relations

Herod 4 renowned philosopher, author, and social activist

(James, “Getting Free”, <http://site.www.umb.edu/faculty/salzman_g/Strate/GetFre/06.htm>, accessed 8/6/09)

It is time to try to describe, at first abstractly and later concretely, a strategy for destroying capitalism. This strategy, at its most basic, calls for pulling time, energy, and resources out of capitalist civilization and putting them into building a new civilization. The image then is one of emptying out capitalist structures, hollowing them out, by draining wealth, power, and meaning out of them until there is nothing left but shells**.** This is definitely an aggressive strategy. It requires great militancy, and constitutes an attack on the existing order.The strategy clearly recognizes that capitalism is the enemy and must be destroyed, but it is not a frontal attack aimed at overthrowing the system, but an inside attack aimed at gutting it, while simultaneously replacing it with something better, something we want. Thus capitalist structures (corporations, governments, banks, schools, etc.) are not seized so much as simply abandoned. Capitalist relations are not fought so much as they are simply rejected. We stop participating in activities that support (finance, condone) the capitalist world and start participating in activities that build a new world while simultaneously undermining the old. We create a new pattern of social relations alongside capitalist relations and then we continually build and strengthen our new pattern while doing every thing we can to weaken capitalist relations. In this way our new democratic, non-hierarchical, non-commodified relations can eventually overwhelm the capitalist relations and force them out of existence**.** This is how it has to be done. This is a plausible, realistic strategy**.** To think that we could create a whole new world of decent social arrangements overnight, in the midst of a crisis, during a so-called revolution, or during the collapse of capitalism, is foolhardy**.** Our new social world must grow within the old, and in opposition to it, until it is strong enough to dismantle and abolish capitalist relations. Such a revolution will never happen automatically, blindly, determinably, because of the inexorable, materialist laws of h[er]story. It will happen, and only happen, because we want it to, and because we know what we’re doing and know how we want to live, and know what obstacles have to be overcome before we can live that way, and know how to distinguish between our social patterns and theirs. But we must not think that the capitalist world can simply be ignored, in a live and let live attitude, while we try to build new lives elsewhere. (There is no elsewhere.) There is at least one thing, wage-slavery, that we can’t imply stop participating in (but even here there are ways we can chip away at it). Capitalism must be explicitly refused and replaced by something else. This constitutes War, but it is not a war in the traditional sense of armies and tanks, but a war fought on a daily basis, on the level of everyday life, by millions of people. It is a war nevertheless because the accumulators of capital will use coercion, brutality, and murder, as they have always done in the past, to try to block any rejection of the system. They have always had to force compliance; they will not hesitate to continue doing so. Nevertheless, there are many concrete ways that individuals, groups, and neighborhoods can gut capitalism, which I will enumerate shortly. We must always keep in mind how we became slaves; then we can see more clearly how we can cease being slaves**.** We were forced into wage-slavery because the ruling class slowly, systematically, and brutally destroyed our ability to live autonomously. By driving us off the land, changing the property laws, destroying community rights, destroying our tools, imposing taxes, destroying our local markets**,** and so forth, we were forced onto the labor market in order to survive, our only remaining option being to sell, for a wage, our ability to work. It’s quite clear then how we can overthrow slavery. We must reverse this process. We must begin to reacquire the ability to live without working for a wage or buying the products made by wage-slaves (that is, we must get free from the labor market and the way of living based on it), and embed ourselves instead in cooperative labor and cooperatively produced goods. Another clarification is needed. This strategy does not call for reforming capitalism, for changing capitalism into something else. It calls for replacing capitalism, totally, with a new civilization. This is an important distinction, because capitalism has proved impervious to reforms, as a system. We can sometimes in some places win certain concessions from it (usually only temporary ones) and win some (usually short-lived) improvements in our lives as its victims, but we cannot reform it piecemeal, as a system. Thus our strategy of gutting and eventually destroying capitalism requires at a minimum a totalizing image, an awareness that we are attacking an entire way of life and replacing it with another, and not merely reforming one way of life into something else. Many people may not be accustomed to thinking about entire systems and social orders, but everyone knows what a lifestyle is, or a way of life, and that is the way we should approach it. The thing is this: in order for capitalism to be destroyed millions and millions of people must be dissatisfied with their way of life. They must want something else and see certain existing things as obstacles to getting what they want**.** It is not useful to think of this as a new ideology. It is not merely a belief-system that is needed, like a religion, or like Marxism, or Anarchism. Rather it is a new prevailing vision, a dominant desire, an overriding need. What must exist is a pressing desire to live a certain way, and not to live another way. If this pressing desire were a desire to live free, to be autonomous, to live in democratically controlled communities, to participate in the self-regulating activities of a mature people, then capitalism could be destroyed. Otherwise we are doomed to perpetual slavery and possibly even to extinction. The content of this vision is actually not new at all, but quite old. The long term goa**l** of communists, anarchists, and socialists has always been to restore community. Even the great peasant revolts of early capitalism sought to get free from external authorities and restore autonomy to villages. Marx defined communism once as a free association of producers, and at another time as a situation in which the free development of each is a condition for the free development of all**.** Anarchists have always called for worker and peasant self-managed cooperatives. The long term goals have always been clear: to abolish wage-slavery, to eradicate a social order organized solely around the accumulation of capital for its own sake, and to establish in its place a society of free people who democratically and cooperatively self-determine the shape of their social world**.**

### 1nc

#### CP Text: The United States Federal Government should no longer indefinitely detain oppressed bodies except those proven to be linked to terror plots against the United States.

#### Reforms result in terrorism--- destroys intel gathering

Goldsmith 2009, Henry L. Shattuck Professor at Harvard Law School (Jack Goldsmith, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf)

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### That would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they may constrain U.S. actions but because they may send signals and shape other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case reflects the broad constitutional discretion presidents now have to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war are not just expansive but largely beyond Congress’s authority to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms. Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … are matters of presidential competence. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military action – endowed with what Alexander Hamilton called “[d]ecision, activity, secrecy, and dispatch”116 – best protects American interests. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175 As applied to strategies of threatened force, generally under these proposals the President would lack authority to make good on them unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the *most* important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that the law would undermine the credibility of U.S. deterrent and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

### case

**Modernity isn’t the root cause of violence—it’s always proximately caused. The alternative leaves us unable to deal with any global problems.**

**Curtler 97** – PhD Philosophy, Hugh, “rediscovering values: coming to terms with postnmodernism” 44-7

The second and third concerns, though, are more serious and to a degree more legitimate. **The** second **concern** is that "**reason is** the product of the Enlightenment, modern science, and Western society, and as such for the postmodernists, it is **guilty byassociation of all**the errors attributed to them, [namely], **violence**, suffering, and alienation in the twentieth century, be it the Holocaust, world wars, Vietnam, Stalin's Gulag, or computer record-keeping . . ." (Rosenau 1992, 129). Although this is a serious concern, it **is hardly grounds for** the **rejection** of reason, for which postmodernism calls in a loud, frenetic voice. There is precious little evidence that the problems of the twentieth century are the result of too much reason! On the contrary. To be sure, it was Descartes's dream to reduce every decision to a calculation, and in ethics, this dream bore fruit in Jeremy Bentham's abortive "calculus" of utilities. But at least since the birth of the social sciences at the end of the last century, and with considerable help from logical positivism, ethics (and values in general) has been relegated to the dung heap of "poetical and metaphysical nonsense," and in the minds of the general populace, reason has no place in ethics, which is the proper domain of feeling. The postmodern concern to place feelings at the center of ethics, and judgment generally—which is the third of their three objections to modern reason—simply plays into the hands of the hardened popular prejudice that has little respect for the abilities of human beings to resolve moral differences reasonably. **Can it honestly be said of any major decision** made in **thiscentury** that it **was the result of "too much reason"** and that feelings and emotions played no part? **Surely not.Can** this be said in the case of any of the concerns reflected in the list above: are **violence**, suffering, and alienation, or the Holocaust, Vietnam, Stalin's Gulag, or Auschwitz the **result of a too reasonable approach to** human **problems? No** one could possibly make this claim who has dared to peek into the dark and turbid recesses of the human psyche. In every case, it is more likely that **these concerns result from** such things as **sadism, envy, avarice, love of power, the "death wish," or short-term self-interest, none of which is "reasonable**."One must carefully distinguish between the methods ofthe sciences, which are thoroughly grounded in reason and logic, and the uses men and women make of science. The warnings of romantics such as Goethe (who was himself no mean scientist) and Mary Shelley were directed not against science per se but rather against the misuse of science and the human tendency to become embedded in the operations of the present moment. To the extent that postmodernism echoes these concerns, I would share them without hesitation. But the claim that our present culture suffers because of an exclusive concern with "reasonable" solutions to human problems, with a fixation on the logos, borders on the absurd.**What is required** here **is not a mindless rejection of human reason** on behalf of "intuition," "conscience," or "feelings" **in the blind hope** that somehow **complex problems will be solved if we** simply d**o whatever makes us feel good.** Feelings and **intuitions are notoriously unreliable** and cannot be made the center of a workable ethic. We now have witnessed several generations of college students who are convinced that "there's no disputing taste" in the arts and that ethics is all about feelings. As a result, it is almost impossible to get them to take these issues seriously. The notion that we can trust our feelings to find solutions to complex problems is little more than a false hope.We are confronted today with problems on a scale heretofore unknown, and what is called for is patience, compassion (to be sure), and above all else, clear heads. In a word, **what is called for is a balance between reason and feelings**—not the rejection of one or the other. One need only recall Nietzsche's own concern for the balance between Dionysus and Apollo in his Birth of Tragedy. Nietzscheknew better than his followers, apparently, that one cannot sacrifice Apollo to Dionysus in the futile hope that we can rely on our blind instincts to get us out of the hole we have dug for ourselves.

#### Personal narratives reproduce hegemonic power relations and inequality – protects dominant narratives from criticism – this is an epistemological indict

