# 1AC

### Plan

***The authority of the President of the United States to use or deploy armed forces in circumstances likely to lead to an armed attack without a prior declaration of war from the United States Congress should be substantially restricted.***

***“Armed attack” should be defined as: The use of force of a magnitude that is likely to produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property.***

**Contention 1: Wars of Choice**

#### They’re inevitable in the status quo:

***First - Commitment trap --- lack of congressional war power causes presidential utterances to become de facto strategy --- this locks us into unnecessary conflicts***

**Brookings Institution** 6-20-20**13**, The Road to War: Presidential Commitments and Congressional Responsibility, <http://www.brookings.edu/events/2013/06/20-war-presidential-power>, jj

**Ever since WWII**, Kalb said that “**history has led us into conflicts that we don’t understand” because presidents do not seek approval from Congress for declarations of war**. ***The country has reached a point now where “presidential power is so great, words out of his mouth become policy for the United States***.” **Kalb used the Syrian civil war and** President **Obama’s “red line” policy as an example of how a president’s words become strategy for the United States**. Kalb argued **that this presidential “flexibility” in foreign policy decision-making has repeatedly led the country into one misguided war to the next such as the Vietnam and Iraq wars**. ***To nullify these poor decisions***, Kalb believes that ***formal congressional declarations of war will help “trigger the appreciation for the gravity of war*” and assist in “unifying the nation” behind a strategic military intervention, resulting in more positive outcomes for the United States**. ¶ He concluded his remarks by noting that ***declarations of war by Congress are “stark commitments*,” and statements by the president of the United States must be thoroughly discussed to make well-informed decisions that will be in the best interest of the American people**. **Conflicts must be understood before the decision is made to send American troops to war, and presidents of the United States should converse with Congress before taking any military action.**

***Second - Groupthink – Comprehensive analysis proves absent sustained congressional involvement in war-making – unnecessary interventions are inevitable***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

II. The Causes of War

 **In beginning to think about how to improve the legal constraints on the resort to war, it is essential to consider the causes of international armed conflict**. n10 The question of what causes war is the subject of a massive amount of re-search and debate, stretching back literally thousands of years. n11 **The focus of the various theories on the causes of war range from the individual decision makers, through small-group dynamics, the structure of the state itself, all the way to the structure and operation of the international system of states**. n12 Thucydides, whose analysis of the Peloponnesian War is one of the earliest studies of the subject known to us, set the stage with a complex explanation for the causes of that war that included the individual attributes of decision makers, the nature and structure of the leading city-states, and the nature of the interstate system itself. n13 Kenneth Waltz continues this classification by defining the three levels as "Images": the individual or human level ("Image I"), the level of the state structure or organization ("Image II"), and the level of the international system ("Image III"). n14 And despite the differing theories, disagreements, and areas of emphasis, there is a widely shared acceptance that all three Images play a role in explaining the causes of war, albeit to varying degrees [\*617] depending on one's theoretical perspective. n15 While it is not necessary for us to examine the various theories in detail, it will be helpful to get a flavor for some of the more important ideas as they relate to each of the three Images, as I will refer back to these ideas to support the argument for the proposed Model.

 A. Image I--The Level of the Individual

 **There are a wide variety of theories, and indeed a number of different sublevels within the Image I--the individual level--perspective on the causes of war. Some of these focus on aspects such as human nature itself and the inherent aggression of ~~man~~**. n16 **But the theories that relate to both the psychology of decision makers, and a number of systemic problems in small-group decision making are of greatest significance for the argument being advanced here**. **Beginning with individual psychology, one set of theories focus on the personality traits that are common among those who tend to reach the highest offices of government as factors that contribute to unsound judgments regarding the use of armed force**. **Empirical studies suggest that a number of traits that tend to be overrepresented in national leaders--such as au-thoritarian and domineering tendencies, introversion** (which is perhaps counter-intuitive, but Hitler and Nixon are both prime examples of this trait), **narcissism, and high-risk tolerance--also tend to correlate with much higher levels of con-frontation and the use of force to resolve conflicts**. n17

 Psychological theories also focus on problems of misperception. **There is powerful evidence that people are prone to systematic patterns of misperception, and that such misperception in government leaders contributes significantly to irrational decisions**. n18 In particular, **decision makers frequently form strong hypotheses regarding the intentions** [\*618] **and capabilities of potential adversaries, and there is a strong tendency to then dismiss or discount information that is inconsistent with the hypothesis, and to interpret ambiguous information in a manner that is consistent with and reinforces the hypothesis**. n19 **Such misperception often constitutes a significant factor in the path to war**. n20

 Another set of theories that relate to the Image I causes of war focus not on the individual alone, but on how deci-sions are made within groups and organizations. Contrary to the expectation that government agencies generally operate in accordance with rational choice theory, **studies suggest that group decision making is often characterized by dynamics that can lead to irrational and suboptimal decisions**. One such characteristic is excessive "incrementalism" and "satisfycing"--the tendency to make small incremental policy shifts, coupled with the sequential analysis of options and adoption of the first acceptable alternative, a process captured in the aphorism "the good is the enemy of the best." n21 **A second theory suggests that the dynamic of competing bureaucratic and departmental interests--interests which are often inconsistent with the larger national interest, but which nonetheless command greater loyalty and mobilize greater effort among department or division members--subvert the decision-making process**. n22 **Moreover, each department will itself approach the decision making within the constraints of its own perspectives and mindsets, standard operating procedures, and capabilities. This is the famous "where you stand is where you sit" explanation of internal government politics**, n23 **often referred to as the** [\*619] "**bureaucratic politics model**." n24 For **example, the senior representatives of the U.S. Air Force, with obviously vested interests, strongly argued in favor of the continued strategic bombing of North Vietnam in 1967, even though the Secretary of Defense and others in the Nixon administration had determined that it was at best pointless and at worst counterproductive**. n25

 **Finally, there is the phenomenon known as "*groupthink***." n26 **This theory suggests that some decision-making groups--particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfi-dence, and a shared world view or value system--suffer from a deterioration in their capacity to engage in critical analysis during the decision-making process**. n27 **Decision-making groups that suffer from groupthink are particularly vulnerable to the kind of systemic misperception discussed above, but they suffer from other weaknesses as well, all stemming from a failure to challenge received wisdom, consider alternate perspectives, or bring to bear exogenous criteria or modalities in assessing policy options**. n28

 These theories do not, of course, explain all of the problems in decision making in all situations. Groupthink and the bureaucratic politics model generally do not operate at the same time in the same groups. But **the studies of each of these phenomena suggest that these systemic patterns can be a significant factor in the less-than-rational and suboptimal decision making about the use of armed force.** **And these theories together show the importance of introducing exogenous criteria for assessing the merit of competing policy options, and the kinds of checks and balances that might lessen the probability that these tendencies could affect the decision to go to war.** [\*620]

 B. Image II--The Level of the State

 **The causes of war also operate at the level of the state itself. Again, there is an extensive range of theoretical ex-planations for the causes of war that focus on factors at the state level, but those that are central to Image II relate to the actual structure or form of the government of the state**. n29 **The essential idea is that some forms of government are inherently less prone to wage war than others**. **This idea has been central to liberal theories of the state and international relations since the beginning of the eighteenth century, with the argument that liberal democratic states are less inclined to initiate wars than autocratic or other nondemocratic states**. These arguments were founded upon a number of strands of liberal political theory, including the nature of individual rights within democracies and the manner in which respect for such rights would influence how the state would behave within the international society. n30 They also drew upon liberal ideas about the influence of capitalist economies, arguing that laissez-faire capitalist systems would operate to reduce the incentives for war in liberal democratic states. n31 But **perhaps the most important argument among these liberal claims, is that the very structure of government, both in terms of its leaders being representative of and directly accountable to an electorate, and the separation of political power between the executive and a more broadly representative legislature, would operate to reduce the likelihood that such governments would embark on military adventures**. n32

 Rousseau and Madison both wrote about the ramifications of the democratic structure of the state on the propensity for war. n33 But it was Immanuel Kant who developed the argument most fully in the eighteenth century with his [\*621] short work Perpetual Peace: A Philosophical Sketch. n34 Writing at a time when there were less than a handful of fledgling democratic "republics" in the world, n35 **Kant argued that a perpetual peace would result from the spread of the republican form of government among the nations of the world and the development of a form of pacific federation among these free states**. n36 His argument thus straddled the second and third images, and I will return to discuss his overall theory more fully below when we turn to consider Image III. But one of his arguments for why republics would be inherently less likely to wage war is still very much at the heart of current liberal theories relating to Image II. His point was that, **in the kind of republic he envisioned, the consent of citizens would be required for decisions to go to war**. **Those who would "call[] down on themselves all the miseries of war," not only fighting and dying in the conflict but also paying for it and suffering the resulting debt, would be much less likely to agree to such an adventure than the heads of state in other kinds of political systems such as monarchies, who can "decide on war, without any significant reason**." n37

 As we will see, Kant himself did not argue that the development of democratic structures within any given state would be sufficient to prevent it from going to war, and his theory of perpetual peace also rested on the requirement that the republican form of government be also spread throughout the international system. Indeed, **one of the problems with liberal theories that rely upon governmental structure as an explanation for the cause of war is that the extensive empirical research and analysis on the subject suggest that liberal democracies are almost as prone to engaging in war as nondemocratic states, at least as against nondemocratic countries**. n38 **Some have tried to argue that liberal democracies nonetheless do not initiate wars to the same degree, and thus** [\*622**] are inherently less aggressive than other forms of government, but even that claim is very difficult to sustain from the perspective of traditional international law conceptions of aggression and self-defense**. n39

 What has emerged from this line of research, however, is the widely accepted proposition that liberal democracies do not commence wars against other liberal democracies. The so-called "democratic peace" encompasses both this empirical fact and the principle said to explain it. n40 While there remains some residual debate over the validity of the principle, n41 persuasive evidence suggests that, with the possible exception of two instances of armed conflict between what might be considered democratic states, there have been no wars between liberal democracies during the period between 1816 and 1965. n42 The assertion has been made, and often cited, that the democratic peace is close to being an empirical law in international relations. n43

 **There is less agreement over the best explanation for the democratic peace. There are two main theoretical posi-tions: (1) normative and cultural explanations, and (2) institutional and structural constraints**. n44 The normative-cultural explanations argue that the shared norms of democracies, and particularly the shared adherence to the rule of law and commitment to peaceful dispute resolution internally, inform and influence the approach of democratic governments to [\*623] resolving disputes that may arise as between democracies. Moreover, there is a shared respect for the rights of other people who live in a similar system of self-government. These shared beliefs, norms and expectations tip the cost-benefit analysis toward peaceful resolution of disputes when they arise as among democracies. n45

 **The structural-institutional advocates argue that the elements of the liberal democratic legal and political system operate to constrain the government from commencing armed conflicts**. **This is entirely in line with the insights of earli-er writers such as Madison, Kant, and Cobden, regarding the lower likelihood of war when representatives of those who will pay and die for the war are deciding, since it is more politically risky for democratic leaders to gamble the blood and treasure of the nation in war unless it is clearly viewed by the public as being necessary**. n46 **The arguments are also based in part on the broader idea that structural checks and balances typical of democratic systems, and the operation of certain other institutional features of deliberative democracy, will reduce the incidence of war**. n47 We will return to some of these arguments in more detail below.

***Third - Lack of public awareness about war power issues allows uninhibited intervention***

**Druck ’12**, Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013; Notes Editor, Cornell Law Review, Volume 98, November, 2012¶ Cornell Law Review¶ 98 Cornell L. Rev. 209, NOTE: DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLO-GY-DRIVEN WARFARE, Lexis, jj¶

 The War Powers Resolution in the Era of Technology-Driven Warfare

A. Why an Unconstrained Executive Matters Today

 **If public scrutiny acts as a check on presidential action by pressuring Congress into enforcing domestic law** (namely, the WPR), **then that check has weakened given the increased use of technology-driven warfare abroad**. n135 As a result, **fewer checks on presidential military actions exist, implying that we will see more instances of unilateral presidential initiatives**. **But if the new era of warfare removes the very issues associated with traditional warfare, should we be con-cerned about the American public's increasing numbness to it all? The answer is undoubtedly yes.**

**First, from a practical standpoint, the psychology surrounding mechanized warfare makes it easier for the United States to enter hostilities initially**. n136 **Without having to worry about any of the traditional costs of war (such as a draft, rationing, casualties, etc.), the triggers that have historically made the public wary of war are now gone**. **When ma-chines, rather than human beings, are on the front lines, the public** (and, as a result, politicians and courts) **will not act to stop the continued use of drones. In other words, people will simply stop caring about our increased actions abroad**, regardless of their validity, constitutionality, or foreign harm.

But again one must wonder: should we care? After all, even if we increase the number of military conflicts abroad, the repercussions hardly seem worth worrying about. For example, worrying that WPR violations will cause significant harm to the United States seems somewhat misplaced given the limited nature of technology-driven warfare. Granted, this style of warfare might make it easier to enter hostilities, but the risk of subsequent harm (at least to the United States) is low enough to mitigate any real danger. Furthermore, even if the effects of warfare might become increasingly dulled, any use of force that would eventually require traditional, Vietnam-esque types of harms as the result of technology-driven warfare would in a sense "wake up the populace" in order to check potentially unconstitutional action. n137 [\*232] Thus, if our level of involvement requires machines and only machines, why worry about a restrained level of public scrutiny?

The answer is that **a very real risk of harm exists nonetheless. War by its very nature is unpredictable**. n138 Indeed, **one of the major grievances concerning the war in Vietnam was that we ended up in a war we did not sign up for in the first place**. n139 ***The problem is not the initial action itself but the escalation***. Therefore, **while drone strikes might not facially involve any large commitment, the true threat is the looming possibility of escalation**. n140 **That threat exists in the context of drones, whether because of the risk of enemy retaliation or because of a general fear that an initial strike would snowball into a situation that would require troops on the ground**. n141 **In both cases, an apparently harmless initial action could eventually unravel into a situation involving harms associated with traditional warfare**. n142 Worse yet, even if that blowback was sufficient to incentivize the populace and Congress to mobilize, the resulting involvement would only occur after the fact. n143 **If we want restraints on presidential action, they should be in place before the United States is thrown into a war, and this would require public awareness about the use of drones**. n144 As such, **whether it is unforeseen issues arising out of the drones themselves** n145 **or unforeseen consequences stemming from what was ostensibly a minor military undertaking, there is reason to worry about a** [\*233**] populace who is unable to exert any influence on military actions, even as we shift toward a more limited form of warfare**. n146

Another issue associated with a toothless WPR in the era of technology-drive warfare involves humanitarian con-cerns. If one takes the more abstract position that the public should not allow actions that will kill human beings to go unchecked, regardless of their legality or underlying rationale, then that position faces serious pressure in the era of technology-driven warfare. As the human aspect of warfare becomes more attenuated, **the potential humanitarian costs associated with war will fade out of the collective consciousness, making it easier for the United States to act in potentially problematic ways without any substantial backlash**. Rather than take note of whom we target abroad, for example, **the numbing effect of technology-driven warfare forces the public to place "enormous trust in our leaders" despite the fact that good faith reliance on intelligence reports does not necessarily guarantee their accuracy**. n147 Accordingly, **as the level of public scrutiny decreases, so too will our ability to limit unwarranted humanitarian damage abroad**. n148 **At the very least, some dialogue should occur before any fatal action is taken; yet, in the technology-driven warfare regime, that conversation never occurs.** n149

***The impact is imperialism, militarism and aggressive foreign policy – the aff is key***

**Fisher ’05**, LOUIS FISHER, Specialist with the Law Library, The Library of Congress. Ph.D., New School for Social Research, 1967; B.S., College of William and Mary, 1956, Indiana Law Journal¶ Fall, 2005¶ 81 Ind. L.J. 1199, Lost Constitutional Moorings: Recovering the War Power, LEXIS, jj

**The initiation of U.S. military operations in Iraq flowed from a long list of miscalculations, false claims, and misjudgments, both legal and political. Errors of that magnitude were not necessary or inevitable. Military conflict could have been delayed**, perhaps **permanently, had the responsible political leaders performed their constitutional duties with greater care, reflection, integrity, and commitment to constitutional principles**. Adding to the failures of elected officials were decades of irresponsible and misinformed statements by federal judges, academics, law reviews, and the media.¶ **Although the Iraq War that began in 2003 was orchestrated by the Republican Party and the Bush administration, their miscalculations built upon a half century of violations of constitutional principles over the war power**. **Democratic Presidents led the country to war against North Korea** (President Harry Truman), North **Vietnam** (President Lyndon Johnson), **and Serbia** (President Bill Clinton). **Republican neoconservatives beat the drums for war against Iraq, but Democratic academics did the same for Korea**. **The dominant theme in American foreign policy since World War II has been a bellicose spirit that champions the use of military force, boasts the virtues of "American exceptionalism," stands ready to fight "evil" anywhere** (**whether Soviet Communism or Islamic fundamentalism), and regularly attacks opponents of war as unpatriotic and unmanly**. **That these forces led to torture by U.S. soldiers at Abu Ghraib or CIA "black sites" should come as no surprise. They are the natural results of concentrated power, political arrogance, and ideological fervor.**

### Contention 2: Cult of the Presidency

***Politics is ceded to the president now --- Americans believe the president will solve all problems --- that ensures an unrestrained imperial president --- only increasing public deliberation on the presidency allows a reinvigoration of politics***

Gene **Healy ‘09** is an American political pundit, journalist and editor. Healy is a Vice President at the libertarian think tank Cato Institute, as well as a contributing editor to Liberty magazine. Cult of the Presidency : America's Dangerous Devotion to Executive Power. Washington, DC, USA: The Cato Institute, 2009. p 2-3. http://site.ebrary.com/lib/wayne/Doc?id=10379710&ppg=12 Copyright © 2009. The Cato Institute. All rights reserved.

Nearly six years earlier, September 11 had inspired similar rhetorical excess, but with far greater consequence. The week after the attacks, President Bush invoked America’s ‘‘responsibility to history’’ and declared that we would ‘‘answer these attacks and rid the world of evil .’’ 5 A mission that vast would seem to require equally vast powers. And the Bush administration has made some of the broadest assertions of executive power in American history: among them, the power to launch wars at will, to tap phones and read e-mail without a warrant, and to seize American citizens on American soil and hold them for the duration of the War on Terror— in other words, perhaps forever— without ever having to answer to a judge. Those assertions have justifiably given rise to fears of a new Imperial Presidency. Yet, many of the same people who condemn the growing concentration of power in the executive branch also embrace a virtually limitless notion of presidential responsibility. **Today, politics is as bitterly partisan as it’s been in three decades, and the Bush presidency is at the center of the fight. But amid all the bitterness, it’s easy to miss the fact that, at bottom, both Left and Right agree on the boundless nature of presidential responsibility. Neither Left nor Right sees the president as the Framers saw him: a constitutionally constrained chief executive with an important, but limited job: to defend the country when attacked, check Congress when it violates the Constitution, enforce the law— and little else**. Today, for conservatives as well as liberals, it is the president’s job to protect us from harm, to ‘‘grow the economy,’’ to spread democracy and American ideals abroad, and even to heal spiritual malaise— whether it takes the form of a ‘‘sleeping sickness of the soul,’’ as Hillary Clinton would have it, or an ‘‘if it feels good, do it’’ ethic, as diagnosed by George W. Bush. 6 **Few Americans find anything amiss in the notion that it is the president’s duty to solve all large national problems and to unite us all in the service of a higher calling. The vision of the president as national guardian and redeemer is so ubiquitous that it goes unnoticed**. Is that vision of the presidency appropriate for a self-governing republic? Is it compatible with limited, constitutional government? The book you’re holding argues that it is not. **Americans’ unconfined conception of presidential responsibility is the source of much of our political woe and some of the gravest threats to our liberties. If the public expects the president to deal with all national problems, physical or spiritual, then the president will seek— or seize— the power necessary to handle that responsibility. We’re right to fear the growth of presidential power. But the Imperial Presidency is the price of making the office the focus of our national hopes and dreams.**

***Deliberation about war powers is key to check the unitary executive --- policy relevant debate about war powers decision-making is critical to hold the government accountable for their hypocrisy --- only engaging specific proposals and learning the language of the war-machine solves***

Ewan E. **Mellor** – European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference 20**13**, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, online

**This section of the paper considers** more generally **the need for** just war **theorists to engage with policy debate about the use of force**, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. **It draws on John Kelsay’s conception of just war thinking as being a social practice**,35 **as well as on** Michael **Walzer’s understanding of the role of the social critic in society**.36 It argues that **the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.**”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “**good just war thinking involves continuous and complete deliberation**, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 **This is important as it highlights the need for** just war **scholars to engage with the ongoing operations in war and the specific policies that are involved**. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. **Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”**40 **in terms of being able to discuss it and judge it in moral terms**.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. **The** just war **theorist, as a social critic, must be involved with his or her own society and its practices**. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 **the** just war **theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted**.42 **It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to**¶ **demonstrate its hypocrisy and to show the gap that exists between its practice and its values**.43 **The tradition** itself provides a set of values and principles and, as argued by Cian O’Driscoll, **constitutes a “language of engagement” to spur participation in public and political debate.**44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 **By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis**.¶ **Engaging with the reality of war requires recognising that war is**, as Clausewitz stated, **a continuation of policy**. **War**, according to Clausewitz, **is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued**.47 ***Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship***.48 ***This engagement must bring*** just war ***theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers***, **however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power**. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition **the policy-makers will be forced to account for their decisions and justify them in just war language**. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 **it is incumbent upon** just war **theorists to ensure that the public are informed and are capable of holding their political leaders to account**. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, **it is precisely because it is “our country” that we are “especially obligated to criticise its policies**.”51

***Without deliberation about the presidency, progressive politics is impossible --- conservative social movements will inevitably engage the presidency --- the left can only be effective by recognizing that politics flows through the presidency --- the global uniquely shapes the local in this context***

Institutional focus is key – any other starting point ignores the primacy of the presidency to American politics ---

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**This article analyzes the often fraught yet sometimes productive relationship between the modern presidency and social movements**. Although the presidency-social movement nexus is fraught with tension, ***collaboration between the White House and social activists was indispensable to the important changes that occurred during the second half of the twentieth century***. **Focusing especially on** Lyndon **Johnson's uneasy but critical relationship to the civil rights movement** and Ronald Reagan's enlistment of the Christian Right into the Republican Party, **we trace the emergence of a novel form of politics since the 1960s that joins executive prerogative, grassroots insurgency, and party polarization**. **Johnson's efforts to leverage presidential power to advance civil rights played a critical role in recasting the relationship between national administration and social movements**, one that paved the way for a national conservative offensive. The relationship forged between Johnson and the civil rights movement has echoes in the similar joining of the Reagan presidency and the Christian Right, an executive-insurgency alliance that instigated the transformation of the Republican Party and spurred the development a new presidency-centered party system by the end of the 1980s.

**This article explores the relationship between the modern presidency and social movements, an uneasy but critical alliance in the quest for both liberal and conservative reform during the past half-century**. Focusing on Lyndon Johnson's relationship to the civil rights movement and Ronald Reagan's collaboration with the Christian Right, **we explore the idea**, born of the Progressive era, **that the presidency is inherently disposed to ally itself with major reform movements**. **Presidency scholars, like many citizens, regularly perceive occupants of the Oval Office as leading agents of change in a labyrinthine political system that can be difficult to navigate**. Social movement scholars, in turn, associate social and political transformation with organized, collective insurgencies of ordinary people motivated by common purposes or social solidarities. By definition, social movements are, to borrow James Jasper's words, "conscious, concerted, and relatively sustained efforts by organized groups ... to change some aspect of their society by using extra-institutional means" (1999, 5).

**Although both presidents and social movements have played leading roles in the development of major legal and policy innovation over the course of American political development, the respective literatures on executive power and insurgency rarely intersect**. **Salutary efforts to probe the subject tend to emphasize the inherent conflict between a centralizing institution tasked with conserving the constitutional order and grassroots associations dedicated to structural change** (e.g., see Riley 1999; Sanders 2007). **To be sure, the relationship between presidents and insurgents is fraught with tension; nonetheless, it has significant formative potential given the ambition and capacity of both actors under opportune conditions to transform the political order**. For all of their differences, ***the ambitions and work of presidents and movements are sometimes complementary rather than antagonistic.***

Our central point is that the emergence of **the modern presidency recasts in important ways the relationship between executive power and social movements**. Constrained by constitutional norms, the separation and division of powers, and a decentralized party system, the disruptive potential of executive power was often limited until the twentieth century. **With the advent of the modern presidency during the Progressive era**, however, **the White House was more likely to challenge the existing order of things**. To be sure, modern executives regularly have shied away from close relationships with controversial social movements and sometimes openly attacked them (Tichenor 1999, 2007). Nonetheless, ***the consolidation of the modern presidency during the New Deal realignment invested the executive with powers and public expectations that made it a critical agent of social and economic reform*** (Milkis 1993). **Once the White House became the center of growing government commitments, its occupants were more likely to profess support for the same high ideals that prominent social movements in their camps championed** (Miroff 1981,14).

**The idea that the executive office might act as a spearhead for social justice-a rallying point for democratic reform movements-reached a critical juncture during the Johnson presidency**. **The nation received glimpses of the transformational possibilities of presidential-movement collaborations during the presidencies of Theodore Roosevelt, Woodrow Wilson, Franklin Roosevelt, Harry Truman, and John F. Kennedy**. But they also demonstrated the deep conflicts of interest and ideology that inherently divided presidents and movements. **Only with Lyndon Johnson was the full panoply of modern presidential powers-political, administrative, and rhetorical-deployed on behalf of insurgent interests and demands**. Johnson claimed broad authority to transform domestic policy on his own terms at a time when Congress and parties were subordinate to a "modern" presidency at high tide and a national administration unprecedentedly expansive. This also was a period when the civil rights movement's ability to blend and balance disruptive collective action and conventional political pressure was at its zenith. Consequently, **Johnson and the civil rights movement formed a more direct, combustible, and transformative relationship than was true of previous collaborations between presidents and social movements** (Milkis and Tichenor 2011). **The result was both a historic body of civil rights reforms** and enormous political fallout for Johnson and the Democratic Party.

**A little more than a decade later, a new executive-insurgency alliance spurred a national conservative offensive**. Like Johnson, Reagan commanded a strong and active presidency that reshaped national law and policy commitments, but he sought to deploy modern executive power to achieve conservative objectives. Some of these purposes, most notably a more aggressive anti-Communist agenda and the protection of "family values," required the expansion rather than the rolling back of national governmental responsibilities. Moreover, by the time Ronald Reagan became president, cultural forces unleashed by the Great Society had created a more polarized political environment. **Reagan's contribution to the development of a decidedly right of center modern Republican Party, pledged to advance issues of critical importance to Christian conservatives, made the GOP an attractive venue for the forging a strong bond between the White House and Christian Right**. As we shall see, **the fact that Christian conservatives were less suspicious of executive power than civil rights activists had been might have diminished the Christian Right's reformist potential**. **Yet with their impressive march through American political institutions, these religious movement activists joined with Reagan in advancing a more centralized, polarized, and programmatic party system that defied national consensus and enduring reform, and appeared to issue, instead, a rancorous struggle between conservatives and liberals for control of the modern executive office.**

The two cases examined in this article thus shed light on important developments in American politics. Johnson's alliance with the civil rights movement and Reagan's ties with the Christian right mark critical episodes in the confluence of executive prerogative and insurgency that both infused politics with moral fervor and sharpened conflict between liberals and conservatives. By the end of the 1980s, these new strains had formed into a novel form of party politics that joined presidential prerogative, grassroots mobilization, and partisan polarization. We seek to take account of this transformation of American politics in the conclusion, suggesting that the **critical, tense alliances presidents have forged with social movements over the past half-century have advanced reforms and visions of an alternative political order**-but at the risk of weakening the means of common deliberation and public judgment, the very practices that nurture a civic culture.