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In the previous section, we discussed how narratives, like the lives and experiences they recount, are cultural productions. Narratives are generated interactively through normatively structured performances and interactions. Even the most personal of narratives rely on and invoke collective narratives — symbols, linguistic formulations, structures, and vocabularies of motive — without which the personal would remain unintelligible and uninterpretable. Because of the conventionalized character of narrative, then, our stories are likely to express **ideological effects and hegemonic assumptions.**[ [10](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib10)] We are as likely to be **shackled by** the stories we tell (or that are culturally available for our telling) as we are by the form of oppression they might **seek to reveal.** In short, the structure, the content, and the performance of stories as they are defined and regulated within social settings often articulate and **reproduce existing ideologies and hegemonic relations of power and inequality**. It is important to emphasize that narratives do more than simply reflect or express existing ideologies. Through their telling, our **stories come to constitute the hegemony that in turn shapes social lives and conduct "**The hegemonic is not simply a static body of ideas to which members of a culture are obliged to conform" (Silberstein 1988:127). Rather, Silberstein writes, hegemony has "a protean nature in which dominant relations are preserved while their manifestations remain highly flexible. **The hegemonic must continually evolve** so as to recuperate alternative hegemonies." In other words, the hegemonic gets **produced and evolves** within individual, seemingly unique, discrete personal narratives. Indeed, the **resilience** of ideologies and hegemony **may derive from their articulation within personal stories.** Finding expression and **being refashioned within the stories of countless individuals may lead to a polyvocality that inoculates and protects the master narrative from critique.** The hegemonic strength of a master narrative derives, Brinkley Messick (1988:657) writes, from "its textual, and lived heteroglossia … [, s]ubverting and dissimulating itself at every … turn"; thus ideologies that are encoded in particular stories are "effectively protected from sustained critique" by the fact that they are constituted through variety and **contradiction**. Research in a variety of social settings has demonstrated the *hegemonic* potential of narrative by illustrating how narratives can contribute to the reproduction of existing structures of meaning and power. First, narratives can function specifically as mechanisms of social control (Mumby 1993). At various levels of social organization — ranging from families to nation-states — storytelling instructs us about what is expected and warns us of the consequences of nonconformity. Oft-told family *tales* about lost fortunes or spoiled reputations enforce traditional definitions and values of family life (Langellier & Peterson 1993). Similarly, bureaucratic organizations exact compliance from members through the articulation of managerial prerogatives and expectations and the consequences of violation or challenge (Witten 1993). Through our narratives of courtship, lost accounts, and failed careers, cultures are constructed; we "do" family, we "do" organization, through the *stories* we tell (Langellier & Peterson 1993). Second, the hegemonic potential of narrative is further enhanced by narratives' ability to **colonize consciousness**. Well-plotted *s*tories cohere by relating various (selectively appropriated) events and details into a temporally organized whole (see part I above). The coherent whole, that is, the configuration of events and characters arranged in believable plots, **preempts alternative stories.** The events seem to speak for themselves; the tale appears to tell itself. Ehrenhaus (1993) provides a poignant example of a cultural meta-narrative that operates to stifle alternatives. He describes the currently dominant cultural narrative regarding the United States's involvement in the Vietnam War as one that relies on themes of dysfunction and rehabilitation. The story, as Ehrenhaus summarizes it, is structured as a social drama which characterizes both the nation and individual Vietnam veterans as having experienced a breakdown in normal functioning only recently resolved through a process of healing. This narrative is persuasive because it reiterates and elaborates already existing and dominant metaphors and interpretive frameworks in American culture concerning what Philip Rieff (1968) called the "triumph of the therapeutic" (see also Crews 1994). Significantly, the therapeutic motif underwriting this narrative depicts veterans as emotionally and psychologically fragile and, thus, disqualifies them as creditable witnesses. The connection between what they saw and experienced while in Vietnam and what the nation did in Vietnam is severed. In other words, what could have developed as a powerful critique of warfare as national policy is contained through the image of illness and rehabilitation, an image in which "'healing' is privileged over 'purpose' [and] the rhetoric of recovery and reintegration subverts the emergence of rhetoric that seeks to examine the reasons that recovery is even necessary" (Ehrenhaus 1993:83). Constituent and distinctive features of narratives make them particularly potent forms of **social control** and **ideological penetration and homogenization**. In part, their potency derives from the fact that narratives put "forth powerful and persuasive truth claims — claims about appropriate behavior and values — **that are shielded from testing or debate"** (Witten 1993:105). Performative features of narrative such as repetition, vivid concrete details, particularity of characters, and coherence of plot **silence epistemological challenges** and often generate **emotional identification** and commitment. Because narratives make **implicit rather than explicit** claims regarding causality and truth as they are dramatized in particular events regarding specific characters, **stories elude challenges, testing, or debate**. Van Dijk (1993) has reported, for instance, that stories containing negative images and stereotypes of nonwhite persons are less subject to the charge of racism when they recount personal experiences and particular events. Whereas a general claim that a certain group is inferior or dangerous might be contested on empirical grounds, an individual *story* about being mugged, a *story* which includes an incidental reference to the nonwhite race of the assailant, communicates a similar message but under the protected guise of simply stating the "facts." The causal significance or relevance of the assailant's race is, in such a tale, strongly implied but not subject to challenge or falsifiability. Thus representations, true and/or false, made implicitly without either validation or contest, are routinely exchanged in social interactions and thereby occupy social space. Third, narratives contribute to hegemony to the extent that they **conceal the social organization of their production and plausibility**. Narratives embody general understandings of the world that by their deployment and repetition come to constitute and sustain the life-world. Yet because narratives depict specific persons existing in particular social, physical, and historical locations, those general understandings often remain unacknowledged. By failing to make these manifest, narratives draw on unexamined assumptions and causal claims without displaying these assumptions and claims or laying them open to challenge or testing. Thus, as narratives depict understandings of particular persons and events, they reproduce, without exposing, the connections of the specific story and persons to the structure of relations and institutions that made the story plausible. To the extent that the hegemonic is "that order of signs and practices, relations and distinctions, images and epistemologies … that come to be taken-for-granted as the natural and received shape of the world and everything that inhabits it" (Comaroff & Comaroff 1991), the unarticulated and unexamined plausibility is the story's contribution to hegemony. The following two examples drawn from recent sociolegal research illustrate the ways in which legally organized narrativity helps produce the taken-for-granted and naturalized world by effacing the **connections between the particular and the general.** Sara Cobb (1992) examines the processes through which women's stories of violence are "domesticated" (tamed and normalized) within mediation sessions. Cobb reports that the domestication of women's stories of violence are a consequence of the organization of the setting in which they are told: within mediation, the storyteller and her audience are situated within a normative organization that recognizes the values of narrative participation over any substantive moral or epistemological code or standard. Being denied access to any external standards, the *stories* the women tell cannot therefore be adjudged true or compelling. The stories are interpreted as one version of a situation in which "multiple perspectives are possible." Cobb demonstrates how this particular context of elicitation specifically buries and silences stories of violence, effectively reproducing women's relative powerlessness within their families. With women deprived of the possibility of corroboration by the norms of the mediation session, their stories of violence are minimized and "disappeared." As a consequence, the individual woman can get little relief from the situation that brought her to mediation: she is denied an individual legal remedy (by being sent from court to mediation) and at the same time denied access to and connections with any collective understanding of or response to the sorts of violence acknowledged by the law (through the organization of the mediation process). Through this process, "violence, as a disruption of the moral order in a community, is made familiar (of the family) and natural — the extraordinary is tamed, drawn into the place where we eat, sleep and [is] made ordinary" (ibid., p. 19). Whereas mediation protects narratives from an interrogation of their truth claims, other, formal legal processes are deliberately organized to adjudicate truth claims. Yet even in these settings, certain types of truth claims are disqualified and thus shielded from examination and scrutiny. The strong preference of courts for individual narratives operates to impede the expression (and validation) of truth claims that are not easily represented through a particular *story*. Consider, for example, the Supreme Court's decision in the McClesky case (1986). The defendant, a black man who had been convicted of the murder of a police officer, was sentenced to death. His Supreme Court appeal of the death sentence was based on his claim that the law had been applied in a racially discriminatory way, thus denying him equal protection under the law. As part of McClesky's appeal, David Baldus, a social scientist, submitted an amicus brief in which he reported the results of his analysis of 2,000 homicide cases in that state (Baldus 1990). The statistical data revealed that black defendants convicted of killing white citizens were significantly more likely to receive the death sentence than white defendants convicted of killing a black victim. Despite this evidence of racial discrimination, the Court did not overturn McClesky's death sentence. The majority decision, in an opinion written by Justice Powell, stated that the kind of statistical evidence submitted by Baldus was simply not sufficient to establish that any racial discrimination occurred in this particular case. The court declared, instead, that to demonstrate racial discrimination, it would be necessary to establish that the jury, or the prosecutor, acted with discriminatory purpose in sentencing McClesky.[ [11](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib11)] Here, then, an unambiguous pattern of racial inequity was sustained through the very invocation of and demand for subjectivity (the jury's or prosecutor's state of mind) and particularity (the refusal to interpret this case as part of a larger category of cases) that are often embodied in narratives. In this instance, relative powerlessness and injustice (if one is to believe Baldus's data) were preserved, rather than challenged, by the demand for a particular narrative about specific concrete individuals whose interactions were bounded in time and space. In other words, the Court held that the legally cognizable explanation of the defendant's conviction could not be a product of inferential or deductive comprehension (Mink 1970; Bruner 1986). Despite its best efforts, the defense was denied discursive access to the generalizing, and authoritative, language of social logico-deductive science and with it the type of "truths" it is capable of representing. The court insists on a narrative that effaces the relationship between the particular and the general, between this case and other capital trials in Georgia. Further, the McClesky decision illustrates not only how the demand for narrative particularity may reinscribe relative powerlessness by obscuring the connection between the individual case and larger patterns of institutional behavior; it also reveals how conventionalized legal procedures impede the demonstration of that connection.[ [12](http://web.ebscohost.com.proxy.library.emory.edu/ehost/detail?vid=4&hid=106&sid=c00733b3-4acd-4926-b4f9-94f849d6e9f1%40sessionmgr109#bib12)] The court simultaneously demanded evidence of the jurors' states of mind and excluded such evidence. Because jury deliberations are protected from routine scrutiny and evaluation, the majority demanded a kind of proof that is institutionally unavailable. Thus, in the McClesky decision, by insisting on a narrative of explicit articulated discrimination, the court calls for a kind of narrative truth that court procedures institutionally impede. As these examples suggest, a reliance on or demand for narrativity is neither unusual nor subversive within legal settings. In fact, given the ideological commitment to individualized justice and case-by-case processing that characterizes our legal system, narrative, relying as it often does on the language of the particular and subjective, **may more often operate to sustain, rather than subvert, inequality and injustice**. The law's insistent demand for personal narratives achieves a kind of radical individuation that disempowers the teller by effacing the connections among persons and the social organization of their experiences. This argument is borne out if we consider that being relieved of the necessity, and costs, of telling a *story* can be seen as liberatory and collectively empowering. Insofar as particular and subjective narratives reinforce a view of the world made up of autonomous individuals interacting only in immediate and local ways, they may hobble collective claims and solutions to social inequities (Silbey 1984). In fact, the progressive achievements of workers' compensation, no-fault divorce, no-fault auto insurance, strict liability, and some consumer protection regimes derive directly from the provision of legal remedies without the requirement to produce an individually crafted narrative of right and liability.

#### Narrative is a technique of subjugation – leaves dominant powers untouched and reproduces the violence they criticize

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But if the silences in discourses of domination are a site for insurrectionary noise, if they are the corridors we must fill with explosive counter-tales, **it is also possible to make a fetish of breaking silence.** Even more than a fetish, it is possible that this ostensible tool of emancipation carries its own **techniques of subjugation**--that it converges with non-emancipatory tendencies in contem- porary culture (for example, the ubiquity of confessional discourse and rampant personalization of political life), that it establishes regulatory norms, coincides with the disciplinary power of confession, in short, **feeds the powers we meant to starve**. While attempting to avoid a simple reversal of feminist valorizations of breaking silence, it is this dimension of silence and its putative opposite with which this Article is concerned. In the course of this work, I want to make the case for silence not simply as an aesthetic but a political value, a means of preserving certain practices and dimensions of existence from regulatory power, from normative violence, as well as from the scorching rays of public exposure. I also want to suggest a link between, on the one hand, a certain contemporary tendency concerning the lives of public figures--the confession or extraction of every detail of private and personal life (sexual, familial, therapeutic, financial) and, on the other, a certain practice in feminist culture: the compulsive putting into public discourse of heretofore hidden or private experiences--from catalogues of sexual pleasures to litanies of sexual abuses, from chronicles of eating disorders to diaries of homebirths, lesbian mothering, and Gloria Steinam's inner revolution. In linking these two phenomena--the privatization of public life via the mechanism of public exposure of private life on the one hand, and the compulsive/compulsory cataloguing of the details of women's lives on the other--I want to highlight a modality of regulation and depoliticization specific to our age that is not simply confessional but empties private life into the public domain, and thereby also usurps public space with the relatively trivial, rendering the political personal in a fashion that leaves injurious social, political and economic powers **unremarked and untouched**. In short, while intended as a practice of freedom (premised on the modernist conceit that the truth shall make us free), **these productions of truth not only bear the capacity to chain us to our injurious histories as well as the stations of our small lives but also to instigate the further regulation of those lives, all the while depoliti- cizing their conditions.**

#### That creates new and worse forms of domination

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These questions suggest that in legally codifying a fragment of an insurrec- tionary discourse as a timeless truth, interpellating women as unified in their victimization, and casting the "free speech" of men as that which "silences" and thus subordinates women, MacKinnon not only opposes bourgeois liberty to substantive equality, but potentially intensifies the regulation of gender and sexuality in the law, abetting rather than contesting the production of gender identity as sexual. In short, as a regulatory fiction of a particular identity is deployed to displace the hegemonic fiction of universal personhood, the discourse of rights converges insidiously with the discourse of disciplinarity to produce a spectacularly potent mode of juridical-regulatory domination. Again, let me emphasize that the problem I am seeking to delineate is not specific to MacKinnon or even feminist legal reform. Rather, MacKinnon's and kindred efforts at bringing subjugated discourses into the law merely constitute examples of what Foucault identified as the risk of re-codification and re- colonisation of "disinterred knowledges" by those "unitary discourses, which first disqualified and then ignored them when they made their appearance." n23 **They exemplify how the work of breaking silence can metamorphose into new techniques of domination**, how our **truths can become our rulers rather than our emancipators**, how our confessions become the norms by which we are regulated.