***We must engage the presidency --- focus on purely local politics contributes to the decline of liberalism and resurgence of conservative moments***

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For a time, **LBJ's "careful practicality" and moral leadership made him an indispensable ally of the civil rights movement**. His greatest strength as majority leader of the Senate had been personal persuasion, a talent he now used to convince the Senate Republican leader, Everett Dirksen, to endorse the 1964 civil rights bill and enlist moderate Republicans in the cause. This support came with a price. Dirksen insisted on compromises that reduced the power of the Equal Employment Opportunity Commission (EEOC) and limited the authority of the Justice Department to bring suits against businesses to those situations in which a clear "pattern and practice" of discrimination existed.3 These compromises addressed moderate Republicans' distaste for overlapping bureaucracies and excessive litigation, as well as their desire to protect northern and western businesses from intrusive federal agencies. Still, the principal objective of the civil rights bill-eliminating entrenched segregation in the South-was preserved.¶ Dirksen's support of the civil rights bill also followed from the senator's perception, confirmed by the president's successful southern tour, that public opinion had turned in favor of civil rights. Investing the power and prestige of his office in a cause and a movement, Johnson persuaded Dirksen and most members of Congress that civil rights reform could no longer be resisted. As Dirksen put it, paraphrasing Victor Hugo's diary, "No army is stronger than an idea whose time has come."4 Johnson signed the Civil Rights Act on July 2, 1964.¶ **Throughout the fight for this legislation, Johnson drew strength from and collaborated with civil rights leaders, even seeking their support for his decision not to delay signing the bill until Independence Day**.5 More controversially, most civil rights activists accepted the compromise that the Johnson White House struck with Mississippi Freedom Democratic Party (MFDP) at the 1964 Democratic Convention, which included seating of the regular Mississippi delegation.6 In return, the deal included the symbolic gesture of making MFDP delegates honored guests at the convention, with two of its members seated as special delegates at large, and a prohibition of racial discrimination in delegate selection at the 1968 convention. The Student Nonviolent Coordinating Committee (SNCC) and the Committee of Racial Equality (CORE) assailed the White House for sacrificing the MFDP's moral cause on the altar of expediency. But the MFDP, through its lawyer Joseph Rauh, joined King and most moderate civil rights leaders in swallowing the compromise.7 Not only were southern states threatening to walk out of the convention if the regular Mississippi delegation was purged, but Johnson and Democratic leaders also warned civil rights leaders that an unruly convention would cost the party the support of several border states and deprive Democrats of a chance to win a historic landslide-and a mandate for further reform.8¶ Just as important, Johnson's support for a nondiscrimination rule would have enormous long-term consequences for the Democratic Party. Previously, state parties had sole authority to establish delegate selection procedures. Johnson's proposed solution to the MFDP compromise established the centralizing principle that henceforth the national party agencies would decide not only how many votes each state delegation got at the national convention, but also would enforce uniform rules on what kinds of persons could be selected (Milkis 1993, 210-16). 9¶ Having gained credibility with civil rights leaders during the first critical year of his presidency, **Johnson solidified an alliance with them during the dramatic prelude to the 1965 voting rights legislation that ultimately enfranchised millions of African Americans**. New archival materials, specifically the Johnson Tapes, clarify that **Johnson did not want to go slow after the 1964 act. LBJ not only pushed aggressively to continue the advance of civil rights, but also seemed to welcome the movement's ability to disrupt politics-as-usual and to spur action**. On January 15, 1965, for instance, Johnson put in a call to King urging more grassroots protest that would increase pressure on Congress by dramatizing "the worst conditions [of blacks being denied the vote] that you can run into . . . If you can take that one illustration and get it on the radio, get on the television, get it in the pulpits, get it in the meetings-every place you can-then pretty soon the fellow who didn't do anything but drive a tractor would say, 'Well, that is not right- that is not fair.'¶ Johnson later might have had second thoughts about this importunity, since King and civil rights activists would take direct action in Selma, Alabama, that aroused massive resistance from local police and state troopers as well as national demonstrations in support of the marchers, some of which were directed at the president for not taking immediate action to avert the violence. Nonetheless, when King sought his public endorsement of the Selma campaign, Johnson championed the demonstrators' cause despite the efforts of White House aides to shield him from public involvement in the crisis. "I should like to say that all Americans should be indignant when one American is denied the right to vote ... all of us should be concerned with the efforts of our fellow Americans to register to vote in Alabama," Johnson said. "I intend to see that the right [to vote] is secured for all our citizens."11¶ In March of 1965, as the crisis in Selma worsened, Johnson delivered his famous voting rights message to Congress. His speech warned that the enactment of the voting rights bill was but one front in a larger war that must include not just federal laws to throw open the "gates of opportunity," but also affirmative action against ignorance, ill health, and poverty that would enable individual men and women to "walk through those gates." As he memorably closed, "Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome" (Johnson 1965a).¶ LBJ had not won over southern congressmen, most of whom slumped in their seats as the joint session erupted in applause. Yet he had triumphed where FDR failed- without embroiling himself in an enervating purge campaign against conservative Democrats, as Roosevelt had in 1938, he joined civil rights activists to discredit southern resistance to racial justice.12 Dr. King, watching the speech on television in Montgomery, Alabama, was moved to tears. As he wrote of the historical address, "President Johnson made one of the most eloquent, unequivocal, and passionate pleas for human rights ever made by a President of the United States. . . . We had the support of the President in calling for immediate relief of the problems of the disinherited people of our nation (King 1998, 288).¶ Even more skeptical civil rights activists, who had refused to acquiesce to the 1964 MFDP compromise, were moved by Johnson's fervent support of what one of his startled advisors called "radical" changes in the federal government's support of voting rights.14 SNCC President John Lewis acknowledged that on this night LBJ was "a man who spoke from his heart, a statesman, a poet."" The following week, CORE's James Farmer led a march to the White House to express civil rights activists' support for the president's efforts. "When President Johnson said 'we shall overcome' he joined the civil rights revolution," Farmer told the marchers "Now it's up to you and me to keep him in it-to keep him and our friends in Congress moving. If we let up the pressure, they let up the progress.'"5¶ Although most activists appreciated Johnson's support in achieving historic reforms, tensions within the civil rights movement threatened to sever its critical but uneasy ties with his White House. Indeed, in contrast to moderate civil rights leaders, more radical insurgents loathed White House leadership and their views increasingly gained a hold over the movement. Johnson's civil rights sermon won little praise from radical civil rights activists in Alabama like James Foreman, the field secretary for SNCC. As far as radical SNCC dissidents were concerned, Johnson's speech was little more than a "tinkling, empty symbol." As he told reporters, "Johnson spoiled a good song that day" (Lewis with D'Orso 1998, 340).¶ Social Protest and the Limits of White House Leverage¶ Toward the end of 1965, the energy and resources committed to the Great Society began to suffer, threatened by Johnson's preoccupation with the Vietnam War. The war also fatally wounded his relationship with the civil rights movement. Even moderate civil rights leaders like King became visible participants in the antiwar movement. King saw the Vietnam War not only as morally indefensible, but also as a growing commitment that would divert resources needed to address problems of poverty at home. As the schisms in the civil rights movement deepened along with the administration's involvement in Vietnam, Johnson became the target, rather than the ally, of civil rights activists.¶ In late November, White House aide Hayes Redmon lamented the antiwar efforts of civil rights activists. "I am increasingly concerned over the involvement of civil rights groups with anti-war demonstrators," he wrote in a memo to White House aide Bill Moyers. "The anti-Vietnam types are driving the middle class to the right. This is the key group that is slowly being won over to the civil rights cause. Negro leadership involvement with anti-Vietnam groups will set their programs back substantially."16 King's opposition became public in September of 1965, infuriating Johnson and exposing the inherent conflict between the interests of the president and civil rights movement. Like Kennedy, Johnson deferred to Federal Bureau of Investigation (FBI) Director J. Edgar Hoover's use of telephone wiretaps and hotel room microphones to discredit King on national security grounds.17¶ Johnson had tried to renew ties with King a few weeks before the civil rights leader publicly voiced opposition to his administration. In August, soon after race riots broke out in Watts, he called King to express his continued support for civil rights and to question him about rumors that he opposed Johnson's Vietnam policy.1" Trying in vain to meet the demands of spiraling civil rights militancy, the president urged King to take seriously and to help publicize a recent commencement address the president had given on June 4 at Howard University (Kotz 2005, 353). The speech proclaimed that "freedom was not enough" and that the time had come to "seek . . . not just equality as a right and a theory but equality as a fact and as a result." LBJ told King that it demonstrated his administration's commitment to address the most stubborn forces sustaining racial inequality.'9 The Howard University speech was arguably the boldest rhetorical presidential challenge to racial injustice since Lincoln's second inaugural. And yet, he complained, civil rights activists had in large part greeted it with a deafening silence. Johnson also urged the civil rights leader to support the administration on Vietnam, telling King, "I want peace as much as you do if not more so," because "I'm the fellow who had to wake up to 50 marines killed."20¶ King acknowledged that Johnson's Howard University speech was "the best statement and analysis of the problem" he had seen and that "no president ever said it like that before."21 Nonetheless, King and other movement leaders refused to lavish praise publicly on the Howard University address, concerned that associating too closely with Johnson might weaken their standing in the civil rights community. As David Carter has written, "in this period of growing polarization it had become increasingly clear to civil rights leaders, and ultimately even to the President and his staff, that a White House blessing of a leader was tantamount to a curse" (2001, 320).¶ Indeed, King was the least of the administration's problems. As the civil rights movement trained its eye on the poverty-stricken ghettos of large northern cities, King lost influence to more militant leaders who were better attuned than he to the frustrations and rage of young urban blacks (Mann 1996, 480). "Black power" advocates like Stokely Carmichael, newly elected head of SNCC, and Floyd McKissick of CORE, were not only dissatisfied with the achievements of the Johnson administration's civil rights program, but they also were contemptuous of its objective of racial integration. The growing militancy of black America erupted during the summer of 1966 as urban riots swept across the nation. In the wake of these developments, the moderately conservative middle class, as the White House feared, grew impatient with reform. The administration's string of brilliant triumphs in civil rights was snapped. Its 1966 civil rights bill, an open housing proposal, fell victim to a Senate filibuster. Johnson's leadership of the civil rights movement was a great asset to him in 1964, but it was a political liability by the summer of 1966.¶ From the start of his presidency, Johnson had recognized that his alliance with the civil rights movement risked substantial Democratic losses in the South. The president's encouraging visit to Georgia gave him hope that he would be forgiven by white southerners; this was the very purpose of his appeal to conscience. But the elections of November 1966 confirmed the South was not in a forgiving mood. Three segregationist Democrats-Lester Maddox in Georgia, James Johnson in Arkansas, and George P. Mahoney in Maryland-won their party's gubernatorial nomination. In Alabama, voters ratified a caretaker administration for Lurleen Wallace, since her husband, George, was not permitted to succeed himself. George Wallace, dubbed the "prime minister" of Alabama, had by 1966 emerged as a serious threat to consummate the North-South split in the Democratic Party, either by entering the 1968 presidential primaries or running as a third party candidate. The gubernatorial race in California, where former movie star Ronald Reagan handily defeated the Democratic incumbent Edmund G. Brown, revealed that conservative insurgency was not limited to southern Democrats.¶ In the wake of the civil rights crisis of 1966, Johnson no longer met with civil rights leaders. Instead, he followed Attorney General Nicholas Katzenbach 's advice to send a number of his younger aides to various cities to meet with young black leaders. The attorney general's suggestion was the origin of ghetto visits that White House aides made throughout 1967; a dozen or so visited troubled black areas in more than 20 major cities. On the one hand, the ghetto visits revealed the extent to which the modern presidency sought to assume important tasks once carried out by intermediary political associations like political parties. Rather than relying on local party leaders for information about their communities, Johnson asked his aides to live in various ghettos and then report directly to him about the state of black America. Local public officials and party leaders, even Chicago's powerful boss Richard Daley, were not told of the ghetto visits, lest they take umbrage at someone from the White House rooting about their home territories.¶ On the other hand, these visits marked the declining significance of the modern presidency as the leading agent of liberal reform-a symptom of its "extraordinary isolation."22 This isolation was accentuated by the evolution of the civil rights movement, whose more militant leaders, representing an oppositional culture that tended to withdraw rather than bestow legitimacy on reigning institutions, gained ascendancy in urban ghettos. The Johnson White House struggled to understand why young urban blacks, as one aide put it, "were against just about every leader (Negro and white) . . . except [black power advocates like] Stokely Carmichael."23 The awkward presence of these Johnson aides-mostly white, mostly from small towns and cities in the Midwest and Southwest-spending a week, sometimes a weekend, in volatile ghetto environments such as Harlem and Watts was, as a leading participant put it, a "unique attempt by the President to discover what was happening in urban ghettos and why."24 Aides were not sent to organize or manipulate or steer, but solely to gain a sense of the ideas, frustrations, and attitudes at the basis of the riots.¶ The ghetto reports apparently helped persuade Johnson to respond to the riots by intensifying his efforts to expand civil rights and war on poverty programs.The administration continued to push for an open-housing bill that was enacted after King's assassination. In 1968, LBJ also submitted and Congress passed the most extensive and most expensive public housing legislation in American history. Finally, Johnson continued to support the White House's Office of Economic Opportunity, even though its sponsorship of Community Action Programs (CAPs), requiring "the maximum feasible participation of residents of the areas and groups involved," was reportedly having a disruptive influence in many cities and was the target of bitter complaints from local party leaders. LBJ seethed privately about the "revolutionary" activity that some CAPs were fomenting, but he never repudiated them publicly and continued to support federal funds for neighborhood organizations. CAPs were the administration's final, frail hope that it could benefit from the transformative energy of a movement over which it rapidly lost influence.26¶ Political Failure and Enlightened Administration¶ **Against the general norm that presidents are repressive or indifferent in their response to the demands of insurgent groups, Johnson's uneasy collaboration with the civil rights movement shows how an ambitious president and social activists can form an alliance in the service of enduring reform**. Although this fusion of presidential power to a movement for social justice was short lived, **the fragile partnership made possible the most dramatic civil rights legislation since the Reconstruction era**. **Without the work of civil rights leaders and activists in mobilizing demonstrations that elicited the violent reaction of segregationists and aroused strong sympathy in the country, no civil rights revolution would have been possible. At the same time,** **without Johnson's willingness to support, indeed, to take advantage of the opportunity that civil rights direct action provided, the landmarks laws of 1964 and 1965 might never have been enacted.**¶ Johnson's singularly determined fusion of executive power to a social movement eventually imploded. As early as 1965, it became clear that Johnson's effort to become a leader of the civil rights movement suffered from his attempt to manage all the other responsibilities that the modern presidency pulls in its train. Since Theodore Roosevelt, reformers and ambitious presidents had endeavored to reconstruct the executive office so that its constitutional mandate to "preserve, protect and defend the Constitution" might be rededicated as a vantage point for social and economic change. But Johnson's explosive relationship with the civil rights movement cast serious doubt on the "Progressive era conceit that the presidency is inherently disposed to ally itself with movements for reform and liberation" (Skowronek and Glassman 2007, 7). In the end, the Great Society revealed both the untapped potential for cooperation between the modern presidency and social movements and the inherent tensions between "high office" and insurgency that made such collaboration so difficult. The tasks of the modern presidency-the domestic and international responsibilities that constrained the "steward of the public welfare"-necessarily limited the extent to which Johnson could become a trusted leader of the social movements that arose during the 1960s.¶ By 1968, Johnson, the self-fashioned agent of a political transformation as fundamental as any in history, had become a hated symbol of the status quo, forced into retirement lest he contribute further to the destruction of the liberal consensus. As he privately told Hubert Humphrey in the spring of 1968, "I could not be the rallying force to unite the country and meet the problems confronted by the nation ... in the face of a contentious campaign and the negative attitudes towards [me] of the youth, Negroes, and academics."27¶ LBJ thus saw the mantle of leadership pass to the likes of Eugene McCarthy, whose pioneering grassroots organization drove the president from the field in 1968, and George McGovern, the Democratic nominee for president in 1972. The "McGovern Democrats," who took control of the Democratic Party in the wake of the fractious 1968 presidential contest, followed the progressive tradition of scorning partisanship-of desiring a direct relationship between presidential candidates and grassroots activists. In this respect, the expansion of presidential primaries and other changes in the nomination politics initiated by the McGovern-Fraser reforms were the logical extension of the modern presidency. But these reformers, champions of a "new politics," rejected notions of popular presidential leadership that prevailed during the Progressive era and New Deal eras (Ceaser 1979; Miroff 2007). **Viewing the president as the agent rather than the steward of the public welfare, new politics liberals embraced the general ideas current in the late 1960s that social movements should direct presidential politics and governance.**¶ **Even as McGovern's insurgent presidential campaign was an electoral disaster, the legislation conceived by the ephemeral alliance between Johnson and the civil rights movement built a national administrative apparatus that had staying power in American political life**. The 1964 and 1965 civil rights reforms empowered the federal bureaucracy-especially the Department of Justice, the Department of Health, Education, and Welfare, and the newly formed EEOC-to assist the courts in creating parallel enforcement mechanisms for civil rights. These proved effective. For example, in four years the Johnson administration accomplished more desegregation in southern schools than the courts had in the previous 14.¶ As historians like Hugh Davis Graham have chronicled, "new theories of compensatory justice and group rights" given prominent expression in LBJ's Howard University Address were deftly advanced by "new social regulators" in the EEOC (Graham 1990, Chapter IX). Despite the late-1960s political demise of the Great Society, the EEOC staff, aided by supporters in other executive agencies and the federal courts, was able to expand the EEOC's power far beyond the original constraints of Title VII of the act. The text of Title VII explicitly sought to limit findings of discrimination by requiring evidence of intent. EEOC staffers argued that racial disparities in the composition of a labor force were ample proof of discrimination, whether intended or not. Seizing authority on its own accord, the EEOC collected data from tens of thousands of employers in order to analyze entire industries. Only a couple of years after Johnson left office, the federal courts deferred to EEOC guidelines, tossing aside Title VII's original dictates in favor of an "effects based definition of discrimination" that went beyond the goal of equal treatment to that of equal results (Graham 1990, 250). A "quiet revolution" had occurred in national administration, one that dismantled the compromise that Dirksen and moderate Republicans extracted in 1964.¶ Similarly, as Richard Valelly has documented, an "extended Voting Rights Act" emerged from an institutional partnership between the Justice Department and the courts. **The alliance between bureaucratic discretion and legal activism expanded the 1965 statute from the commitment to free African Americans from discriminatory practices, such as literacy tests, to a more capacious program that promoted minority office holding, regulated nonsouthern states and local jurisdictions that had discriminated against the voting rights of racial minorities, and freed regulators and plaintiffs from having to demonstrate intentional discrimination in seeking remedies for low levels of minority representation and electoral participation** (Valelly 2004, chap. 9)-**These**¶ **administrative and legal efforts appeared to give institutional form to hard-won victories achieved by Johnson and civil rights activists**. At the same time, the securing of what Valelly has called a "second reconstruction" tended to isolate civil rights activists. LBJ paid dearly for the alienation of the social movements from the White House; just as surely, ***the civil rights movement and the other social protest movements it inspired paid a price for their rejection of presidential leadership***. The 1960s unleashed new forces and new expectations that could not be quelled by the election of Nixon. Indeed, it was the 1970s rather than the 1960s when affirmative action and many other civil rights measures became a real presence in American society. **And yet, even as they continued to look to the national government to solve the problems thrown up by an industrial-and postindustrial-order, the public interest groups that emerged during the 1970s** (which evolved from the social movements of the 1960s) **distrusted presidential leadership and bureaucratic agencies, and sought to protect social policy from unfriendly executive administration** (Melnick 2005). **Teaching Americans both to expect more from the government and to trust it less, the Great Society was the fulcrum on which decline of liberalism and the rise of conservatism tilted.**¶ **Johnson's willingness to embrace the civil rights movement and its reform agenda transcended narrow, cautious self-interest. Indeed, his wholehearted support for far-reaching civil rights defied the careful distance that most presidents maintained vis-à-vis social movements**. As we shall see, Reagan and his political allies developed an alliance with Christian Conservatives that was arbitrated by a reconstructed Republican Party. Consequently, he would be much less exposed in his relationship with the Religious Right than Johnson had been in seeking to leverage the civil rights revolution.