#### Their narratives cement an attachment to injury – this prevents overcoming that injury, homogenizes group identities, and silences those whose experiences do not parallel theirs – creates new zones of sacrifice

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If, taken together, the two passages from Foucault we have been consider- ing call feminists to account in our compulsion to put everything about women into discourse, they do not yet exhaust the phenomenon of being ensnared 'in the folds of our own discourses.' For if the problem I have been discussing is easy enough to see--indeed, largely familiar to those who track techniques of co-optation--at the level of legal and bureaucratic discourse, it is altogether more disquieting when it takes the form of regulatory discourse in our own sub- and counter-cultures of resistance . . . when confessing injury becomes that which attaches us to the injury, paralyzes us within it, and prevents us from seeking or even desiring a status other than injured. In an age of social identification through attributes marked as culturally significant--gender, race, sexuality, and so forth--confessional discourse, with its truth-bearing status in a post-epistemological universe, not only regulates the confessor in the name of freeing her as Foucault described that logic, **but extends beyond the confess- ing individual to constitute a regulatory truth about the identity group.** Confessed truths are assembled and deployed as "knowledge" about the group. This phenomenon would seem to undergird a range of recurring troubles in feminism, from the "real woman" rejoinder to post-structuralist deconstructions of her, to totalizing descriptions of women's experience that are the inadvertent effects of various kinds of survivor stories. Thus, for example, the porn star who feels miserably exploited, violated and humiliated in her work invariably monopolizes the truth about sex work; as the girl with math anxieties constitutes the truth about women and math; as eating disor- ders have become the truth about women and food; as sexual abuse and viola- tion occupy the knowledge terrain of women and sexuality. In other words, even as feminism aims to affirm diversity among women and women's ex- periences, confession as the site of production of truth and its convergence with feminist suspicion and deauthorization of truth from other sources tends to reinstate a unified discourse in which the story of greatest suffering becomes the true story of woman. (I think this constitutes part of the rhetorical power of MacKinnon's work; analytically, the epistemological superiority of confes- sion substitutes for the older, largely discredited charge of false consciousness). Thus, the adult who does not suffer from her or his childhood sexual experi- ence, the lesbian who does not feel shame, the woman of color who does not primarily or "correctly" identify with her marking as such--these figures are excluded as bonafide members of the categories which also claim them. Their status within these discourses is that of being "in denial," "passing" or being a "race traitor." This is the norm-making process in feminist traditions of "breaking silence" which, ironically, silence and exclude the very women these traditions mean to empower. (Is it surprising, when we think in this vein, that there is so little feminist writing on heterosexual pleasure?) But if these practices tacitly silence those whose experiences do not parallel those whose suffering is most marked (or whom the discourse produces as suffering markedly), they also condemn those whose sufferings they record to a **permanent identification** with that suffering. Here, we experience a temporal ensnaring in 'the folds of our own discourses' insofar as we identify ourselves in speech in a manner that condemns us to live in a present dominated by the past. But what if speech and silence aren't really opposites? Indeed, what if to speak incessantly of one's suffering is to silence the possibilities of overcoming it, of living beyond it, of identifying as something other than it? What if this incessant speech not only overwhelms the experiences of others, but alternative (unutterable? traumatized? fragmentary? inassimilable?) zones of one's own experience? Conversely, what if a certain modality of silence about one's suffering--and I am suggesting that we must consider modalities of silence as varied as modalities of speech and discourse--is to articulate a variety of possibilities not otherwise available to the sufferer?

#### The word “history” reifies patriarchal systems of domination

**Tsehelska 2006** (Marina Tsehelska has been teaching English at Kryvyi Rih State Pedagogical University for ten years. During that time she completed a dissertation in Linguistics and became chair of the English Language and Methodology department; “Teaching Politically Correct Language” English Teaching Forum, Vol. 44 No. 1 <http://exchanges.state.gov/englishteaching/forum/archives/docs/06-44-1-e.pdf>)

Politically correct speech became a matter of hot debate in the 1980s, when many native speakers of English became sensitive to biased terms and phrases that exist in the language. In the previous decade, activists of the feminist movement made the first attempts to diminish differences between men and women in society. They criticized the existing language and culture as "male-dominated" and "patriarchal." The history of society, as the feminists argued, was written from the male point of view ("it's HIStory, not HERstory").

1. **In the context of women’s liberation, we advocate the use of the word “herstory”- this recognizes that women have been written out of regular “history”**

**Wallechinsky and Wallace 1981** (David; and Irving; “Feminism Ideas and Sexism in Language Part 3” <http://www.trivia-library.com/a/feminism-ideas-and-sexism-in-language-part-3.htm>)

The Women's Liberation Movement has attempted to alter the English language as it touches women. Ms. (pronounced "miz") existed before the women's movement in secretarial handbooks as the solution to the sticky problem of unknown marital status, but its use was not ensured until the publication of the most widely circulated magazine associated with the women's movement, Ms. The U.S. Government Printing Office, official stylemaster for government and civil-service publications has condoned the use of Ms. However, a 1973 Gallup poll found that disapproval of its use among women who knew of the term outweighed approval, 5-3. Some women say that "miz" sounds a little too much like "massa," or that the abbreviation already stands for the word "manuscript." The term's acceptance has been primarily as a written and not a verbal form of address. While "Ms." has been the most successful attempt to alter language, other attempts have included using "he/she" or a newer form "s/he" to replace "he." Replacing "men" with "people" or "persons" has become popular (almost a game or joke for some). "Jurymen" becomes "jurypeople," "postmen" becomes "postpeople," and so on. History now has an adjunct "herstory," not because the etymology of history is history (it isn't), but because "herstory" emphasizes that women have been written out of regular history. And the "Madam Chairmen" of the world (a linguistic contradiction to begin with) have been deposed by hundreds of "chairpersons."

## 2nc

#### Terrorism rhetoric is vital to stigmatizing terrorist legitimacy and to eliminating violence against civilians as a means to attain political goals

**Ganor 01**

(Boaz, Director of the International Policy Institute for Counter-Terrorism, “Defining Terrorism”, <http://www.ict.org.il/articles/define.htm>)