#### We are the imperialists – and we are culpable – confronting that is a critical moment for counter-hegemonic resistance

The Center for Informed Americans NEWSLETTER #43 Revisiting September 11 The Collapsing Towers September 28, 2003, <http://davesweb.cnchost.com/nwsltr43.html>

A few months have passed since then and no evidence establishing a link between Iraq and the ‘terrorist’ attacks has surfaced. So where do we now stand? According to the most recent polls, an even higher percentage of the American people (around 70%) now believe that Saddam was behind the carnage of September 11. It is perfectly obvious that we, as a nation, are in denial. In a big way. We will believe virtually any lie (or at least convince ourselves that we believe), no matter how thoroughly that lie has been discredited, just so long as we do not have to face the undeniable reality that our beloved, peace-loving, law-abiding nation is waging a brutal, illegal, unprovoked and completely unjustified war of aggression. We refuse to deal with the reality that America is not the hero of this story, even though the evidence is overwhelming. What that evidence says is that we are the aggressors. We are the imperialists. We are the oppressors. We are the occupiers. We are the mass murderers. We are the war criminals. But to the vast majority of us, that cannot possibly be true. We are (repeat after me) America, land of the free and home of the brave. We do not invade and occupy sovereign nations for the express purpose of exploiting their resources and oppressing their people. We do not slaughter innocents for the financial gain of the Washington elite. There must, therefore, be a righteous reason that we invaded Iraq -- and we are determined to find it. We need to find it, and then cling to it for dear life, no matter how demonstrably fraudulent it is. During the build-up to the invasion, we were willing to accept the most amateurishly fabricated evidence of the existence of ‘weapons of mass destruction.’ We would have gratefully welcomed any discovery of such weapons, no matter how obviously staged the 'discovery' would have been. Even without any ‘discoveries,’ even after months of searching, many of us are reluctant to give up our belief in the mythical weapons. We will continue to believe in nonexistent weapons just as we will continue to believe that most of the Iraqi people are really quite happy to have their country militarily occupied. And we will continue to believe that occupying Iraq somehow makes America a better and safer place to live, just as we will continue to believe that the world becomes a much kinder and gentler place every time America slaughters for profit. Most of all, we will continue to believe that Iraq sponsored the September 11 attacks, because that belief allows us to construct a false reality in which America did not, in defiance of world opinion, choose to wage an unprovoked war against a nation that posed no threat to anyone. No, in our artificial reality, a benevolent America acted in self-defense against a terrorist-sponsoring regime that had launched a completely unprovoked first-strike against us. We will believe - indeed, we will warmly embrace - that Orwellian inversion of reality because we lack the courage to take even a cursory look at the alternative. We would rather live in a parallel universe than accept a reality that can no longer be reasonably denied, but which we are terrified to confront.

#### We need to get on the frontlines and challenge the presidency. Otherwise, new realities will always be created and they won’t be very pretty for the marginalized. Challenging the cult the presidency is a key component of deliberation and an effective counter-narrative

* President controls counter-factual --- gets to reinterpret and shape reality

Nelson ’08, Dana D. Nelson, professor of English at Vanderbilt University, 2008, “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg 1-2

IN THE RUN-UP TO THE 2004 PRESIDENTIAL ELECTION, A BUSH administration official memorably asserted to New York Times reporter Ron Suskind, “We’re an empire now, and when we act, we create our own reality And while you’re studying that reality—judiciously, as you with we’ll act again, creating other new realities, which you can study too, and that’s how things will sort out. We’re history’s actors . . . and you, all of you, will be left to just study what we do 6” Suskind’s article “Without a Doubt” framed this assertion as the administration’s assessment of Left- leaning intellectuals, and it predictably outraged Bush’s political oppositions His administration was widely seen by Democrats as heedlessly unilateralist: this bald assertion of power seemed concisely to summarize Bush’s own philosophy and his scorn for those who disagree with him. But this is not just a simple summary of the Bush—Cheney—Rumsfeld— Wolfowìtz philosophy for dealing with political, opposition. Rather, it draws on a deep and relatively unnoticed tradition of expanding presidential powers that began in the age of George Washington. This expansion has come at times through the ambitions, machinations, and moxie of individual presidents — some of them impressively gifted governmental and political leaders. It has also come through the active and passive consent of citizens, the courts, and Congress. Because the president has come to symbolize both our democratic process and our national power, we tend to see him simultaneously as democracy’s heart (he will unify the citizenry) and its avenging sword (he will protect us from all external threats). Those beliefs, inculcated in us from our earliest days in school, reinforced by both popular culture and media coverage of government, politics, and foreign affairs, make us want to give the president more power, regardless of the constitutional checks and balances we also learned to treasure as schoolchildren.

#### Demystifying the Cult of the Presidency is Necessary to Allow for Diverse Opinions and Expertise. Presidential primacy generates antagonistic politics in the status quo

**Nelson ’08**, Dana D. Nelson, professor of English at Vanderbilt University, 2008, “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg 139-143

**The militarization of our democratic politics fosters a Manichaean Worldview. You’re either with us or against us, on the side of the good or the axis of evil. It’s easy to attribute these politically reductive and vicious characterizations to the “other” side, but thinkers on both the right and the left have become infected with the knee-jerk habits of political demonization**. It is on such habits that “shouting head” television and radio have thrived, as well as a book industry that produces such titles as If Democrats Had Any Brains, They’d Be Republicans, and Rush Limbaugh Is a Big Fat Idiot. **These political actors** (in the fullest sense) **scorn reasoned deliberation and compromise. Instead, with an evangelical fervor, they denounce their opponents** (the losers) **in the shrillest and most aggressive terms possible. They maximize and overdraw political difference in order to vilify it. Demonology demands that your hero is my villain** (which helps explain opinion polls that, for instance, in 2007 showed 75 percent of Republicans approving Bush’s performance, as opposed to 8 percent of Democrats), **With such opponents, compromise is demeaning when it’s not unthinkable. With such opponents, no one can deliberate**. If you don’t agree with the president, this demonology teaches (and both Demo crats and Republicans have made this claim in the past twenty years), you should leave the country.

**The macho mystique of the commander in chief feeds the civil war atmosphere of U.S. democratic culture. The exaggerated and irremediable differences painted by its Manichaean pundits work to create a climate of political and social fear,** activating and feeding what political scientists have described as an “authoritarian dynamic” or “situation-sensitive” authoritarianism. Recent research shows “that the effect of an authoritarian disposition on partisanship has. .. increased markedly between 1992 and 2OO4” Marc Hetherington and Jonathan Weiler’s study draws on four questions introduced in the 1992 National Election Study, which probe for two of three key authoritarian attitudes, submission and conventional ism (the third is aggression. Hetherington and Weiler, like fellow political scientist Bob Altemeyer; are interested in showing authoritarianism’s effect on current expressions of conservative partisanship. Others like Karen Stenner, caution that it’s important to distinguish between the authoritananism that is situationally manifested by those predisposed for whatever reason, toward authoritarianism, and the apparent authoritarianism of some kinds of conservatism. But **there is a growing consensus that normative threats and fears about bad leadership summon authoritarian behaviors into our political scene—exactly the kinds of threats cultivated and kept alive by our politics-as-war culture, and that cultivate the habit of mistaking the president as “our” commander in chief**; who policies we must honor, whether or not we like them.