The prevalent definitions of terrorism entail difficulties, both conceptual and syntactical. It is thus not surprising that alternative concepts with more positive connotations—guerrilla movements, underground movements, national liberation movements, commandos, etc.—are often used to describe and characterize the activities of terrorist organizations. Generally these concepts are used without undue attention to the implications, but at times the use of these definitions is tendentious, grounded in a particular political viewpoint. By resorting to such tendentious definitions of terrorism, terrorist organizations and their supporters seek to gloss over the realities of terrorism, thus establishing their activities on more positive and legitimate foundations. Naturally, terms not opposed to the basic values of liberal democracies, such as “revolutionary violence,” “national liberation,” etc., carry fewer negative connotations than the term, “terrorism.” Terrorism or Revolutionary Violence? Salah Khalef (Abu Iyad) was Yasser Arafat’s deputy and one of the leaders of Fatah and Black September. He was responsible for a number of lethal attacks, including the killing of Israeli athletes at the 1972 Munich Olympics. In order to rationalize such actions, he used the tactic of confounding “terrorism” with “political violence,” stating, “By nature, and even on ideological grounds, I am firmly opposed to political murder and, more generally, to terrorism. Nevertheless, unlike many others, I do not confuse revolutionary violence with terrorism, or operations that constitute political acts with others that do not.”[[4](http://www.ict.org.il/articles/define.htm#4)] Abu Iyad tries to present terrorism and political violence as two different and unconnected phenomena. The implication of this statement is that a political motive makes the activity respectable, and the end justifies the means. I will examine this point below. Terrorism or National Liberation? A rather widespread attempt to make all definitions of terrorism meaningless is to lump together terrorist activities and the struggle to achieve national liberation. Thus, for instance, the recurrently stated Syrian official position is that Syria does not assist terrorist organizations; rather, it supports national liberation movements. President Hafez el-Assad, in a November 1986 speech to the participants in the 21st Convention of Workers Unions in Syria, said the following: We have always opposed terrorism. But terrorism is one thing and a national struggle against occupation is another. We are against terrorism… Nevertheless, we support the struggle against occupation waged by national liberation movements.[[5](http://www.ict.org.il/articles/define.htm#5)] The attempt to confound the concepts of “terrorism” and “national liberation” comes to the fore in various official pronouncements from the Arab world. For instance, the fifth Islamic summit meeting in Kuwait, at the beginning of 1987, stated in its resolutions that: The conference reiterates its absolute faith in the need to distinguish the brutal and unlawful terrorist activities perpetrated by individuals, by groups, or by states, from the legitimate struggle of oppressed and subjugated nations against foreign occupation of any kind. This struggle is sanctioned by heavenly law, by human values, and by international conventions.[[6](http://www.ict.org.il/articles/define.htm#6)] The foreign and interior ministers of the Arab League reiterated this position at their April 1998 meeting in Cairo. In a document entitled “Arab Strategy in the Struggle against Terrorism,” they emphasized that belligerent activities aimed at “liberation and self determination” are not in the category of terrorism, whereas hostile activities against regimes or families of rulers will not be considered political attacks but rather criminal assaults.[[7](http://www.ict.org.il/articles/define.htm#7)] Here again we notice an attempt to justify the “means” (terrorism) in terms of the “end” (national liberation). Regardless of the nature of the operation, when we speak of “liberation from the yoke of a foreign occupation” this will not be terrorism but a legitimate and justified activity. This is the source of the cliché, “One man’s terrorist is another man’s freedom fighter,” which stresses that all depends on the perspective and the worldview of the one doing the defining. The former President of the Soviet Union, Leonid Brezhnev, made the following statement in April 1981, during the visit of the Libyan ruler, Muamar Qadhafi: “Imperialists have no regard either for the will of the people or the laws of history. Liberation struggles cause their indignation. They describe them as ‘terrorism’.”[[8](http://www.ict.org.il/articles/define.htm#8)] Surprisingly, many in the Western world have accepted the mistaken assumption that terrorism and national liberation are two extremes in the scale of legitimate use of violence. The struggle for “national liberation” would appear to be the positive and justified end of this sequence, whereas terrorism is the negative and odious one. It is impossible, according to this approach, for any organization to be both a terrorist group and a movement for national liberation at the same time. In failing to understand the difference between these two concepts, many have, in effect, been caught in a semantic trap laid by the terrorist organizations and their allies. They have attempted to contend with the clichés of national liberation by resorting to odd arguments, instead of stating that when a group or organization chooses terrorism as a means, the aim of their struggle cannot be used to justify their actions (see below). Thus, for instance, Senator Jackson was quoted in Benyamin Netanyahu’s book Terrorism: How the West Can Win as saying, The idea that one person’s ‘terrorist’ is another’s ‘freedom fighter’ cannot be sanctioned. Freedom fighters or revolutionaries don’t blow up buses containing non-combatants; terrorist murderers do. Freedom fighters don’t set out to capture and slaughter schoolchildren; terrorist murderers do . . . It is a disgrace that democracies would allow the treasured word ‘freedom’ to be associated with acts of terrorists.[[9](http://www.ict.org.il/articles/define.htm#9)] Professor Benzion Netanyahu also assumed, a priori, that freedom fighters are incapable of perpetrating terrorist acts: For in contrast to the terrorist, no freedom fighter has ever deliberately attacked innocents. He has never deliberately killed small children, or passersby in the street, or foreign visitors, or other civilians who happen to reside in the area of conflict or are merely associated ethnically or religiously with the people of that area… The conclusion we must draw from all this is evident. Far from being a bearer of freedom, the terrorist is the carrier of oppression and enslavement . . .[[10](http://www.ict.org.il/articles/define.htm#10)] This approach strengthens the attempt by terrorist organizations to present terrorism and the struggle for liberation as two contradictory concepts. It thus plays into the terrorists’ hands by supporting their claim that, since they are struggling to remove someone they consider a foreign occupier, they cannot be considered terrorists. The claim that a freedom fighter cannot be involved in terrorism, murder and indiscriminate killing is, of course, groundless. A terrorist organization can also be a movement of national liberation, and the concepts of “terrorist” and “freedom fighter” are not mutually contradictory. Targeting “the innocent”? Not only terrorists and their allies use the definition of terrorism to promote their own goals and needs. Politicians in countries affected by terrorism at times make political use of the definition of terrorism by attempting to emphasize its brutality. One of the prevalent ways of illustrating the cruelty and inhumanity of terrorists is to present them as harming “the innocent.” Thus, in Terrorism: How the West Can Win, Binyamin Netanyahu states that terrorism is “the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends.”[[11](http://www.ict.org.il/articles/define.htm#11)] This definition was changed in Netanyahu’s third book, Fighting Terrorism, when the phrase “the innocent” was replaced by the term “civilians”: “Terrorism is the deliberate and systematic assault on civilians to inspire fear for political ends.”[[12](http://www.ict.org.il/articles/define.htm#12)] “Innocent” (as opposed to “civilian”) is a subjective concept, influenced by the definer’s viewpoint, and therefore must not be the basis for a definition of terrorism. The use of the concept “innocent” in defining terrorism makes the definition meaningless and turns it into a tool in the political game. The dilemma entailed by the use of the term “innocent” is amply illustrated in the following statement by Abu Iyad: As much as we repudiate any activity that endangers innocent lives, that is, against civilians in countries that are not directly involved in the Arab-Israeli conflict, we feel no remorse concerning attacks against Israeli military and political elements who wage war against the Palestinian people . . . Israeli acts of vengeance usually result in high casualties among Palestinian civilians—particularly when the Israeli Air Force blindly and savagely bombs refugee camps—and it is only natural that we should respond in appropriate ways to deter the enemy from continuing its slaughter of innocent victims.”[[13](http://www.ict.org.il/articles/define.htm#13)] Abu Iyad here clarifies that innocent victims are civilians in countries that are not directly involved in the Arab-Israeli conflict (implying that civilians in Israel, even children and old people, are not innocent), while he describes Palestinian civilians as innocent victims. Proposing a Definition of Terrorism The question is whether it is at all possible to arrive at an exhaustive and objective definition of terrorism, which could constitute an accepted and agreed-upon foundation for academic research, as well as facilitating operations on an international scale against the perpetrators of terrorist activities. The definition proposed here states that terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims. **Continues…** This distinction between the target of the attack and its aims shows that the discrepancy between “terrorism” and “freedom fighting” is not a subjective difference reflecting the personal viewpoint of the definer. Rather it constitutes an essential difference, involving a clear distinction between the perpetrators’ aims and their mode of operation. As noted, an organization is defined as “terrorist” because of its mode of operation and its target of attack, whereas calling something a “struggle for liberation” has to do with the aim that the organization seeks to attain. Diagram 2 illustrates that non-conventional war (between a state and an organization), may include both terrorism and guerrilla activities on the background of different and unrelated aims. Hiding behind the guise of national liberation does not release terrorists from responsibility for their actions. Not only is it untrue that “one man’s terrorist is another man’s freedom fighter” but it is also untrue that “the end justifies the means.” The end of national liberation may, in some cases, justify recourse to violence, in an attempt to solve the problem that led to the emergence of a particular organization in the first place. Nevertheless, the organization must still act according to the rules of war, directing its activities toward the conquest of military and security targets; in short, it must confine itself to guerrilla activities. When the organization breaks these rules and intentionally targets civilians, it becomes a terrorist organization, according to objective measures, and not according to the subjective perception of the definer. It may be difficult at times to determine whether the victim of an attack was indeed a civilian, or whether the attack was intentional. These cases could be placed under the rubric of a “gray area,” to be decided in line with the evidence and through the exercise of judicial discretion. The proposed definition may therefore be useful in the legal realm as a criterion for defining and categorizing the perpetrators’ activities. In any event, adopting the proposed definition of terrorism will considerably reduce the “gray area” to a few marginal cases. Defining States’ Involvement in Terrorism **Continues…** supporting terrorism – terrorist organizations often rely on the assistance of a sympathetic civilian population. An effective instrument in the limitation of terrorist activity is to undermine the ability of the organization to obtain support, assistance, and aid from this population. A definition of terrorism could be helpful here too by determining new rules of the game in both the local and the international sphere. Any organization contemplating the use of terrorism to attain its political aims will have to risk losing its legitimacy, even with the population that supports its aims. Public relations – a definition that separates terrorism out from other violent actions will enable the initiation of an international campaign designed to undermine the legitimacy of terrorist organizations, curtail support for them, and galvanize a united international front against them. In order to undermine the legitimacy of terrorist activity (usually stemming from the tendency of various countries to identify with some of the aims of terrorist organizations), terrorist activity must be distinguished from guerrilla activity, as two forms of violent struggle reflecting different levels of illegitimacy. The Attitude of Terrorist Organizations Toward the Definition The definition of terrorism does not require that the terrorist organizations themselves accept it as such. Nevertheless, reaching international agreement will be easier the more objective the definition, and the more the definition takes into account the demands and viewpoints of terrorist organizations and their supporters. The proposed definition, as noted, draws a distinction between terrorism and guerrilla warfare at both the conceptual and moral levels. If properly applied, it could challenge organizations that are presently involved in terrorism to abandon it so as to engage exclusively in guerrilla warfare. As noted, most organizations active today in the national and international arena engage in both terrorist activities and guerrilla warfare; after all, international convention makes no distinction between the two. Hence, there are no rules defining what is forbidden and what is allowed in non-conventional war, and equal punishments are imposed on both terrorists and guerrilla fighters. People perpetrating terrorist attacks or engaging in guerrilla warfare know they can expect the same punishment, whether they attack a military installation or take over a kindergarten. The terrorist attack may be more heavily censored because it involves children, but the legitimacy of these actions will be inferred from their political aims. In these circumstances, why not prefer a terrorist attack that will have far more impact, and will be easier to accomplish, with much less risk? The international adoption of the proposed definition, with its distinction between terrorism and guerrilla warfare—and its concomitant separation from political aims—could motivate the perpetrators to reconsider their intentions, choosing military targets over civilian targets—guerrilla warfare over terrorism–both because of moral considerations and because of “cost-benefit” considerations. The moral consideration – many terrorist organizations are troubled by the moral question bearing on their right to harm civilians, and this concern is reflected in their literature and in interviews with terrorists. Thus, for instance, an activist of the Popular Front for the Liberation of Palestine, Walid Salam, argued in December 1996 that “among activists of the Popular Front, more and more are opposed to military activities against civilians, as the one near Ramallah on Wednesday. They do not say so publicly because of internal discipline and to preserve unity.”[[27](http://www.ict.org.il/articles/define.htm#27)] We can also see something of this moral dilemma in Sheik Ahmad Yassin, the leader of Hamas: “According to our religion it is forbidden to kill a woman, a baby, or an old man, but when you kill my sister, and my daughter, and my son, it is my right to defend them.”[[28](http://www.ict.org.il/articles/define.htm#28)] This concern might explain why, after attacks on civilian targets, organizations such as Hamas often make public statements proclaiming that they have attacked military targets. The moral dilemma does exist, and the opponents of terrorism must intensify it. When countries acknowledge the principle of relying on guerrilla warfare to attain legitimate political aims, and unite in their moral condemnation of terrorism, they increase the moral dilemma that is already prevalent in terrorist organizations. The utilitarian consideration – If the perpetrators know that attacking a kindergarten or other civilian target will never be acceptable; that these attacks will turn them into wanted and extraditable terrorists and will undermine the legitimacy of their political goals—and that, when apprehended, they will be punished much more harshly than would guerrilla fighters—they may think twice before choosing terrorism as their modus operandi. Adopting the proposed definition of terrorism, formulating rules of behavior, and setting appropriate punishments in line with the proposed definition will sharpen the “cost-benefit” considerations of terrorist organizations. One way of encouraging this trend among terrorist organizations is, as noted, to agree on different punishments for those convicted of terrorism and those convicted of guerrilla warfare. Thus, for instance, the possibility should be considered of bringing to criminal trial, under specific charges of terrorism, individuals involved in terrorist activities, while allotting prisoner of war status to those accused of involvement in guerrilla activities. The proposed definition of terrorism may indeed help in the struggle against terrorism at many and varied operative levels. An accepted definition, capable of serving as a basis for international counter-terrorist activity, could above all, bring terrorist organizations to reconsider their actions. They must face the question of whether they will persist in terrorist attacks and risk all that such persistence entails—loosing legitimacy, incurring harsh and specific punishments, facing a coordinated international opposition (including military activity), and suffering harm to sources of support and revenue. The international community must encourage the moral and utilitarian dilemmas of terrorist organizations, and establish a clear policy accompanied by adequate means of punishment on the basis of an accepted definition. Summary We face an essential need to reach a definition of terrorism that will enjoy wide international agreement, thus enabling international operations against terrorist organizations. A definition of this type must rely on the same principles already agreed upon regarding conventional wars (between states), and extrapolate from them regarding non-conventional wars (betweean organization and a state). The definition of terrorism will be the basis and the operational tool for expanding the international community’s ability to combat terrorism. It will enable legislation and specific punishments against those perpetrating, involved in, or supporting terrorism, and will allow the formulation of a codex of laws and international conventions against terrorism, terrorist organizations, states sponsoring terrorism, and economic firms trading with them. At the same time, the definition of terrorism will hamper the attempts of terrorist organizations to obtain public legitimacy, and will erode support among those segments of the population willing to assist them (as opposed to guerrilla activities). Finally, the operative use of the definition of terrorism could motivate terrorist organizations, due to moral or utilitarian considerations, to shift from terrorist activities to alternative courses (such as guerrilla warfare) in order to attain their aims, thus reducing the scope of international terrorism. The struggle to define terrorism is sometimes as hard as the struggle against terrorism itself. The present view, claiming it is unnecessary and well-nigh impossible to agree on an objective definition of terrorism, has long established itself as the “politically correct” one. It is the aim of this paper, however, to demonstrate that an objective, internationally accepted definition of terrorism is a feasible goal, and that an effective struggle against terrorism requires such a definition. The sooner the nations of the world come to this realization, the better.

#### Terrorist ideology is the root cause, not language—only the war on terror solves.

**Epstein 05** (Alex, **analyst at the Ayn Rand Institute,** BA in Philosophy from Duke University, “Fight the Root of Terrorism With Bombs, Not Bread”, San Fransisco Chronicle, 8/14, http://www.aynrand.org/site/News2?page=NewsArticle&id=11243&news\_iv\_ctrl=1021)

In light of the recent suicide bombings in London, and the general inability of the West to prevent terrorist attacks, there is much talk about fighting the "root cause" of terrorism. The most popular argument is that terrorism is caused by poverty. The United Nations and our European and Arab "allies" repeatedly tell us to minimize our military operations and instead dole out more foreign aid to poor countries--to put down our guns and pick up our checkbook. Only by fighting poverty, the refrain goes, can we address the "root cause" of terrorism. The pernicious idea that poverty causes terrorism has been a popular claim since the attacks of September 11. U.N. Secretary General Kofi Annan has repeatedly asked wealthy nations to double their foreign aid, naming as a cause of terrorism "that far too many people are condemned to lives of extreme poverty and degradation." Former Secretary of State Colin Powell agrees: "We have to put hope back in the hearts of people. We have to show people who might move in the direction of terrorism that there is a better way." Businessman Ted Turner also concurs: "The reason that the World Trade Center got hit is because there are a lot of people living in abject poverty out there who don't have any hope for a better life."   Indeed, the argument that poverty causes terrorism has been central to America’s botched war in Iraq--which has focused, not on quickly ending any threat the country posed and moving on to other crucial targets, but on bringing the good life to the Iraqi people.   Eliminating the root of terrorism is indeed a valid goal--but properly targeted military action, not welfare handouts, is the means of doing so.   Terrorism is not caused by poverty. The terrorists of September 11 did not attack America in order to make the Middle East richer. To the contrary, their stated goal was to repel any penetration of the prosperous culture of the industrialized "infidels" into their world. The wealthy Osama bin Laden was not using his millions to build electric power plants or irrigation canals. If he and his terrorist minions wanted prosperity, they would seek to emulate the United States--not to destroy it.   More fundamental, poverty as such cannot determine anyone's code of morality. It is the ideas that individuals choose to adopt which make them pursue certain goals and values. A desire to destroy wealth and to slaughter innocent, productive human beings cannot be explained by a lack of money or a poor quality of life--only by anti-wealth, anti-life ideas. These terrorists are motivated by the ideology of Islamic Fundamentalism. This other-worldly, authoritarian doctrine views America's freedom, prosperity, and pursuit of worldly pleasures as the height of depravity. Its adherents resent America's success, along with the appeal its culture has to many Middle Eastern youths. To the fundamentalists, Americans are "infidels" who should be killed. As a former Taliban official said, "The Americans are fighting so they can live and enjoy the material things in life. But we are fighting so we can die in the cause of God."   The terrorists hate us because of their ideology--a fact that filling up the coffers of Third World governments will do nothing to change.

Death outweighs all their impacts – it’s the only impact you can’t recover from

Bauman 95 (Zygmunt**,** University Of Leeds Professor Emeritus Of Sociology, Life In Fragments: Essays In Postmodern Morality, p. 66-71, AD: 11/16/09) jl

The being‑for is like living towards‑the‑future: a being filled with anticipation, a being aware of the abyss between future foretold and future that will eventually be; it is this gap which, like a magnet, draws the self towards the Other,as it draws life towards the future, making life into an activity of overcoming, transcending, leaving behind. The self stretches towards the Other, as life stretches towards the future; neither can grasp what it stretches toward, but it is in this hopeful and desperate, never conclusive and never abandoned stretching‑toward that the self is ever anew created and life ever anew lived. In the words of M. M. Bakhtin, it is only in this not‑yet accomplished world of anticipation and trial, leaning toward stubbornly an‑other Other, that life can be lived ‑ not in the world of the `events that occurred'; in the latter world, `it is impossible to live, to act responsibly; in it, I am not needed, in principle I am not there at all." Art, the Other, the future: what unites them, what makes them into three words vainly trying to grasp the same mystery, is the modality of possibility. A curious modality, at home neither in ontology nor epistemology; itself, like that which it tries to catch in its net, `always outside', forever `otherwise than being'. The possibility we are talking about here is not the all‑too‑familiar unsure‑of‑itself, and through that uncertainty flawed, inferior and incomplete being, disdainfully dismissed by triumphant existence as `mere possibility', `just a possibility'; possibility is instead `plus que la reahte' ‑ both the origin and the foundation of being. The hope, says Blanchot, proclaims the possibility of that which evades the possible; `in its limit, this is the hope of the bond recaptured where it is now lost."' The hope is always the hope of *being fu filled,* but what keeps the hope alive and so keeps the being open and on the move is precisely its *unfu filment.* One may say that the paradox *of hope* (and the paradox of possibility founded in hope) is that it may pursue its destination solely through betraying its nature; the most exuberant of energies expends itself in the urge towards rest. Possibility uses up its openness in search of closure. Its image of the better being is its own impoverishment . . . The togetherness of the being‑for is cut out of the same block; it shares in the paradoxical lot of all possibility. It lasts as long as it is unfulfilled, yet it uses itself up in never ending effort of fulfilment, of recapturing the bond, making it tight and immune to all future temptations. In an important, perhaps decisive sense, it is selfdestructive and self‑defeating: its triumph is its death. The Other, like restless and unpredictable art, like the future itself, is a *mystery.* And being‑for‑the‑Other, going towards the Other through the twisted and rocky gorge of affection, brings that mystery into view ‑ makes it into a challenge. That mystery is what has triggered the sentiment in the first place ‑ but cracking that mystery is what the resulting movement is about. The mystery must be unpacked so that the being‑for may focus on the Other: one needs to know what to focus on. (The `demand' is *unspoken,* the responsibility undertaken is *unconditional;* it is up to him or her who follows the demand and takes up the responsibility to decide what the following of that demand and carrying out of that responsibility means in practical terms.) Mystery ‑ noted Max Frisch ‑ (and the Other is a mystery), is an exciting puzzle, but one tends to get tired of that excitement. `And so one creates for oneself an image. This is a loveless act, the betrayal." Creating an image of the Other leads to the substitution of the image for the Other; the Other is now fixed ‑ soothingly and comfortingly. There is nothing to be excited about anymore. I know what the Other needs, I know where my responsibility starts and ends. Whatever the Other may now do will be taken down and used against him. What used to be received as an exciting surprise now looks more like perversion; what used to be adored as exhilarating creativity now feels like wicked levity. Thanatos has taken over from Eros, and the excitement of the ungraspable turned into the dullness and tedium of the grasped. But, as Gyorgy Lukacs observed, `everything one person may know about another is only expectation, only potentiality, only wish or fear, acquiring reality only as a result of what happens later, and this reality, too, dissolves straightaway into potentialities'. Only death, with its finality and irreversibility, put an end to the musical-chairs game of the real and the potential - it once and for all closes the embrace of togetherness which was before invitingly open and tempted the lonely self.”

**Every instance of oppression except death is irreversible**

Bauman 6 (Zygmunt, Prof Emeritus of Sociology @ U of Leeds, Liquid Fear, p 29-30, AD: 12/20/09) jl

Irreparable ... Irremediable Irreversible... Irrevocable yond recall or remedy ... The point of no return The final ... The ultimate ... The end of everything. There is one and only one event to which all such qualifiers can be ascribed in full and wish no exception; one event that renders all the other applications of such concepts metaphorical, the event that accords them with their primal meaning –pristine, unadulterated and undiluted. That event is death. Death is fearful because of that quality unlike any other qualities; a quality of rendering all other qualities no longer negotiable. Each event we know or know of – except death – has a past as well as a future. Each event – except death – has a promise written in indelible ink, even if in the smallest of prints, that the plot is to be continued'. Death carries only one inscriptions Lasciate ogni speranza (though Dante Alighicri's idea of engraving that final sentence from which there was no appeal over the gate to Hell was not really legitimate, since all sorts of things went on happening after crossing hell's gate ... after that sign to 'Abandon all hope . ). Only death means nothing will happen from now that on, nothing will happen to you, that is – nothing will happen you will be able to see, hear, touch, smell, enjoy or bewail. It is for that reason that death is bound to remain incomprehensible o the living; indeed, when it comes to drawing a truly impassable limit to human imagination, death has no competitor,. The one and only thing we can't and never will be able visualize is a world that does not contain us visualizing No human experience, however rich, offers an inkling of how it feels when nothing is going to happen and nothing more is to he done. What we learn from life, day in day out, is exactly the opposite; but death annuls everything we've learned. Death is the (unknown' incarnate: among all other unknowns it is the only one fully and truly unknowable. Whatever we've done to prepare for death, death finds us unprepared. To add insult to injury, it makes the very idea of 'preparation' . -char accumulation of knowledge and skills which defines life wisdom - null and void. All other cases of hopelessness and haplessness, ignorance and impotence could he, with due effort, cured. Not this one. The (original fear, We fear of death (an inborn, endemic fear e, human beings, share it seems with all animals, owing to the oval instinct Programmed in the course of evolution into all animal species (or at least into those among them which survived long enough and so left enough traces to have their existence, recorded But only we, human beings, know of death's inescapability and so face also the awesome task of surviving the acquisition of that knowledge; Me task living with the awareness of death's inevitability, and despite it. Maurice Blanchot r dos as to suggest that whereas man knows oh death only because he is man - he is only man because he is a death in the process of becoming!

And more evidence – keeping the other alive is a necessary pre-requisite to ethics

Wapner 3

(Paul, associate professor and director of the Global Environmental Policy Program at American University, Winter, Dissent, online: <http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm>, AD: 11/16/09) jl

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment. NOW, WHAT does this mean for politics and policy, and the future of the environmental movement? Society is constantly being asked to address questions of environmental quality for which there are no easy answers. As we wrestle with challenges of global climate change, ozone depletion, loss of biological diversity, and so forth, we need to consider the economic, political, cultural, and aesthetic values at stake. These considerations have traditionally marked the politics of environmental protection. A sensitivity to eco-criticism requires that we go further and include an ethic of otherness in our deliberations. That is, we need to be moved by our concern to make room for the "other" and hence fold a commitment to the nonhuman world into our policy discussions. I don't mean that this argument should drive all our actions or that respect for the "other" should always carry the day. But it must be a central part of our reflections and calculations. For example, as we estimate the number of people that a certain area can sustain, consider what to do about climate change, debate restrictions on ocean fishing, or otherwise assess the effects of a particular course of action, we must think about the lives of other creatures on the earth-and also the continued existence of the nonliving physical world. We must do so not because we wish to maintain what is "natural" but because we wish to act in a morally respectable manner.

#### Narrative is a technique of subjugation – leaves dominant powers untouched and reproduces the violence they criticize

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But if the silences in discourses of domination are a site for insurrectionary noise, if they are the corridors we must fill with explosive counter-tales, **it is also possible to make a fetish of breaking silence.** Even more than a fetish, it is possible that this ostensible tool of emancipation carries its own **techniques of subjugation**--that it converges with non-emancipatory tendencies in contem- porary culture (for example, the ubiquity of confessional discourse and rampant personalization of political life), that it establishes regulatory norms, coincides with the disciplinary power of confession, in short, **feeds the powers we meant to starve**. While attempting to avoid a simple reversal of feminist valorizations of breaking silence, it is this dimension of silence and its putative opposite with which this Article is concerned. In the course of this work, I want to make the case for silence not simply as an aesthetic but a political value, a means of preserving certain practices and dimensions of existence from regulatory power, from normative violence, as well as from the scorching rays of public exposure. I also want to suggest a link between, on the one hand, a certain contemporary tendency concerning the lives of public figures--the confession or extraction of every detail of private and personal life (sexual, familial, therapeutic, financial) and, on the other, a certain practice in feminist culture: the compulsive putting into public discourse of heretofore hidden or private experiences--from catalogues of sexual pleasures to litanies of sexual abuses, from chronicles of eating disorders to diaries of homebirths, lesbian mothering, and Gloria Steinam's inner revolution. In linking these two phenomena--the privatization of public life via the mechanism of public exposure of private life on the one hand, and the compulsive/compulsory cataloguing of the details of women's lives on the other--I want to highlight a modality of regulation and depoliticization specific to our age that is not simply confessional but empties private life into the public domain, and thereby also usurps public space with the relatively trivial, rendering the political personal in a fashion that leaves injurious social, political and economic powers **unremarked and untouched**. In short, while intended as a practice of freedom (premised on the modernist conceit that the truth shall make us free), **these productions of truth not only bear the capacity to chain us to our injurious histories as well as the stations of our small lives but also to instigate the further regulation of those lives, all the while depoliti- cizing their conditions.**

#### That creates new and worse forms of domination

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These questions suggest that in legally codifying a fragment of an insurrec- tionary discourse as a timeless truth, interpellating women as unified in their victimization, and casting the "free speech" of men as that which "silences" and thus subordinates women, MacKinnon not only opposes bourgeois liberty to substantive equality, but potentially intensifies the regulation of gender and sexuality in the law, abetting rather than contesting the production of gender identity as sexual. In short, as a regulatory fiction of a particular identity is deployed to displace the hegemonic fiction of universal personhood, the discourse of rights converges insidiously with the discourse of disciplinarity to produce a spectacularly potent mode of juridical-regulatory domination. Again, let me emphasize that the problem I am seeking to delineate is not specific to MacKinnon or even feminist legal reform. Rather, MacKinnon's and kindred efforts at bringing subjugated discourses into the law merely constitute examples of what Foucault identified as the risk of re-codification and re- colonisation of "disinterred knowledges" by those "unitary discourses, which first disqualified and then ignored them when they made their appearance." n23 **They exemplify how the work of breaking silence can metamorphose into new techniques of domination**, how our **truths can become our rulers rather than our emancipators**, how our confessions become the norms by which we are regulated.