As touted Senate strategies like the “nuclear option” suggest, and as analysts like Mann and Ornstein, and Crenson and Ginsberg, demonstrate, **key democratic political skills for consociation and deliberation are declining** in government. **Shouting-head culture has encouraged citizens who do want to talk politics - face-to--face or online — to seek these conversations only among those with whom they believe they’ll find agreement. But this reassuring habit only feeds the cycle of war culture.** Groups of like-minded people are highly susceptible to the phenomenon of group polarization, something legal scholar Cass Sunstein has recently described at length in Why Societies Need Dissent. In settings where a group shares basic leanings or opinions, deliberation tends to radicalize the opinion of the group and individuals within it, polarizing rather than moderating opinion. **Democratic deliberation needs civil injections of diverse opinion, different expertises, and diverging institutions that support civil dissent**. **Politics-as-war kills this possibility as it strangles citizens’ ability to imagine a richer, more active, and productively dissensual democratic community We can’t say that the mystique of the commander in chief causes all these ills, but we can say his macho symbolic presence certainly encourages them.**

Finally, politics-as-war spills over into our daily lives. The post-1965 trend toward social enclaving and gated communities crucially reinforçes tendencies toward political enclaving, as Bill Bishop so richly documents in his book, The Big Sort. **Politics-as-war has spawned culture wars and what the sociolinguist Deborah Tannen has described as “argument culture,” an agonistic, warlike stance that assumes all differences must be seen in oppositional terms and all decisions must be produced by adversariaist means. This attitude permeates our most mundane interactions.**

As Tannen notes, it’s become habitual to conceptualize joining a conver—sation as “leaping into the fray” rather than as “sharing ideas.” **Argument culture encourages Americans to approach every subject as though it were war**, a proclivity that feeds aggressive debate, “slash-and-burn” argumentative styles, and a winner-take-all attitude toward discussion that can inspire irrelevance and even dishonesty in routine interactions, **all in the name of “coming out on top.” Some people, clearly, are good at argument culture** and even thrive on it, **but for the rest, the energy required for routine defensiveness in argument culture is drawn away from more creative, generative enterprises. And those who have intelligent qualifications to contribute to debates, but fear being slaughtered in the war of words, withdraw, with them go vital, enriching insights.**

**Contention 3: Solvency**

***Requiring prior congressional approval of conflict is vital to revitalizing democratic accountability – it fosters deliberation that breaks down group-think and ensures better decision-making and challenges presidential supremacy***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

 Turning to the second element of the Model--the provision that would require legislative approval of decisions to use force--there is of course considerable theoretical support for such a constitutional structure. As we have already discussed, the concept dates back at least to the development of the American Articles of Confederation, and the war powers provisions of the U.S. Constitution continues to be a model of the principle. It is also one of the central issues in the war powers debate that has been raging in the United States for over a hundred years. But much of the modern debate in the United States is over the precise meaning and exact scope of the war powers provisions of the U.S. Constitution, and the particulars of many of those arguments need not concern us [\*680] here. n257 As we have already reviewed, however, **the primary motive of many of the drafters of the U.S. Constitution, as expressed most clearly by Madison, was to reduce the likelihood of war**. n258 **And the theoretical arguments of Madison, Kant, and others in support of such a separation of powers related to both the domestic objectives of the state: putting an important check on the state's rush to war and increasing the democratic accountability of the process of deciding on war; and the broader goals of reducing the incidence of war generally in the international system**. In this sense, the arguments in support of this element of the Model again relate to the causes of war at both the domestic level and the international level.

 The starting point is the insight that **requiring legislative approval of executive decision making on the use of force will likely reduce the risk of rash decisions to go to war for the wrong reasons**. This argument was initially advanced by Madison and Kant, among others, and indeed can be traced all the way back to Thucydides. n259 Madison and John Jay both argued **that the executive is more likely to be motivated by parochial self-interest and narrow perspectives, and thus more likely to enter into armed conflict than the legislature**. n260 Madison further argued that there ought to be a separation between those who are charged with the conduct of war, as the President is as the Commander in Chief, and those who have the authority to decide on the commencement of war. n261 But **the argument becomes more compelling when unpacked and explained in a little more detail, with the support of more modern theory. We need to explore the question of how exactly the legislative involvement improves decision making or** [\*681] **engages the causes of war in a manner that would reduce the incidence of war.**

 It is helpful to begin by recalling the functions of legislatures. n262 In addition to passing legislation, **the legislature in virtually all liberal democracies**, whether parliamentary or presidential in structure, **performs the core functions of representation, oversight, and control over government expenditure.** n263 **Representation and oversight in particular are important to the argued benefit of legislative involvement in the decision to use force**. **Both functions are tied to the core notions of democratic accountability and to deliberative democracy, which overlap in important ways**. **Democratic accountability is understood to include the idea that the people who are likely to be impacted by decisions ought to be able to participate in the decision making. Participation in this sense means not only having some expectation that the collective will of constituents will be taken into consideration in the decision-making process, but that the public debate and deliberation that is part of the parliamentary process of decision making will also serve the vital function of informing constituents and affording them some sense of access to the decision-making process**. n264

 **Obviously, this process of debate and information exchange is also at the heart of ideas of deliberative democracy**. The perspective here, though, is not so much on the importance of making the process accountable to and representative of the people, but on the extent to which the **very process of deliberation among the representatives of disparate stake-holders and interests will result in the generation of sounder judgments**. **The argument is that the process results in better decisions due to the attenuation of extreme positions, the canvassing of a wider range of perspectives and sources of information, and the vigorous public interrogation of reasons** [\*682] **and motives underlying proposals**. n265 More specifically, theories of deliberative democracy hold that **the deliberative process**, of which the parliamentary debate and decision-making process is a key feature, **actually involves the transformation of preferences through the consideration of the justifications offered by various perspectives, rather than merely serving as a means by which society can aggregate preferences**. n266

 **The oversight function of legislatures also feeds into both these aspects of democracy, in that the employment of specialized committees to engage in public inquiries into policy choices or proposed courses of action, provides a deeper level of deliberation that ensures a more thorough interrogation of policy justifications and the underlying information upon which policy proposals are based**. **Senate committee hearings during the Vietnam War illustrate how such oversight can reveal important information underlying policy debates, which in turn can influence public opinion and better inform the policy preferences of the representatives of the people**. In 1967, the Senate Armed Services Committee held hearings on the escalation of the strategic bombing of North Vietnam. After the representatives of the Joint Chiefs, and in particular the Chief of the Air Force, had testified before the committee on the necessity of the continued strategic bombing, Secretary of Defense Robert S. McNamara stunned the committee, the government, and the public by testifying that the bombing was entirely ineffective. n267

 **The performance of these functions of the legislature, to the extent that they are permitted or required to operate in the decision-making process on the use of force, engage the domestic causes of war in important ways**. The fuller realization of the representative and oversight functions--serving as they do to both incorporate the will of the broader population and to arguably contribute to the arrival at sounder judgments through the deliberative process--would result in those structural aspects of democratic states that comprise the Image II factors most related to the causes of the "democratic [\*683] peace," being brought to bear more directly on the decision-making process. In other words, the structure would thus more perfectly reflect the theoretical ideal that is part of the structural explanations of the democratic peace. n268

 **The institutional structure of the decision-making process created by the Model's separation of powers element would also affect the political costs of going to war** in a manner that would further engage the Image II causes of war. **Absent an overwhelming or obvious threat, the procedural requirements to obtain the support of the majority of the legislature would impose significant political costs upon the executive**. n269 The structure would effectively create a sliding scale, in the sense that **the greater the threat or the more obvious the case for war--such as the use of force in self-defense against an ongoing armed attack--the lower the costs would be in obtaining legislative approval**. Converse-ly, **the more tenuous the case for engaging in armed conflict, the more** [\*684] **politically costly it would be to win over the majority of the legislature for support.** This is precisely the kind of structural characteristic that reduces the Image II causes of war.

 **The second element of the Model would also engage the** Image I **causes of war, which include particular psycho-logical traits that are common in many executive officers, systemic problems of misperception among decision makers, and the irrational behavior of small-group decision making reflected in "groupthink" and the "bureaucratic politics model" of decision making**. n270 **The risks that such tendencies could lead to irrational or suboptimal decisions to use armed force would be reduced, in the case of each of these particular phenomenon, by spreading the decision-making process more widely through the inclusion of the legislative body**. **The requirement to obtain legislative approval, bringing to bear the core functions of deliberative democracy on the decision-making process, such that a wider set of perspectives and criteria are brought to the process, as well as a more public interrogation of reasons and rationales, would significantly reduce the potential for these potential features of government decision making to manifest themselves in the form of unsound or dangerous decisions regarding the use of force.** n271

***Redefining hostilities in the WPR boosts congressional involvement, checks intervention, and stops circumvention***

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**Congress should strengthen the WPR regime by defining hostilities in a manner that links hostilities to the scope and intensity of a use of force, irrespective of the attendant threat of U.S. casualties**. **Without defining hostilities, Con-gress has ceded to the President the ability to evade the trigger and the limits of the WPR**. **The President's adoption of a definition of hostilities that is tied to the threat of U.S. casualties or the presence of U.S. ground troops opens the door to long-lasting and potentially intensive operations that rely on drones** - at least beyond the sixty-day window - **that escape the WPR by virtue of drones being pilotless** (which is to say, by virtue of drones being drones). **Tying hostilities to the intensity and scope of the use of force will limit the President's ability to evade Congressional regulation of war**. **It will curtail future instances of the United States being in an armed conflict for purposes of international law but not for purposes of domestic law, as was the case in Libya**. Finally, ***a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR*** - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far.

***The distinction between “declaration of war” and “authorization of war” is important***

**Mullen, 11** (May 7, Tom, author of [A Return to Common Sense: Reawakening Liberty in the Inhabitants of America](http://www.amazon.com/gp/product/0578006839?ie=UTF8&tag=tomusbl-20&linkCode=xm2&camp=1789&creativeASIN=0578006839). He writes weekly columns on his blog and has been featured at The Daily Caller, Daily Paul, American Breaking Point, guest on Fox’s Freedom Watch, Free Talk Live, and numerous other talk radio programs.¶ Tom was the opening speaker at the Revolution March in Washington, D.C. in 2008 a featured speaker at the New Hampshire Liberty Forum, Campaign for Liberty, Tom is originally a native of Buffalo, NY and graduate of Canisius College. He earned a Master’s Degree in English from State University of New York College at Buffalo¶ “What’s So Important About a Declaration of War?,” <http://www.tommullen.net/featured/whats-so-important-about-a-declaration-of-war/>)

I’m not sure that this is resonating with those that are unfamiliar with what a declaration of war means. **For most** people, **the declaration of war is a formality whereby the president makes sure that it is agreeable to the Congress that he utilizes the military**. Some might even go so far as to say it is the president “asking permission” from the Congress to do so. **By this reasoning, both** Presidents **Bush and Obama have complied**, especially considering H.J. Res. 114 (October 16, 2002). With that resolution, Congress authorized the president to use military force in the war on terror. **What is the difference between that and a declaration of war?** **The answer is both intuitive and supported by history.** **First, a “declaration” has nothing to do with “permission.”** **Neither is it the same thing as creation or initiation**. **One can only declare something that already exists.** Therefore**, a declaration of war does not create a war or initiate a war. A declaration of war is a resolution passed by Congress recognizing that the United States is already at war.**