#### Their narratives cement an attachment to injury – this prevents overcoming that injury, homogenizes group identities, and silences those whose experiences do not parallel theirs – creates new zones of sacrifice

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If, taken together, the two passages from Foucault we have been consider- ing call feminists to account in our compulsion to put everything about women into discourse, they do not yet exhaust the phenomenon of being ensnared 'in the folds of our own discourses.' For if the problem I have been discussing is easy enough to see--indeed, largely familiar to those who track techniques of co-optation--at the level of legal and bureaucratic discourse, it is altogether more disquieting when it takes the form of regulatory discourse in our own sub- and counter-cultures of resistance . . . when confessing injury becomes that which attaches us to the injury, paralyzes us within it, and prevents us from seeking or even desiring a status other than injured. In an age of social identification through attributes marked as culturally significant--gender, race, sexuality, and so forth--confessional discourse, with its truth-bearing status in a post-epistemological universe, not only regulates the confessor in the name of freeing her as Foucault described that logic, **but extends beyond the confess- ing individual to constitute a regulatory truth about the identity group.** Confessed truths are assembled and deployed as "knowledge" about the group. This phenomenon would seem to undergird a range of recurring troubles in feminism, from the "real woman" rejoinder to post-structuralist deconstructions of her, to totalizing descriptions of women's experience that are the inadvertent effects of various kinds of survivor stories. Thus, for example, the porn star who feels miserably exploited, violated and humiliated in her work invariably monopolizes the truth about sex work; as the girl with math anxieties constitutes the truth about women and math; as eating disor- ders have become the truth about women and food; as sexual abuse and viola- tion occupy the knowledge terrain of women and sexuality. In other words, even as feminism aims to affirm diversity among women and women's ex- periences, confession as the site of production of truth and its convergence with feminist suspicion and deauthorization of truth from other sources tends to reinstate a unified discourse in which the story of greatest suffering becomes the true story of woman. (I think this constitutes part of the rhetorical power of MacKinnon's work; analytically, the epistemological superiority of confes- sion substitutes for the older, largely discredited charge of false consciousness). Thus, the adult who does not suffer from her or his childhood sexual experi- ence, the lesbian who does not feel shame, the woman of color who does not primarily or "correctly" identify with her marking as such--these figures are excluded as bonafide members of the categories which also claim them. Their status within these discourses is that of being "in denial," "passing" or being a "race traitor." This is the norm-making process in feminist traditions of "breaking silence" which, ironically, silence and exclude the very women these traditions mean to empower. (Is it surprising, when we think in this vein, that there is so little feminist writing on heterosexual pleasure?) But if these practices tacitly silence those whose experiences do not parallel those whose suffering is most marked (or whom the discourse produces as suffering markedly), they also condemn those whose sufferings they record to a **permanent identification** with that suffering. Here, we experience a temporal ensnaring in 'the folds of our own discourses' insofar as we identify ourselves in speech in a manner that condemns us to live in a present dominated by the past. But what if speech and silence aren't really opposites? Indeed, what if to speak incessantly of one's suffering is to silence the possibilities of overcoming it, of living beyond it, of identifying as something other than it? What if this incessant speech not only overwhelms the experiences of others, but alternative (unutterable? traumatized? fragmentary? inassimilable?) zones of one's own experience? Conversely, what if a certain modality of silence about one's suffering--and I am suggesting that we must consider modalities of silence as varied as modalities of speech and discourse--is to articulate a variety of possibilities not otherwise available to the sufferer?

## 1nr

#### Alt solves universal consciousness – historicizing the 1AC is the best method to foster organized resistance against capital

**VAKIAN 99**

(Bob, Chairman of Revolutionary Communist Party, “We Have a New Millenium—What we Need is a New World”, Revolutionary Worker #1036, Dec. 26, p. online: <http://rwor.org/a/v21/1030-039/1036/millenium.htm>)

Will it be the same old, same old--where a small handful continues to control the wealth and knowledge humanity as a whole has created? Where this handful continues to rule over millions and billions, using the most brutal and destructive means to maintain a way of life in which the great majority of humanity is kept in conditions of poverty and wretchedness. Where the institutions of power...the machinery that enforces "law and order"...the customs, traditions, values and ideas with which people are indoctrinated...all serve to keep this kind of system going. Where 40 thousand children die every day in the Third World from starvation and disease that could be prevented or cured. Where the oppressed are treated like dogs and shot down in the streets, or even in their own homes, by the thugs in uniform who "protect and serve" this system. Where discrimination and racism are the rule. Where every day women are insulted and assaulted, and are constantly told it is their "natural role" to be under the domination of "male authority." Where whole peoples and nations are plundered by a few "great powers." Where those who rule over us can unleash massive destruction and war at their command, bringing great suffering to the people and threatening the future of humanity, and this is all justified and glorified as "duty, honor, and righteousness." For another thousand years, will people have to witness the sickening celebration of this as "the best of all possible worlds" and the most humanity can ever hope to achieve? NO. This new millennium will be a time unlike any before in human history. It will be an era in which all of human society will be changed in radically new ways. It will be a world-historical epoch in which there will be the chance, in a way there never has been before, to put an end to oppression, to slavery in every form, in every part of the world. Looking at the world as it is now, as it has been for thousands of years...seeing what the people are caught up in today...HOW CAN ANYONE CONFIDENTLY PROCLAIM THAT THE FUTURE IS BRIGHT, THAT THIS IS WHAT THE NEW MILLENNIUM WILL BRING? AM I DREAMING? YES--BUT THESE DREAMS ARE BASED ON REALITY. Check out history. No empire has lasted forever. Even the mightiest have fallen: the Roman Caesars and their descendants, the Pharaohs of Egypt, the empire of Alexander the Great, the ruling dynasties throughout thousands of years in China, and more recently the empires of the Spanish, Portuguese and others in the Americas. This will also happen to today's empire-rulers, the imperialists, whose system is rooted in the "modern" form of slavery known as capitalism. They may rule over large parts of the world today--and, like the empires of old, they challenge each other for the top-dog position--but they will be brought down. This will be true of the German, the British, the Japanese, the French, the Russian, and other imperialists. And, even though they like to declare that they are invincible and will forever be "all-powerful," this same fate awaits the mightiest of all world powers today, the U.S. imperialists. BUT the BIG QUESTION is: WHAT WILL REPLACE THE RULE OF THESE IMPERIALISTS WHEN THEY FALL? This has everything to do with how these imperialists are brought down--in what way this is achieved and by whom. If, as in the past, empires are overthrown by other empires--if exploiters are brought down to the dust only to have new exploiters arise in their place--then nothing fundamental will change and the masses of people, living under the rule of these imperialists, will not see a new day. BUT that is NOT the only way things can go--that is not the way imperialism will end. There is another road before us--the road of revolutionary struggle to overturn and uproot all imperialists, all systems of exploitation and oppression, to sweep away all their garbage. And that revolutionary struggle will give birth to a new society and a new world without exploitation and oppression. HOW CAN WE KNOW THIS IS POSSIBLE? The reason is that, as a result of thousands of years of historical development and creative activity and struggle by human beings in all parts of the world, a fantastic amount of technology and knowledge has been brought forth. BUT this has taken place through various forms of society in which the few have enslaved the many, in different ways, and have reaped for themselves the benefits of all this development. AND THE PROBLEM TODAY IS THAT, IN THE HANDS OF THE CAPITALIST CLASS THAT RULES OVER US AND STILL CONTROLS HUMANITY'S FATE, THE TREMENDOUS TECHNOLOGY AND KNOWLEDGE THAT IS CREATED CANNOT BE USED FOR THE BENEFIT OF HUMANITY AS A WHOLE AND INSTEAD CAN ONLY SUBJECT THE GREAT MAJORITY OF US TO AGONY AND OPPRESSION. That is a problem for us, yet it is also a problem for THEM, because it makes clear that THIS CLASS OF CAPITALIST EXPLOITERS CANNOT RUN SOCIETY IN THE INTERESTS OF THE PEOPLE. BUT THERE IS A CLASS THAT CAN DO THIS. This class is the proletariat. The proletariat is all of us--of all races and nationalities, in the U.S. and throughout the world--who, under this system, can live only so long as we work, and can work only so long as our work enriches someone else--the capitalist class. Our labor, collectively, is the foundation of society and produces tremendous wealth, but this wealth is stolen by a small number of capitalist exploiters who turn this wealth into their "private property," into a means of further exploiting us. We are trapped in this cycle, where we have to work in order to live but the more we work, the more wealth we create, the more it is stolen and turned into power over us. Acting as individuals, we cannot change this basic condition of enslavement, but as a class we do have a revolutionary way out. Once we have risen up together and thrown off the rule of capital, we can not only free ourselves, we can revolutionize all of society and the world. We can unleash the tremendous creative potential of the masses of people--creative potential that is now wasted, or distorted, or even destroyed under the capitalist-imperialist system. We can take hold of the means to produce and acquire wealth and knowledge, make them the common property of the people and use them to benefit the people and society as a whole. We can transform all of the institutions and relations in society and the culture and ideas so that the common good is promoted and served. This is our world-historic mission. In this, we represent the great majority of the people, and we can lead them to change the world. This can happen--there is a powerful basis for this to happen --because this is the only way the needs and interests of the vast majority of humanity can be met and that humanity can move forward together. And, until this revolution is brought about, the rule of capital will continue to create conditions that force people to rebel against it. As the great communist revolutionary Mao Tsetung put it: wherever there is oppression, there will be resistance. And resistance can and will be transformed into revolutionary struggle, and ultimately revolutionary war, to defeat the forces of oppression on the battlefield, to smash their machinery of oppression, and to create a new system that puts an end to this oppression. No matter how many times this revolutionary struggle may be defeated, or turned back after winning some beginning victories, it will arise again and again until, finally, it triumphs completely and carries out its mission worldwide. Mao Tsetung also powerfully expressed this great truth: Fight, fail; fight again, fail again; fight again...until final victory--that is the logic of the people. Make trouble, fail; make trouble again, fail again...until their doom--that is the logic of the imperialists and all reactionaries. But to make this a reality, the oppressed, and in particular the class of proletarians, must become conscious of this historic revolutionary mission. And those who come to see the need for revolution and are determined to fight for it must be organized as a powerful force at the core of this world-changing struggle. This means that the proletariat must have its own vanguard party. A party that is continually strengthened by sinking its roots and its organization ever more deeply among the proletariat and other oppressed people and by recruiting into the party those who come to the forefront in the revolutionary struggle. A party that is guided by communist ideology, by the scientific world outlook and method that today is called MLM (or Marxism-Leninism-Maoism, after the three greatest leaders of the communist cause so far: Marx, Lenin, and Mao). This ideology of MLM, and only this ideology, represents the proletariat and its revolutionary mission. The MLM party must take up and concretely apply this ideology to solve the practical problems of the revolution.

#### Gender inequality is not the ahistorical product of an abstract system of patriarchy – it’s the result of classed societies organized around the exploitation of surplus labor

CLOUD 3

(Dana, Prof. Comm at UT, “Marxism and Oppression”, Talk for Regional Socialist Conference, April 19, 2003)

In order **to challenge oppression, it is important to know where it comes from**. **Historians, archaeologists, and anthropologists** tell us that in pre-class societies such as hunter-gatherer societies, racism and sexism were **unheard of**. Because homosexuality was not an identifiable category of such societies, discrimination on that basis did not occur either. In fact, it is clear that racism, sexism, and homophobia have arisen in **particular kinds of societies**, namely class societies. Women’s oppression originated in the first class societies, while racism came into prominence in the early periods of capitalism when colonialism and slavery drove the economic system. The prohibition against gays and lesbians is a relatively modern phenomenon. But what all forms of oppression have in common is that they did not always exist and are **not endemic to human nature**. They were **created** in the **interest** of **ruling classes** in society and continue to benefit the people at the top of society, while dividing and conquering the rest of us so as to weaken the common fight against the oppressors. The work of Marx’s collaborator Friederich Engels on The Origins of the Family, Private Property, and the State in some respects reflects the Victorian times in which in was written. Engels moralizes about women’s sexuality and doesn’t even include gay and lesbian liberation in his discussion of the oppressive family. However, anthropologists like the feminist Rayna Reiter have confirmed his most important and central argument that it was in the first settled agricultural societies that women became an oppressed class. In societies where for the first time people could **accumulate** a **surplus** of food and other resources, it was possible for some people to hoard wealth and control its distribution. The first governments or state structures formed to legitimate an emerging ruling class. As settled communities grew in size and became more complex social organizations, and, most importantly, as the surplus grew, the distribution of wealth became unequal—and a small number of men rose above the rest of the population in wealth and power. In the previous hunter-gatherer societies, there had been a sexual division of labor, but one **without a hierarchy of value**. There was no strict demarcation between the reproductive and productive spheres. All of that changed with the development of private property in more settled communities. The earlier division of labor in which men did the heavier work, hunting, and animal agriculture, became a system of differential **control over resource distribution**. The new system required more field workers and sought to **maximize** **women’s reproductive potential.** Production shifted away from the household over time and women became associated with the reproductive role, **losing control over the production** and distribution of the necessities of life. It was not a matter of male sexism, but of economic priorities of a developing class system. This is why Engels identifies women’s oppression as the first form of systematic class oppression in the world. Marxists since Engels have not dismissed the oppression of women as secondary to other kinds of oppression and exploitation. To the contrary, women’s oppression has a primary place in Marxist analysis and is a key issue that socialists organize around today. From this history we know that sexism did not always exist, and that men do not have an inherent interest in oppressing women as domestic servants or sexual slaves. Instead, women’s oppression always has served a class hierarchy in society. In our society divided by sexism, ideas about women’s nature as domestic caretakers or irrational sexual beings justify paying women lower wages compared to men, so that employers can pit workers against one another in competition for the same work. Most women have always had to work outside the home to support their families. Today, women around the world are exploited in sweatshops where their status as women allows bosses to pay them very little, driving down the wages of both men and women. At the same time, capitalist society relies on ideas about women to justify not providing very much in the way of social services that would help provide health care, family leave, unemployment insurance, access to primary and higher education, and so forth—all because these things are supposed to happen in the private family, where women are responsible. This lack of social support results in a lower quality of life for many men as well as women. Finally, contemporary ideologies that pit men against women encourage us to **fight each other** rather than **organizing together**.

#### Racism was create to protect the labor production of chattel slavery – it was manufactured by elites as a means of protecting their interests – anti-racism strategies are co-opted and divide resistance – universal consciousness is key

**Alexander 10** (The new Jim Crow: mass incarceration in the age of colorblindness, Michelle Alexander is an associate professor of law at [Ohio State University](http://en.wikipedia.org/wiki/Ohio_State_University) and a [civil rights](http://en.wikipedia.org/wiki/Civil_and_political_rights) advocate, who has litigated numerous [class action](http://en.wikipedia.org/wiki/Class_action) discrimination cases and has worked on [criminal justice](http://en.wikipedia.org/wiki/Criminal_justice) reform issues. She is a recipient of a 2005 Soros Justice Fellowship of the [Open Society Institute](http://en.wikipedia.org/wiki/Open_Society_Institute), has served as director of the Racial Justice Project at the [ACLU](http://en.wikipedia.org/wiki/American_Civil_Liberties_Union) of Northern [California](http://en.wikipedia.org/wiki/California), directed the Civil Rights Clinic at [Stanford](http://en.wikipedia.org/wiki/Stanford_University) Law School and was a law clerk for Justice [Harry Blackmun](http://en.wikipedia.org/wiki/Harry_Blackmun) at the [U. S. Supreme Court](http://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States).)

The concept of race is a relatively recent development. Only in the past few centuries, owing largely to European imperialism, have the world’s people been classified along racial lines. Here, in America, the idea of race emerged as a means of reconciling chattel slavery- as well as the extermination of American Indians – with the ideals of freedom preached by whites in the new colonies. In the early colonial period, when settlements remained relatively small, indentured servitude was the dominant means of securing cheap labor. Under this system, whites and blacks struggled to survive against a common enemy, what historian Lerone Bennett Jr. describes as “the big planter apparatus and a social system that legalized terror against black and white bondsmen.” Initially, blacks brought to this country were not all enslaved; many were treated as indentured servants. As plantation farming expanded, particularly tobacco and cotton farming, demand increased greatly for both labor and land. The demand for land was met by invading and conquering larger and large swaths of territory. American Indians became a growing impediment to white European “progress,” and during this period, the images of American Indians promoted in books, newspapers, and magazines became increasingly negative. As sociologists Keith Kilty and Eric Swank have observed, eliminating “savages” is less of a moral problem than eliminating human beings, and therefore American Indians came to be understood as a lesser race- uncivilized savages- thus providing a justification for the extermination of the native peoples. The growing demand for labor on plantations was met through slavery. American Indians were considered unsuitable as slaves, largely because native tribes were clearly in a position to fight back. The fear of raids by Indian tribes left plantation owners to grasp for an alternative source of free labor. European immigrants were also deemed poor candidates for slavery, not because of their race, but rather because they were in short supply and enslavement would, quite naturally, interfere with voluntary immigration to the new colonies. Plantation owners thus view Africans, who were relatively powerless, as the ideal slaves. The systemic enslavement of Africans, and the rearing of their children under bondage, emerged with all deliberate speed- quickened by events such as Bacon’s Rebellion. Nathaniel Bacon was a white property owner in Jamestown, Virginia, who managed to united slaves, indentured servants, and poor whites in a revolutionary effort to overthrow the planter elite. Although slaves clearly occupied the lowest position in the social hierarchy and suffered the most under the plantation, the condition of indentured whites was barely better, and the majority of free whites lived in extreme poverty. As explained by historian Edmund Morgan, in colonies like Virginia, the planter elite, with huge land grants, occupied a vastly superior position to workers of all colors. Southern colonies did not hesitate to invent ways to extend the terms of servitude, and the planter class accumulated uncultivated lands to restrict the options of free workers. The simmering resentment against the planter class created conditions that were ripe for revolt. Varying accounts of Bacon’s rebellion abound, but the basic facts are these: Bacon developed plans in 1675 to seize Native American lands in order to acquire more property for himself and others and nullify the threat of Indian raids. When the planter elite in Virginia refused to provide militia support for his scheme, Bacon retaliated, leading to an attack on the elite, their homes, and their property. He openly condemned the rich for their oppression of the poor and inspired an alliance of white and black bond laborers, as well as slaves, who demanded an end to their servitude. The attempted revolution was ended by force and false promises of amnesty. A number of the people who participated in the revolt were hanged. The events in Jamestown were alarming to the planter elite, who were deeply fearful of the multiracial alliance of bond workers and slave. Word of Bacon’s rebellion spread far and wide, and several more uprisings of a similar type followed. In an effort to protect their superior status and economic position, the planters shifted their strategy for maintaining dominance. They abandoned their heavy reliance on indentured servants in favor of the importation of more black slaves. Instead of importing English-speaking slaves from the West Indies, who were more likely to be familiar with European language and culture, many more slaves were shipped directly from Africa. These slaves would be far easier to control and far less likely to form alliances with poor whites. Fearful that such measures might not be sufficient to protect their interests, the planter class took an additional precautionary step, a step that would later come to be known as a “racial bribe.” Deliberately and strategically, the planter class extended special privileges to poor whites in an effort to drive a wedge between them and black slaves. White settlers were allowed greater access to Native American lands, white servants were allowed to police slaves through slave patrols and militias, and barriers were created so that free labor would not be placed in competition with slave labor. These measures effectively eliminated the risk of future alliances between black slaves and poor whites. Poor whites suddenly had a direct, personal stake in the existence of a race-based system of slavery. Their own plight had not improved by much, but at least they were not slaves. Once the planter elite split the labor force, poor whites responded to the logic of their situation and sought ways to expand their racially privileged position. By the mid-1770s, the system of bond labor had been thoroughly transformed into a racial caste system predicated on slavery. The degraded status of Africans was justified on the ground that Negros, like the Indians, were an uncivilized lesser race, perhaps even more lacking in intelligence and laudable human qualities than the red-skinned natives. The notion of white supremacy rationalized the enslavement of Africans, even as whites endeavored to form a new nation based on the ideals of equality, liberty, and justice for all. Before democracy, chattel slavery was born.

**A few hundred years later the Populist movement offered a chance to end racialized violence by uniting poor and working class whites and blacks – once again the corporate elite mitigated the threat of revolt against the rigid and oppressive class structures by fomenting racial tension through segregation laws – they made us think race was the problem when really it was class**