***Redefining “hostilities” as “armed attack” solves***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

A. A Process-Based Constitutional Incorporation of Jus ad Bellum The article begins with the incorporation of the principles of jus ad bellum. The first section provides: (1) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be made only after sufficient and demonstrable consideration of whether the proposed action is consistent with the applicable principles of international law relating to the use of armed force, as found in the United Nations Charter, other relevant treaties to which the State is a party, and the related principles of customary international law. The key elements of this section**, which require some further discussion and explanation, **are that**: (i) it incorpo-rates both conventional international law (that is, treaty law) and customary international law; (ii) it specifies the regime of law from which the principles are drawn, with reference by name to the most important governing convention (the U.N. Charter); (iii) it incorporates the relevant principles of international law by reference only, rather than explicitly stipulating the substance of those principles; (iv) it is process based rather than substantive, in the sense that it does not purport to incorporate and impose the actual prohibitions from international law, but rather it only creates an obligation for decision makers to sufficiently consider compliance with those prohibitions (and the exceptions thereto); and finally, (v) **it provides a threshold level of force that would trigger the operation of the provision, with some criteria for defining that trigger**. Beginning with the first element, there are a number of reasons underlying the decision to incorporate both treaty and customary international law. There is a wide range of approaches among constitutional democracies regarding the manner in which international law is treated within their domestic legal systems, and great variation in the extent to which there is already some constitutional provision for such treatment. This not only relates to the classic theoretical division between monist and dualist perspectives, but also relates, in practical terms, to the significant differences among [\*706] states regarding how the different forms of international law are received and the status each is af-forded within the domestic legal system. n330 The mechanisms and processes by which states incorporate (or transform, as the case may be) customary international law are typically different than those used for the incorporation of conventional international law, and many states also afford one a higher status within the domestic legal system than the other. Moreover, these differences themselves vary considerably across states, even among liberal democracies, with some such as the Netherlands placing a primacy on treaty law, n331 while others such as Germany, Austria, and Italy giving customary international law higher status. n332 States vary as well on how each of these is to be received by the domestic legal systems. n333 All of this suggests a couple of inferences. First, there are clear examples of constitutional democracies incorpo-rating within their constitutions both conventional international law and customary international law, and indeed examples of each being afforded a higher status than domestic statutes and even a national constitution. Second, given the very uneven treatment among democracies for the purposes of developing a universal model of incorporation, and given that there are principles from both a treaty and custom that are thought to be [\*707] important, the incorporation mechanism should explicitly incorporate the principles of both systems as part of the Model. That way, regardless of the more general approach within the particular constitutional system, the provision would make quite clear that the principles of both systems are being incorporated directly into the constitution for the purposes of this constraint on the use of armed force. This of course raises the question of whether there are significant differences between the principles of jus ad bel-lum to be found in conventional international law and custom. There is in fact very little difference, as the International Court of Justice went to some pains to establish in Nicaragua v. United States (Merits). n334 And the most fundamental principles of the jus ad bellum regime, the incorporation of which is central to the Model, are essentially found in Article 2(4) and Chapter VII (which includes Article 51) of the U.N. Charter. Nonetheless, it will be recalled that one of the theoretical arguments in support of adopting the Model to begin with is that the jus ad bellum regime is coming under pressure to change, leading to the possible development of new principles and new legal tests to determine their application. The extent to which there is indeed some change to the jus ad bellum regime in the near to mid-term, it is unlikely to come in the form of amendments to the U.N. Charter or the adoption of any new treaty. It is much more likely to come in the form of changes to customary international law. In such circumstances, it will be important that the Model will have been structured so as to incorporate the relevant principles of customary international law, and to require that the decision making on the use of armed force be informed by the most current developments in the law. The second element of this subsection of the provision is the manner in which it refers specifically to the principles of the jus ad bellum regime, and refers even more explicitly to a particular treaty regime, namely the U.N. Charter. This is in contrast to the option of a much broader incorporation of international law as a whole, as many national con-stitutions already have. Some of the reasons for a more narrow and specific incorporation will be obvious and were discussed earlier. n335 In addition, given fairly widespread concerns about [\*708] the legitimacy in permitting interna-tional law to trump domestic law--concerns grounded in arguments about the democratic deficiency of the international law-making process, the erosion of national sovereignty, and the negating of the democratic will of the state's citizenry--it may be considerably easier in practical terms to mobilize support for a carefully tailored provision than a blanket incorporation of international law along the lines of the Netherlands. In addition to this, however, the incorporation of specific principles or regimes of international law provides a much more fertile basis for the internal interpretation and internalization of the associated norms, which as was dis-cussed earlier is an important aspect of the process of enhancing compliance with international law according to trans-national legal process theory. Moreover, by identifying particular regimes and specifying the precise treaty from which principles are drawn, examples from a number of countries suggest that the constitutional provision will thereby create the legitimate basis for courts and other domestic institutions to consider how those principles have been interpreted by international tribunals and organizations. This can be an important factor in insuring that the principles that are incor-porated remain organically connected to the international law sources from which they were drawn. One of the best examples of this approach is the constitutional incorporation of human rights principles by a number of countries over the last few decades. For instance, Article 10(2) of the Spanish Constitution of 1978 provides that "the norms relative to basic human rights and liberties which are recognized by the constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain." n336 This has been interpreted to mean that such human rights conventions as the European Convention on Human Rights and the International Convention on Civil and Political Rights n337 have constitutional status within the Spanish legal system; or, to put it another way, the relevant provisions of those conventions have effectively been incorporated by reference into the [\*709] Constitution. n338 What is more, this incorporation by explicit reference to the conventions themselves has provided a basis for the Spanish courts to not only interpret the constitutional provisions in light of the principles in the conventions, but also to draw upon the interpretation of the relevant provisions of the conventions by international courts and other interpretative bodies. n339 The third element of this subsection of the Model relates to the manner in which the provision incorporates the principles of jus ad bellum by reference only, rather than specifying the content of those principles as part of the consti-tutional text. In other words, **the provision requires decision makers to consider the applicable principles relating to the use of force, as found in the U.N. Charter and other sources,** but it does not provide an explicit list of what those princi-ples are. An alternative approach would have been to provide a set of subsections detailing the content of each principle and rule taken from international law that decision makers had to consider before taking action. Aside from the sheer awkwardness of trying to stipulate all the relevant rules and principles, the reasons for employing the "by reference" mechanism are similar to those discussed above in relation to the importance of including general references to customary international law and treaty sources. That is, **incorporation by reference preserves the flexibility of the Model, such that the provision can essentially evolve as the underlying international law principles change over time, and it retains the organic link to those principles for purposes of interpretation**. As already discussed, that has its own inherent risks, but given the likelihood that the jus ad bellum regime will develop over the next few decades, coupled with the difficulty associated with any constitutional amendment, building in that kind of flexibility is important. An example of this approach, albeit in a regular statute rather than a constitutional context, can be found in the Alien Tort Statute in the United States, the key clause of which states that "the district courts shall have original juris-diction of any civil action by an alien for a tort only, committed in violation of [\*710] the law of nations or a treaty of the United States." n340 This does not incorporate international law norms per se, but as the Supreme Court held in Sosa v. Alvarez-Machain, the statute confers subject matter jurisdiction and creates a cause of action for the violation of the "laws of nations," which is a reference to customary international law. n341 Two advantages of the incorporation by reference are well illustrated by this example. The first is the flexibility of the legislative provision, as its content can essentially evolve over time without requiring any change to statutory lan-guage. Thus, in Sosa it was recognized that the content of the "narrow set of violations of the law of nations" today is certainly not the same as the narrow set of violations that were contemplated back in 1789 when the statute was enacted. Rather, the range of what types of violations within the law of nations was defined, but the content of those violations was not specified, and is left to be ascertained according to the current principles of customary international law. n342 Second, but very much related, is the advantage of maintaining an organic connection to the international law principles, which thus continue to be the living source of the rules. The employment of the term "in violation of the laws of nations" constituted an intermediary within the statute, or a trigger, for the application of the primary norms that are promulgated in detail somewhere else--in this instance in the sources of the laws of nations. In the sense of Hart's pri-mary and secondary rules, therefore, the reference in the statute is merely a secondary norm, and leaves the primary norm as the source of the content. n343 [\*711] As explained earlier, this retention of an organic connection with the underlying international law principles also ensures that there will be full access to the associated interpretations and understanding of those principles, including the decisions of international tribunals and organizations, as they have developed over time. This relationship tends to be lost when the contemporary understanding of customary international law rules is taken or the language of a rule is lifted from some treaty and then dropped into the text of a constitution (often in some slightly revised form). Moreover, the juxtaposition of the revised language with other provisions, severed as it is from its conceptual source, can lead to significant unintended consequences. n344 The fourth element of the subsection is that it is process-based rather than substantive in nature. In other words, the provision does not incorporate the prohibitions (and corresponding exceptions) of the jus ad bellum regime as sub-stantive clauses in the Constitution. Rather, it merely requires that the decision makers contemplating the use of force sufficiently and demonstrably consider whether the proposed action is consistent with the international law principles that have been incorporated. There are several reasons for choosing to develop the mechanism in this fashion, but they largely relate to the practical issues of implementation. It can be anticipated that there would be significant political objection in many jurisdictions to any contemplated adoption of this Model. The foundation of many of these objections, principled and otherwise, would be a resistance to the idea of incorporating international law principles to bind the hands of government on issues of national security--issues relating to self-preservation and defending "vital interests." As has already been suggested above, the arguments behind many of these objections are misplaced. But the fact remains that if the Model proposed the incorporation of the principles as binding constitutional prohibitions, which would also entail conferring upon the judiciary the power to decide whether a proposed use of force did or did not comply with the exceptions to the prohibition as a matter of both constitutional and international [\*712] law, then the volume of these objections would likely be overwhelming. Such implementation of binding prohibitions may be possible and desirable in the future, but for now a process-based model may serve as an initial and more viable step along the road to that objective. And for the reasons already discussed in the previous Part, a process-based provision will still have a significant effect. **The final element in the subsection is the initial gate-keeping mechanism, which limits the application of the pro-vision to only those decisions regarding the use of armed force that could constitute an "armed attack," as that term is understood in international law**. **This is to ensure that there is a de minimis level below which the government would not be bound by the provision.** Moreover, as will be discussed in the next section, the same trigger would apply to the other elements of the Model, thus ensuring that the various elements of the Model operate in harmony, and the domestic elements are triggered by criteria that are consistent with valid concepts in international law. **The parameters of this threshold test are not novel**. As explained briefly in the discussion of the modern system of jus ad bellum, **the occurrence of an armed attack is a condition precedent to the exercise of the right of self-defense (or, for the exercise of anticipatory or preemptive self-defense, that an armed attack is imminent, in the sense that it is irrevocably in motion**). n345 Similarly, **the current understanding in international law is that the use of force against a state must reach a certain level--or be of "sufficient gravity**," **to use the language of the U.N. Resolution on the Definition of Aggression--before it can be considered an act of aggression**. n346 **The I**nternational **C**ourt of **J**ustice **has adopted this language in holding that the use of armed force must rise to a certain level before it constitutes an "armed attack" justifying the exercise of the right of self-defense, and it is clearly well above the mere use of force that would violate the prohibition in Article 2(4) of the U.N. Charter**. n347 **Where that line is actually drawn, or what criteria are to be used to determine exactly where to draw the line, has not yet been clearly established in international law, but the principle itself has been. It is no** [\*713] **more uncertain or incapable of determination than any number of other constitutional principles**. **Dinstein suggests that an armed attack requires that the use of force must be of a magnitude that is likely to "produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property**." n348 **The trigger mechanisms in current constitutions, in legislation such as the War Powers Act, and proposed legisla-tion such as that in the War Powers Commission Report, are not any clearer, and what is more, they often employ terms that are not related to known and valid concepts in international law**. We have already seen that the constitutions of many countries, including that of the United States, require legislative approval of any "declaration of war." While declarations of war continue to be theoretically part of the international law on the use of force, they are no longer reflected in state practice, and are certainly no longer considered necessary to trigger the operation of the laws of war or bring into existence the legal state of war. n349 To the extent the term is interpreted to mean anything other than a formal declaration that triggers a technical state of war, it becomes highly ambiguous, as the war powers debate in the United States illustrates. **The War Powers Act lowered the threshold significantly, using as the trigger "any case in which United States Armed Forces are introduced: . . . into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances**." n350 **There is no definition of "hostilities," and so there is no indication of what scale, intensity, or duration of armed conflict that would be required to constitute "hostilities" for the purpose of the provision**. **It could arguably encompass peace-keeping operations, or the lowest-level border skirmishes, yet could potentially be interpreted to exclude such uses of force as cruise missile strikes on foreign targets.** The proposed legislation of the War Powers Commission Report, in contrast, tries to raise the threshold by requir-ing a "significant armed conflict" as a condition precedent, which is defined as being "any combat operation by U.S. armed forces [\*714] lasting more than a week or expected by the president to last more than a week." It explicitly excludes a number of activities, such as "limited acts of reprisal against terrorists or states that sponsor terrorism," "covert operations," and "missions to protect or rescue American citizens or military or diplomatic personnel abroad." n351 Again, "combat operation" remains undefined, creating uncertainty as to what precisely is contemplated. More sig-nificantly, not only does this formulation similarly employ concepts for the trigger that do not equate with the principles of jus ad bellum, but the provision also explicitly endorses unilateral executive action for purposes that could very well violate the prohibition on the use of force in international law. Reprisals, as the term is understood in international law, are illegal. n352 Covert ops and missions to protect nationals abroad would easily encompass the support provided to the Contras in Nicaragua, and the invasions of Grenada and Panama, all actions that are widely seen as having been unlawful. n353 Moreover, aside from the explicit exceptions, the threshold would not be crossed by such uses of force as extensive missile or air strikes, including strikes with nuclear weapons, so long as they would not be expected to lead to "combat" lasting more than one week. There is little apparent relationship between the requirements of international law and that which the War Powers Commission Report considered important enough to require Congressional involvement. **The trigger that is contemplated in the Model**, while it admittedly contains some uncertainty as to its precise scope, **is a concept understood in international law.** **By employing it in the Model, we ensure that the same criterion is used for both requiring consideration of international legality and for obligating the government to obtain legislative approval, and that the criterion itself is comprised of concepts taken from international law**. **It is the kind of principle that courts are in any event well accustomed to working with, and it is necessary to have some threshold to ensure that the government is able to act more freely in circumstances that would not implicate the jus ad bellum regime in interna-tional law. It is only the use** [\*715] **of force constituting an armed attack, whether legally justified or not, which is likely to escalate into an armed conflict. Armed attack, therefore, is arguably the appropriate level of force to trigger the requirement to involve the other branches of government and focus consideration on the questions of whether that use of force will comply with international law**. n354 **A final word should be said about whether the trigger makes any distinction between the use of force for individu-al self-defense and that used for other purposes, be it collective self-defense or collective security operations**. **Constitu-tional controls of some countries do make such a distinction**, as discussed in Part III. The Constitution of Denmark, for instance, provides that "except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign state without the consent of the Parliament." n355 This clearly limits the exception to the exercise of individual self-defense. **The trigger as it is employed in both this element of the Model** and in the separation of powers element to be dis-cussed next, **makes no such distinction**. **In this element, the whole point is to force the decision makers to consider whether the proposed action complies with the principles of jus ad bellum--that is, to determine whether it falls within the scope of either self-defense, individual or collective, or collective security operations authorized by the U.N. Security Council** (to state the current exceptions on the prohibition on the use of force). **It would simply beg the question to suggest that they could avoid such a requirement in the event that the contemplated use of force was to be an exercise of self-defense. Whether it is legally a case justifying self-defense is the very thing to be determined by considering compliance with international law principles. In the context of the next element of the Model, the requirement to obtain approval of the legislature, the trigger would serve the same function. Permitting the government to avoid obtaining legislative approval in the event the force is to be used for self-defense would simply create further incentives** [\*716] **for the government to manipulate the record to provide support for a claim that the action is in fact an exercise of self-defense. It would thereby defeat the very objective of having such assertions subjected to inquiry and debate in the legislature. If the case is obvious and pressing, the analysis will be easy and the approval from the legislature quickly forthcoming; if it is not easy, than there is all the more reason for having the legislature involved in the deliberations, with all the advantages that such delibera-tion brings to the exercise. In the event of an invasion or the like, there is an emergency exception**, as will be discussed in the next section. B. Separation of Powers: Legislative Approval and Judicial Review **The second element of the Model would require legislative approval of any decision to use force**, while the third element would explicitly confer jurisdiction and establish standing for judicial review of the decision-making process. Together they form the "separation of powers" component of the Model, and as such they will be considered together here. The two provisions would read as follows, allowing, of course, for the necessary changes to conform to the cir-cumstances of each jurisdiction: 2. (i) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be approved by both houses of the legislature by a simple majority of votes cast.** (ii) **In the event of an armed attack against the territory or armed forces of the state, or other such national security emergency requiring the urgent use of armed force, making prior approval from the legislature impractical, the government may use armed force without prior approval, but shall immediately provide notice of such determination to the legislature, and it shall obtain approval from each house of the legislature in accordance with the terms of subsection (i) above within 14 days of providing such notice, failing which the executive shall cease any such use of armed force.** (iii) **The approval of any use of force by the legislature in accordance with subsections (i) and (ii) above shall also constitute a decision to use force, subject to the requirements of Section 1 above.** 3. (i) Any person may apply to a court of competent jurisdiction to obtain a declaration, injunctive relief, or dam-ages, or any other remedy that the Court may consider just and appropriate in the circumstances, for any violation of this Article. [\*717] (ii) Any person who has made application under subsection 3(i) above shall have standing so long as the issue raised is a serious issue to be tried, the person has a genuine interest in the issue, even if only as a representative of the general public, and there would be no other reasonable or effective means for the issue to be brought before the Court. Again, a number of the elements of these two sections require further explanation, namely, (i) the terms of the re-quirement for legislative approval of the use of armed force; (ii) the trigger for the provision, being the same de minimis level that was provided for in the first section of the Model; (iii) the emergency exception and ex post approval re-quirement; (iv) the fact that the approval of the legislature is a "decision to use force," thus triggering the application of the requirements of Section 1 of the same Article; (v) the provision of specific jurisdiction for judicial review, and the remedies provided for; and (vi) the creation of broad standing for applications for judicial review. The first element, legislative approval for the use of armed force, is obviously an explicit move away from a "dec-laration of war," and it does not even require that the approval be in the form of a law. But it does require "approval," expressed through a formal vote. This is in contrast to the "consultation" that is contemplated by the draft legislation proposed in the War Powers Commission Report. n356 **As discussed earlier, legislatures may have natural tendencies to avoid making difficult decisions in these kinds of situations, but that is precisely why the Model should require the ex-ecutive to work to obtain the legislature's approval**. At the same time, while in some jurisdictions such approval requires supermajorities of some form, a simple majority of votes cast should be sufficient for the purposes of a general model, albeit in both houses if the system consists of a bicameral [\*718] legislature. n357 **The requirement to obtain a majority vote in each house should be sufficient to engage the deliberative and representational features of the parliamentary process in a manner that will have an impact on the operation of the domestic causes of war**. The second element is the employment of the same trigger or threshold level of force as was used in the first sec-tion of the Article. The reasons for employing this particular concept as the threshold has already been discussed at some length in the explanation of Section 1 so will not be repeated here. **It is perhaps helpful to emphasize yet again, however, how important it is to use a concept that has real meaning in international law for the purposes of triggering the involvement of the legislature in the decision to use armed force**. n358 **Even if a provision providing for the separation of powers with respect to the use of force does not have as one of its objectives an increased compliance with international law, the principles of jus ad bellum would naturally serve as a good proxy for the kinds of armed force that are likely to both escalate conflict and attract international censure. The trigger employed in this Model is taken directly from international law, based on precisely the kind of action that is most likely to lead to wider armed conflict, which are exactly the types of action that should be subject to legislative deliberation and oversight. Moreover, it still provides the executive with significant scope for limited use of force that falls below that threshold. The third element is the emergency carve out**. As mentioned earlier, **this too is not a novel concept, and various forms of such an emergency exception with ex post approval requirements can be found in a number of constitutions, though more frequently with respect to the power to declare emergencies and thus trigger emergency powers domesti-cally**. An early example of such a mechanism can be seen in the [\*719] Constitution of France of 1791. n359 **A varia-tion on this form of emergency carve-out is also the cause of much of the controversy regarding the structure and operation of the U.S. War Powers Act of 1973. Upon closer inspection, however, the War Powers Act provisions in question are not so much an emergency carve out as the grant of a carte blanche for up to ninety days, followed by an effective legislative veto of further action if Congress does not move to approve the operation. n360 That is very different from what is contemplated by the Model.** Many of the criticisms of the War Powers Act may be quite valid, but they ought not to be extended to constitu-tional provisions that require the executive to obtain legislative approval, and which include an automatic termination mechanism in the event that approval is not obtained within a specified period following an emergency use of force. Precisely because the provision is constitutional rather than statutory, the legislature would be less able to shirk its obli-gations to take up the issue when approval is sought by the executive. And requiring the executive to overcome the difficulty of mobilizing support within the legislature is a key element of the Model. That it is difficult and costly is not a basis for criticism, but one of the virtues of the structure. If the executive cannot galvanize the legislature to approve the use of force by a simple majority, particularly where the use of force has already been undertaken in what are al-leged to be urgent circumstances, then that by itself ought to raise significant questions about both the necessity and legitimacy of the use of force in question. The fourth element of this subsection of the article specifies that any approval to use force enacted by the legisla-ture constitutes a "decision to use force" as contemplated by the provisions of section 1 of the article, thus being subject to the requirements of that section. This means that **the legislature** too, in **deliberating on the question of whether or not to approve the use of force, must sufficiently and demonstrably consider whether the use of force in question is in com-pliance with the relevant prevailing principles of international law**. This is key to the combined operation of the distinct elements of the Model, as **it is the mechanism through which the Model effectively causes the deliberative functions of** [\*720] the **legislature to engage the issues of international law compliance, and which causes the criteria of legitimacy under international law to be integrated into the deliberative process of the legislature**. **It is only by requiring both branches of government to grapple with the question of compliance with international law that the Model can ensure that this perspective will be brought to bear in a meaningful and serious fashion in the decision-making process, and that over time the international law norms will be internalized and subsequently exercise influence, in the manner contemplated by transnational process theory and the ideational strand of the liberal theories of international law compliance.**