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Three alternative philosophies of race relations were put forward to compete for the region’s support, all of which rejected the doctrines of extreme racism espoused by some Redeemers: liberalism, conservatism, and radicalism. The liberal philosophy of race relations emphasized the stigma of segregation and the hypocrisy of a government that celebrates freedom and equality yet denies both on account of race. This philosophy, born in the North, never gained much traction among Southern whites or blacks. The conservative philosophy, by contrast, attracted wide support and was implemented in various contexts over a considerable period of time. Conservatives blamed liberals for pushing blacks ahead of their proper station in life and placing blacks in positions they were unprepared to fill, a circumstance that had allegedly contributed to their downfall. They warned blacks that some Redeemers were not satisfied with having decimated Reconstruction, and were prepared to wage an aggressive war against blacks throughout the South. With some success, the conservatives reached out to African American voters, reminding them that they had something to lose as well as gain and that the liberals’ preoccupation with political and economic equality presented the danger of losing all that blacks had so far gained. The radical philosophy offered, for many African Americans, the most promise. It was predicated on a searing critique of large corporations, particularly railroads, and the wealthy elite in the North and South. The radicals of the late nineteenth century, who later formed the Populist Party, viewed the privileged classes as conspiring to keep poor whites and blacks locked into a subordinate political and economic position. For many African American voters, the Populist approach was preferable to the paternalism of liberals. Populists preached an “equalitarianism of want and poverty, the kinship of a common grievance, and a common oppressor.” As described by Tom Watson, a prominent Populist leader, in a speech advocating a union between black and white farmers: “You are kept apart that you may be separately fleeced of your earnings. You are made to hate each other because upon that hatred is rested the keystone of the arch of financial despotism that enslaves you both. You are deceived and blinded that you may not see how this race antagonism perpetuates a monetary system which beggars both.” In an effort to demonstrate their commitment to a genuinely multiracial, working-class movement against white elites, the Populists made strides toward racial integration, a symbol of their commitment to class-bound unity. African Americans throughout the South responded with great hope and enthusiasm, eager to be true partners in a struggle for social justice. According to Woodward, “It is altogether probable that during the brief Populist upheaval in the nineties Negros and native whites achieved a greater comity of mind and harmonyfff of political purpose than ever before or since in the South.” The challenges inherent in creating the alliance sought by the Populists were formidable, as race prejudice ran the highest among the very white populations to which the Populist appeal was specifically address- the depressed lower economic classes. Nevertheless, the Populist movement initially enjoyed remarkable success in the South, fueled by a wave of discontent aroused by the severe agrarian depression of the 1880s and 1890s. The Populists took direct aim at the conservatives, who were known as comprising a party of privilege, and they achieved a stunning series of political victories throughout the region. Alarmed by the success of the Populists and the apparent potency of the alliance between poor and working-class whites and African Americans, the conservatives raised the cry of white supremacy and resorted to the tactics they had employed in their quest for Redemption, including fraud, intimidation, bribery, and terror. Segregation laws were proposed as part of a deliberate effort to drive a wedge between poor whites and African Americans. These discriminatory barriers were designed to encourage lower-class whites to retain a sense of superiority over blacks, making it far less likely that they would sustain inter-racial political alliances aimed at toppling the white elite. The laws were, in effect, another racial bribe. As William Julius Wilson has noted, “As long as poor whites directed their hatred and frustration against the black competitor, the planters were relieved of class hostility directed against them.” Indeed, in order to overcome the well-founded suspicions of poor and illiterate whites that they, as well as blacks, were in danger of losing the right to vote, the leaders of the movement pursued an aggressive campaign of white supremacy in every state prior to black disenfranchisement. Ultimately, the Populists caved to the pressure and abandoned their former allies. “While the [Populist] movement was at the peak of zeal,” Woodward observed, “the two races had surprised each other and astonished their opponents by the harmony they achieved and the good will with which they co-operated.” But when it became clear that the conservatives would stop at nothing to decimate their alliance, the biracial partnership dissolved, and Populist leaders re-aligned themselves with conservatives. Even Tom Watson, who had been among the most forceful advocates for an interracial alliance of farmers, concluded that Populist principles could never be fully embraced by the South until blacks were eliminated from politics. The agricultural depression, taken together with a series of failed reforms and broken political promises, had pyramided to a climax of social tensions. Dominant whites concluded that it was in their political and economic interest to scapegoat blacks, and “permission to hate” came from sources that had formerly denied it, including Northern liberals eager to reconcile with the South, Southern conservatives who had once promised blacks protection from racial extremism, and Populists, who cast aside their dark-skinned allies when the partnership fell under siege. History seemed to repeat itself. Just as the white elite had successfully driven a wedge between poor whites and blacks following Bacon’s Rebellion by creating the institution of black slavery, another racial caste system was emerging nearly two centuries later, in part due to efforts by white elites to decimate a multiracial alliance of poor people. By the turn of the twentieth century, every state in the South had laws on the books that disenfranchised blacks and discriminated against them in virtually every sphere of life, lending sanction to a racial ostracism that extended to schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisons, funeral homes, morgues, and cemeteries.

#### The perm is co-opted into the language of reformism – capital is like a many headed hydra – only totalizing rejection solves

Kovel 2

(Joel, Alger Hiss Prof. At Bard, The Enemy of Nature, Zed Books, p. 142-3)

The value-term that subsumes everything into the spell of capital sets going a kind of wheel of accumulation, from production to consumption and back, spinning ever more rapidly as the inertial mass of capital grows, and generating its force field as a spinning magnet generates an electrical field. This phenomenon has important implications for the reformability of the system. Because capital is so spectral, and succeeds so well in ideologically mystifying its real nature, attention is constantly deflected from the actual source of eco-destabilization to the instruments by which that source acts. The real problem, however, is the whole mass of globally accumulated capital, along with the speed of its circulation and the class structures sustaining this. That is what generates the force field, in proportion to its own scale; and it is this force field, acting across the numberless points of insertion that constitute the ecosphere, that creates ever larger agglomerations of capital, sets the ecological crisis going, and keeps it from being resolved. For one fact may be taken as certain — that to resolve the ecological crisis as a whole, as against tidying up one corner or another, is radically incompatible with the existence of gigantic pools of capital, the force field these induce, the criminal underworld with which they connect, and, by extension, the elites who comprise the transnational bourgeoisie. And by not resolving the crisis as a whole, we open ourselves to the spectre of another mythical creature, the many-headed hydra, that regenerated itself the more its individual tentacles were chopped away. To realize this is to recognize that there is no compromising with capital, no schema of reformism that will clean up its act by making it act more greenly or efficiently We shall explore the practical implications of this thesis in Part III, and here need simply to restate the conclusion in blunt terms: green capital, or non-polluting capital, is preferable to the immediately ecodestructive breed on its immediate terms. But this is the lesser point, and diminishes with its very success. For green capital (or ‘socially/ecologically responsible investing’) exists, by its very capital-nature, essentially to create more value, and this leaches away from the concretely green location to join the great pool, and follows its force field into zones of greater concentration, expanded profitability — and greater ecodestruction.

**Reformism DA—Their attempt to circumscribe political change within the realm of the “possible” confines the perm to a “one issue movement” that changes nothing and is incorporated into existing structures of domination**

**Zizek, 99** (Slavoj, Senior Researcher at the University of Ljubljana, Repeating Lenin <http://www.marxists.org/reference/subject/philosophy/works/ot/zizek1.htm>)

Today, we already can discern the signs of a kind of general unease — recall the series of events usually listed under the name of “Seattle.” The 10 years honeymoon of the triumphant global capitalism is over, the long-overdue “seven years itch” is here — witness the panicky reactions of the big media, which — from the Time magazine to CNN — all of a sudden started to warn about the Marxists manipulating the crowd of the “honest” protesters. The problem is now the strictly Leninist one — how to ACTUALIZE the media’s accusations: how to invent the organizational structure which will confer on this unrest the FORM of the universal political demand. Otherwise, the momentum will be lost, and what will remain is the marginal disturbance, perhaps organized as a new Greenpeace, with certain efficiency, but also strictly limited goals, marketing strategy, etc. In other words, the key “Leninist” lesson today is: politics without the organizational FORM of the [party](http://www.marxists.org/glossary/terms/p/o.htm#political-party) is politics without politics, so the answer to those who want just the (quite adequately named) “[New SOCIAL Movements](http://www.marxists.org/glossary/terms/s/o.htm#social-movement)” is the same as the answer of the Jacobins to the Girondin compromisers: “You want revolution without a revolution!” Today’s blockade is that there are two ways open for the socio-political engagement: either play the game of the system, engage in the “long march through the institutions,” or get active in new social movements, from feminism through ecology to anti-racism. And, again, the limit of these movements is that they are not POLITICAL in the sense of the Universal Singular: they are “one issue movements” which lack the dimension of the universality, i.e. they do not relate to the social TOTALITY. fffffHere, Lenin’s reproach to liberals is crucial: they only EXPLOIT the working classes’ discontent to strengthen their position vis-a-vis the conservatives, instead of identifying with it to the end.[52](http://www.marxists.org/reference/subject/philosophy/works/ot/zizek1.htm#52) Is this also not the case with today’s Left liberals? They like to evoke racism, ecology, workers’ grievances, etc., to score points over the conservatives WITHOUT ENDANGERING THE SYSTEM. Recall how, in Seattle, Bill Clinton himself deftly referred to the protesters on the streets outside, reminding the gathered leaders inside the guarded palaces that they should listen to the message of the demonstrators (the message which, of course, Clinton interpreted, depriving it of its subversive sting attributed to the dangerous extremists introducing chaos and violence into the majority of peaceful protesters). It’s the same with all New Social Movements, up to the Zapatistas in Chiapas: the systemic politics is always ready to “listen to their demands,” depriving them of their proper political sting. The system is by definition ecumenical, open, tolerant, ready to “listen” to all — even if one insist on one’s demands, they are deprived of their universal political sting by the very form of negotiation. The true Third Way we have to look for is this third way between the institutionalized parliamentary politics and the new social movements. The ultimate answer to the reproach that the radical Left proposals are utopian should thus be that, today, the true utopia is the belief that the present liberal-democratic capitalist consensus could go on indefinitely, without radical changes. We are thus back at the old ‘68 motto “Soyons realistes, demandons l'impossible!": in order to be truly a “realist,” one must consider breaking out of the constraints of what appears “possible” (or, as we usually out it, “feasible”)

#### You have an ethical obligation to reject capitalism – it’s costs are beyond calculation

**Zizek & Daly, 04** (Glyn, Senior Lecturer in Politics in the Faculty of Arts and Social Sciences at University College, Northhampton, Conversations with Zizek p. 14-16)

For Zizek it is imperative that we cut through this Gordian knot of postmodern protocol and recognize that our ethico-political responsibility is to confront the constitutive violence of today’s global capitalism and its obscene naturalization/anonymization of the millions who are subjugated by it throughout the world. Against the standardized positions of postmodern culture – with all its pieties concerning ‘multiculturalist’ etiquette – Zizek is arguing for a politics that might be called ‘radically incorrect’ in the sense that it breaks with these types of positions and focuses instead on the very organizing principles of today’s social reality: the principles of global liberal capitalism. This requires some care and subtlety. For far too long, Marxism has been bedeviled by an almost fetishistic economism that has tended towards political morbidity. With the likes of Hilferding and Gramsci, and more recently Laclau and Mouffe, crucial theoretical advances have been made that enable the transcendence of all forms of economism. In this new context, however, Zizek argues that the problem that now presents itself is almost that of the opposite fetish. That is to say, the prohibitive anxieties surrounding the taboo of economism can function as a way of not engaging with economic reality and as a way of implicitly accepting the latter as a basic horizon of existence. In an ironic Freudian- Lacanian twist, the fear of economism can end up reinforcing a de facto economic necessity in respect of contemporary capitalism (i.e. the initial prohibition conjures up the very thing it fears). This is not to endorse any kind of retrograde return to economism. Zizek’s point is rather that in rejecting economism we should not lose sight of the systemic power of capital in shaping the lives and destinies of humanity and our very sense of the possible. In particular we should not overlook Marx’s central insight that in order to create universal global system the forces of capitalism seek to conceal the politico- discursive violence of its construction through a kind of gentrification of that system. What is persistently denied by neo-liberals such as Rorty (1989) and Fukuyama (1992) is that the gentrification of global liberal capitalism is one whose ‘universalism’ fundamentally reproduces and depends upon a disavowed violence that excludes vast sectors of the world’s population. In this way, neo-liberal ideology attempts to naturalize capitalism by presenting its outcomes of winning and losing as if they were simply a matter of chance and sound judgment in a neutral marketplace. Capitalism does indeed create a space for a certain diversity, at least for the central capitalist regions, but it is neither neutral nor ideal and its price in terms of social exclusion is exorbitant. That is to say, the human cost in terms of inherent global poverty and degraded ‘life chances’ cannot be calculated within the existing economic rationale and, in consequence, social exclusion remains mystified and nameless (viz. the patronizing reference to the ‘developing world’). And Zizek’s point is that this mystification is magnified through capitalism’s profound capacity to ingest its own excesses and negativity: to redirect (or misdirect) social antagonisms and to absorb them within a culture of differential affirmation. Instead of Bolshevism, the tendency today is towards a kind of political boutiquism that is readily sustained by postmodern forms of consumerism and lifestyle.