***Statutory restrictions work – they raise the political cost of executive circumvention***

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In part, **these two positions can be reconciled. Recognition that presidents under specific political circumstances will in essence act unilaterally does not mean sustained tyranny is upon us**. **If congressional majorities and large segments of the public respond vigorously and negatively to specific presidential actions, political pressures will minimize the duration and impact of such actions**. Conversely if Congress and large segments of the public go along with the president, formal legal restrictions will have few decisive effects.¶ Over twenty years of experience with the War Powers Resolution (WPR) illuminates the problem. Presidents have usually claimed that they have consulted with Congress as stipulated in the WPR before committing troops to hostile zones. Few members of Congress would read the evidence that way. Presidents have notified Congress about what they were about to do while asserting that they have consulted Congress. What presidents have actually done does not conform with any normal meaning of consultation. Similarly, most presidential decisions to send troops into environments where combat is likely were reported, as required by the WPR , to the Congress. But presidents have studiously avoided reporting in the manner prescribed by the WPR, one that triggers its sixty-day cut-off provisions. [End Page 527]¶ This behavior by presidents surely leaves some critical decisions in a legal limbo. That, for good or evil, is where they actually are. What we can do is recognize that fact and act accordingly. Politics has and will govern the resolution of this issue. Whether this is desirable in principle can be debated. The realities of politics, however, have and are likely to prevail.¶ Legal restrictions sometimes cannot withstand political tides. Constitutional, limited government is not intended to work that way but it does in reality. There are few effective legal safeguards against intense and enduring political tides. Fortunately in U.S. history, such episodes have been few and relatively fleeting. **Legal restrictions** such as those specified in the War Powers Resolution have little direct, conclusive impact. They do, however, **help raise the political costs of unilateral executive actions**. **Therein lies their primary value**. Will presidents fully and freely involve Congress in decision making to send U.S. armed forces into potential or actual combat? Despite the force of Louis Fisher's account of the constitutional history of the war powers, the answer is probably not. **Will presidents carefully calculate the political costs of such initiatives? They usually will.** **Legislation designed to raise political costs may be a useful way to promote this possibility**, but Fisher places far too much weight on "solid statutory checks" (p. 205).

***Even if Congress fails --- plan triggers Court action***

**Cowan ’04**, Kelly L. Cowan, Comments Editor, Santa Clara Law Review, Volume 45; J.D. Candidate, Santa Clara University School of Law; B.A., Economics, University of Colorado., 2004¶ Santa Clara Law Review¶ 45 Santa Clara L. Rev. 99, COMMENT: RETHINKING THE WAR POWERS RESOLUTION: A STRENGTHENED CHECK ON UNFETTERED PRESIDENTIAL DECISION MAKING ABROAD, Lexis, jj

**Finally, the War Powers Resolution can become more effective if the judiciary is able to better interpret specific provisions of the statute**. n227 **Future cases must be brought by plaintiffs in such a way as to avoid dismissal on justiciable grounds, such as constituting a political question, lack of standing, or lack of ripeness**. n228 **In order to escape such dismissal, cases need to center on the meaning of the words within the statute, rather than on alleged presidential actions**. n229 [\*126] **If courts could better interpret the meaning of words within the Resolution, such as** "consult" n230 or "**hostilities**," n231 **the expectations of the president's actions would be more clearly defined. Thus, Congress would know when the president fails to meet the Resolution's requirements and could legitimately act in response to indiscretions.**

#### Our method is superior---debate is a key site to confront presidential war powers. The neg’s disconnect from debating political implications forfeits our ability to activate political agency to curtail violent governmental policies. Debating a time sensitive controversy like war powers is key to challenge conventional wisdom on the subject which checks securitization and exclusion

Kurr 13 – Ph.D. student in the Communication Arts & Sciences program at Pennsylvania State University and a coach for the Penn State Debate Society (9/5, UVA Miller Center & CEDA Public Debate Series, “Bridging Competitive Debate and Public Deliberation on Presidential War Powers”, http://public.cedadebate.org/node/14)

Taken together, the connection between tournament competition and a public collaboration reorients the pedagogical function of debate. Gordon Mitchell and his colleagues comment on this possibility, “The debate tournament site’s potential to work as a translational pipeline for scholarly research presents unique opportunities for colleges and universities seeking to bolster their institutional infrastructure for undergraduate research” (Mitchell et al, 2010, p. 15). Indeed, the debate series affords competitors the opportunity to become part of the discussion and inform policymakers about potential positions, as opposed to the traditional reactionary format of hosting public debates at the season’s end. Empirically, these events had the effect of “giv[ing] voice to previously buried arguments” that “subject matter experts felt reticent to elucidate because of their institutional affiliations” (Mitchell, 2010, p. 107). Given the timeliness of the topic, these debates provide a new voice into the ongoing deliberation over war powers and help make the fruits of competitive research have a public purpose.

The second major function concerns the specific nature of deliberation over war powers. Given the connectedness between presidential war powers and the preservation of national security, deliberation is often difficult. Mark Neocleous describes that when political issues become securitized; it “helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms.” (2008, p. 71). Collegiate debaters, through research and competitive debate, serve as a bulwark against this “short-circuiting” and help preserve democratic deliberation. This is especially true when considering national security issues. Eric English contends, “The success … in challenging the dominant dialogue on homeland security politics points to efficacy of academic debate as a training ground.” Part of this training requires a “robust understanding of the switch-side technique” which “helps prevent misappropriation of the technique to bolster suspect homeland security policies” (English et. al, 2007, p. 224). Hence, competitive debate training provides foundation for interrogating these policies in public.

Alarmism on the issues of war powers is easily demonstrated by Obama’s repeated attempts to transfer detainees from Guantanamo Bay. Republicans were able to launch a campaign featuring the slogan, “not in my backyard” (Schor, 2009). By locating the nexus of insecurity as close as geographically possible, the GOP were able to instill a fear of national insecurity that made deliberation in the public sphere not possible. When collegiate debaters translate their knowledge of the policy wonkery on such issues into public deliberation, it serves to cut against the alarmist rhetoric purported by opponents.

In addition to combating misperceptions concerning detainee transfers, the investigative capacity of collegiate debate provides a constant check on governmental policies. A new trend concerning national security policies has been for the government to provide “status updates” to the public. On March 28, 2011, Obama gave a speech concerning Operation Odyssey Dawn in Libya and the purpose of the bombings. Jeremy Engels and William Saas describe this “post facto discourse” as a “new norm” where “Americans are called to acquiesce to decisions already made” (2013, p. 230). Contra to the alarmist strategy that made policy deliberation impossible, this rhetorical strategy posits that deliberation is not necessary. Collegiate debaters researching war powers are able to interrogate whether deliberation is actually needed. Given the technical knowledge base needed to comprehend the mechanism of how war powers operate, debate programs serve as a constant investigation into whether deliberation is necessary not only for prior action but also future action. By raising public awareness, there is a greater potential that “the public’s inquiry into potential illegal action abroad” could “create real incentives to enforce the WPR” (Druck, 2010, p. 236). While this line of interrogation could be fulfilled by another organization, collegiate debaters who translate their competitive knowledge into public awareness create a “space for talk” where the public has “previously been content to remain silent” (Engels & Saas, 2013, p. 231).

Given the importance of presidential war powers and the strategies used by both sides of the aisle to stifle deliberation, the import of competitive debate research into the public realm should provide an additional check of being subdued by alarmism or acquiescent rhetorics. After creating that space for deliberation, debaters are apt to influence the policies themselves. Mitchell furthers, “Intercollegiate debaters can play key roles in retrieving and amplifying positions that might otherwise remain sedimented in the policy process” (2010, p. 107). With the timeliness of the war powers controversy and the need for competitive debate to reorient publicly, the CEDA/Miller Center series represents a symbiotic relationship that ought to continue into the future. Not only will collegiate debaters become better public advocates by shifting from competition to collaboration, the public becomes more informed on a technical issue where deliberation was being stifled. As a result, debaters reinvigorate debate.

# 2AC

### framework

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### Perm

#### 2. Perm – do both – a pragmatic approach to anti-blackness is key

**Glaude ‘07**, Eddie S. Glaude Jr., PhD – Professor of Religion and Chair of the Center for African American Studies at Princeton University, In a Shade of Blue: Pragmatism and the Politics of Black America, ebook accessed via Wayne State, pg ix-x

“Knowledge is power,” declared a young African American man attending **the Tavis Smiley Foundation Leadership Institute**. The institute **was founded to train young people between the ages of thirteen and eighteen to become leaders in their communities**. **They learn how to take stock of their strengths and weaknesses, to lay plans and set goals, to communicate effectively and build networks. They also learn how to apply these skills to make successful lives for themselves and, ideally, to bring about change in their communities**. I was able to spend some time with these remarkable young people in the summer of 2006 at Texas Southern University. Cornel West, Tavis Smiley, and I held a town-hall meeting to discuss with them The Covenant with Black America, Smiley’s best-selling book on the current conditions of African Americans, and its relevance to their ambitions as future leaders. The young man who spoke was obviously excited about the occasion, and so were we. He went on to say with profound conviction, “I will do everything in my power to continue to get knowledge.” Another young man stood up and offered a slight correction to his colleague’s impassioned remarks. He said, “I agree with what has just been said, but we should know that ***knowledge without action is useless***. **We must do something with that knowledge**.” The conversation that followed was instructive. Students weighed in on the matter. West and Smiley offered their views. I asked, “**What if we understand knowledge not as separate from doing, but rather as a consequence of it? What if knowledge is simply the fruit of our undertakings?”** To use one of Tavis Smiley’s favorite words, we proceeded to “marinate” for a while on the implications of the relation between how we think and how we act. At one level, my questions had been aimed simply at countering an implicit anti-intellectualism. But what I had also done was to invoke, verbatim, John Dewey’s definition of knowledge as the “fruit of our undertakings.” **In a room full of young people with varied backgrounds and challenges in their lives, we found ourselves thinking with distinctly pragmatic tools about epistemology and how our thoughts about the subject could affect how we seek to change the world.** Why John Dewey in this context? Because I believe that ***the tradition of***¶ ***American pragmatism*** exemplified by Dewey ***offers powerful resources for redefining African American leadership and politics***. This book seeks to make that case. I argue that **pragmatism**, when attentive to the darker dimensions of human living (what we often speak of as the blues), **can address many of the conceptual problems that plague contemporary African American political life**. **How we think about black identity, how we imagine black history, and how we conceive of black agency can be rendered in ways that escape bad racial reasoning— reasoning that assumes a tendentious unity among African Americans simply because they are black, or that shortcircuits imaginative responses to problems confronting actual black people. The relationship I propose between pragmatism and African American politics is** mutually beneficial. Pragmatism must reckon with the blues or remain a stale academic exercise. The blues, of course, are much more than a musical idiom. They constitute, as Albert Murray notes in his classic book on the subject, “a statement about confronting the complexities inherent in the human situation and about improvising or experimenting or riffing or otherwise playing with (or even gambling with) such possibilities as are inherent in the obstacles, the disjunctures, and the jeopardy.” Murray goes on to say, in words that I hope will resonate through the pages that follow, that the blues are “a statement about perseverance and about resilience and thus also about the maintenance of equilibrium despite precarious circumstances and about achieving elegance in the very process of coping with the rudiments of subsistence.” 1 In one sense, **to take up the subject of African American politics is inevitably to take up the blues**. **That is to say, the subject cannot but account for the incredible efforts of ordinary black folk to persevere with elegance and a smile as they confront a world fraught with danger and tragedy**. **To embrace pragmatism is to hold close a fundamental faith in the capacities of ordinary people to transform their circumstances while rejecting hidden and notso-hidden assumptions that would deny them that capacity. To bind pragmatism and African American politics together, I hope to show, is to open up new avenues for thinking about both.**

#### Wilderson’s scholarship isn’t intended to preclude goal-oriented political change

Frank b. Wilderson 10 III, Prof at UC Irvine, speaking on a panel on literary activism at the National Black Writers Conference, March 26, "Panel on Literary Activism", transcribed from the video available at http://www.c-spanvideo.org/program/id/222448, begins at roughly 49:10

Typically what I mean when I ask myself whether or not people will like or accept my reading, what I'm really trying to say to myself whether or not people will like or accept me and this is a difficult thing to overcome especially for a black writer because we are not just black writers, we are black people and as black people we live every day of our lives in an anti-black world. A world that defines itself in a very fundamental ways in constant distinction from us, we live everyday of our lives in a context of daily rejection so its understandable that we as black writers might strive for acceptance and appreciation through our writing, as I said this gets us tangled up in the result. The lessons we have to learn as writers resonate with what I want to say about literature and political struggle. I am a political writer which is to say my writing is self consciously about radical change but when I have worked as an activist in political movements, my labor has been intentional and goal oriented. For example, I organized, with a purpose to say free Mumia Abu Jamal, to free all political prisoners, or to abolish the prison industrial complex here in the United States or in South Africa, I have worked to abolish apartheid and unsuccessfully set up a socialist state whereas I want my poetry and my fiction, my creative non fiction and my theoretical writing to resonate with and to impact and impacted by those tangible identifiable results, I think that something really debilitating will happen to the writing, that it the writing will be hobbled if and when I become clear in the ways that which I want my writing to have an impact on political struggle what I am trying to say when I say that I want to be unclear is I don't want to clarify, I do not want to clarify the impact that my work will have or should have on political struggle, is that the relationship of literature to struggle is not one of causality but one of accompaniment, when I write I want to hold my political beliefs and my political agenda loosely. I want to look at my political life the way I might look at a solar eclipse which is to say look indirectly, look arie, in this way I might be able to liberate my imagination and go to places in the writing that I and other black people go to all the time the places that are too dangerous to go to and too dangerous to speak about when one is trying to organize people to take risk or when a political organization is presetting a list of demands, I said at the beginning this is an anti-black world. Its anti black in places I hate like apartheid South Africa and apartheid America and it’s anti-black in the places I don't hate such as Cuba, I've been involved with some really radical political movements but none of them have called for an end of the world but if I can get away from the result of my writing, if I can think of my writing as something that accompanies political struggle as opposed to something that will cause political struggle then maybe just maybe I will be able to explore forbidden territory, the unspoken demands that the world come to an end, the thing that I can’t say when I am trying to organize maybe I can harness the energy of the political movement to make breakthroughs in the imagination that the movement can't always accommodate, if its to maintain its organizational capacity.

#### Vote aff to reclaim our democratic agency; to rethink our relationship to the presidency and return to the ideal and practice of people’s sovereignty

Nelson ’08 (Dana D. Nelson, professor of English at Vanderbilt University, 2008,

 “Bad for Democracy: How the Presidency Undermines the Power of the People”, pg xvii-xviii)

**But Obama detractors, right and left, might usefully cool off a bit and consider that the failures we seek to attribute to the president could as easily be dropped at our own feet**. **The cycle of the four seasons evoked by our quadrennial presidential election might encourage us to believe that democracy will perpetually renew itself**, a gift of nature reminiscent of the seasons. In the seasonal rendition, the energies of democracy wax and wane; like the winter freeze that coaxes seeds from their hulls and gives roots the rest they need to thrive again in the summer to come, this “natural” cycle is a good thing. We become energized in the democratic summer of the election cycle and involve ourselves in selecting a new president. Then we cozy into our couches during the democratic winter and wait for him to perform the magical work of democracy, preferably with a cinematic flourish that will keep us happily spellbound. **The ever-renewing cycle of seasons might be a comforting myth, but it’s not democracy’s reality. The real radicalism of the U.S. revolution for independence came in its advancement of the ideal and the practice of the people’s sovereignty, the idea that regular people were qualified and capable of self-rule** if they worked at it vigilantly, thoughtfully, and hard enough. **The Constitution structured a balanced government, and we have for centuries regarded its scheme of checks and balances as the clarion of democracy**—without really paying attention to how those checks are holding up. Here’s **what the Framers got wrong: the three branches are not in fact equally suited to protect their own self-interest**. **The one headed by the single person—the executive—is best suited for that. Consequentially**, over time, **the presidency has expanded its symbolic and practical powers to the point that**, as I argue in this book, **the presidency is jeopardizing the fundamental premise of democracy: the self-rule of the people.** As we stew in the cold of winter, once again blaming the president for not fixing everything we see wrong in our nation (and indeed, the world), we might want to consider that **we are unthinkingly surrendering our own democratic power and agency**, both as a form of government and as our most precious cultural and political heritage. Corazon Aquino, the Philippine politician who led her country into what many regarded as a democratic revolution against the corrupt Marcos government, died in August 2009. Reflecting on the optimism of that revolutionary moment, and what came after, many Filipinos expressed a sense of regret not just for the loss of Aquino but for their country since her landmark election--- for lost opportunity, the failure to capitalize on the possibilities opened up in that moment of change in the face of continuing poverty, inequality and corruption. Teresita I. Barcelo summarized in The New York Times: “We thought all we needed to do was remove the dictator and do nothing about it. We thought the problem was just the dictator. I say the problem is us. We did not change.” As Barcelo understands, **what the president does for us can be good or bad—but either way, it isn’t democracy**. Bad for Democracy urges that we learn from her wisdom that democratic change does not come like the change of seasons, a gift of nature or the president, but rather from our own efforts at self-governing. **Democracy is not “natural”; rather, it’s a habitat we build together. it won’t be easy, but if we care about our nation’s democratic experiment, we must seriously rethink the relationship of citizens to our form of self-government.** We must find ways to involve ourselves in that project among those with whom we disagree, within a government that is far friendlier to corporate than citizen interest, and within a society that has for too long considered “democracy” something that only “government” does.

***\*The alt’s all-or-nothing choice fails --- small reforms like the plan are key to institutional change and getting others to sign on to the alt***

Erik Olin **Wright 7**, Vilas Distinguished Professor of Sociology at the University of Wisconsin, “Guidelines for Envisioning Real Utopias”, Soundings, April, www.ssc.wisc.edu/~wright/Published%20writing/Guidelines-soundings.pdf

5. Waystations¶ The final guideline for discussions of envisioning real utopias concerns the importance of waystations. The central problem of envisioning real utopias concerns the **viability of institutional alternatives** that embody emancipatory values, but the practical achievability of such institutional designs often ***depends upon the existence of smaller steps***, intermediate institutional innovations **that move us in the right direction but only partially embody these values.** Institutional proposals which have an ***all-or-nothing quality*** to them are both ***less likely to be adopted in the first place, and may pose more difficult transition-cost problems*** if implemented. The catastrophic experience of Russia in the “shock therapy” approach to market reform is historical testimony to this problem.¶ Waystations are a difficult theoretical and practical problem because there are many instances in which partial reforms may have very different consequences than full- bodied changes. Consider the example of unconditional basic income. Suppose that a very limited, below-subsistence basic income was instituted: not enough to survive on, but a grant of income unconditionally given to everyone. One possibility is that this kind of basic income would act mainly as a subsidy to employers who pay very low wages, since now they could attract more workers even if they offered below poverty level¶ earnings. There may be good reasons to institute such wage subsidies, but they would not generate the positive effects of a UBI, and therefore might not function as a stepping stone.¶ What we ideally want, therefore, are **intermediate reforms** that have two main properties: first, they concretely **demonstrate the virtues of the fuller program of transformation, so they contribute to the ideological battle of *convincing people that the alternative is credible and desirable;*** and second, they ***enhance the capacity for action of people***, increasing their ability to push further in the future. Waystations that increase popular participation and ***bring people together in problem-solving deliberations*** for collective purposes are particularly salient in this regard. This is what in the 1970s was called “nonreformist reforms”: reforms that are ***possible within existing institutions*** and that ***pragmatically solve real problems*** while at the same time **empowering people in ways which** ***enlarge their scope of action in the future.***

***\*We must use the institutions that exercise power to change them***

Lawrence **Grossburg**, University of Illinois, We Gotta Get Outta This Place, **1992**, p. 391-393

**The Left needs institutions which can operate within the systems of governance, understanding that such institutions are the mediating structures by which power is actively realized.** It is often **by directing opposition against specific institutions** that **power can be challenged.** The Left has assumed from some time now that, since it has so little access to the apparatuses of agency, its only alternative is to seek a public voice in the media through tactical protests. **The Left** does in fact need more visibility, but it also **needs greater access to the entire range of apparatuses of decision making and power**. Otherwise, the Left has nothing but its own self-righteousness. **It is not individuals who have produced** starvation and the other **social disgraces** of our world, **although it is individuals who must take responsibility for eliminating them. But to do so, they must act within organizations, and within the system of organizations which in fact have the capacity** (as well as the moral responsibility) **to fight them.** Without such organizations, the only models of political commit­ment are self-interest and charity. Charity suggests that we act on behalf of others who cannot act on their own behalf. But we are all precariously caught in the circuits of global capitalism, and every­one’s position is increasingly precarious and uncertain. It will not take much to change the position of any individual in the United States, as the experience of many of the homeless, the elderly and the “fallen” middle class demonstrates. Nor are there any guarantees about the future of any single nation. We can imagine ourselves involved in a politics where acting for another is always acting for oneself as well, a politics in which everyone struggles with the resources they have to make their lives (and the world) better, since the two are so intimately tied together! For example, we need to think of affirmation action as in everyone’s best interests, because of the possibilities it opens. We need to think with what Axelos has described as a “planetary thought” which “would be a coherent thought—but not a rationalizing and ‘rationalist’ inflection; it would be a fragmentary thought of the open totality—for what we can grasp are fragments unveiled on the horizon of the totality. Such a politics will not begin by distinguishing between the local and the global (and certainly not by valorizing one over the other) for the ways in which the former are incorporated into the latter preclude the luxury of such choices. **Resistance is always a local struggle, even when** (as in parts of the ecology movement) **it is imagined to connect into its global structures of articulation**: Think globally, act locally. Opposition is predicated precisely on locating the points of articulation between them, the points at which the global becomes local, and the local opens up onto the global. Since the meaning of these terms has to be understood in the context of any particular struggle, one is always acting both globally and locally: Think globally, act appropriately! Fight locally because that is the scene of action, but aim for the global because that is the scene of agency. “Local struggles directly target national and international axioms, at the precise point of their insertion into the field of imma­nence. This requires the imagination and construction of forms of unity, commonality and social agency which do not deny differences. Without such commonality, politics is too easily reduced to a ques­tion of individual rights (i.e., in the terms of classical utility theory); difference ends up “trumping” politics, bringing it to an end. The struggle against the disciplined mobilization of everyday life can only be built on affective commonalities, a shared “responsible yearning: a yearning out towards something more and something better than this and this place now.” The Left, after all, is defined by its common commitment to principles of justice, equality and democ­racy (although these might conflict) in economic, political and cultural life. It is based on the hope, perhaps even the illusion, that such things are possible. **The construction of an affective commonal­ity attempts to mobilize people in a common struggle, despite the fact that they have no common identity or character, recognizing that they are the only force capable of providing a new historical and oppositional agency. It strives to organize minorities into a new majority.**

#### \*Uniting different coalitions is necessary to overcome white supremacy---them trying to create competition with their K is white “divide and conquer” tactics

bell hooks 3, social critic extraordinaire, “Beyond Black Only: Bonding Beyond Race”, http://prince.org/msg/105/50299?pr

African Americans have been at the forefront of the struggle to end racism and white supremacy in the United States since individual free black immigrants and the larger body of enslaved blacks first landed here. Even though much of that struggle has been directly concerned with the plight of black people, all gains received from civil rights work have had tremendous positive impact on the social status of all non-white groups in this country. Bonding between enslaved Africans, free Africans, and Native Americans is well documented. Freedom fighters from all groups (and certainly there were many traitors in all three groups who were co-opted by rewards given by the white power structure) understood the importance of solidarity-of struggling against the common enemy, white supremacy. The enemy was not white people. It was white supremacy. ¶ Organic freedom fighters, both Native and African Americans, had no difficulty building coalitions with those white folks who wanted to work for the freedom of everyone. Those early models of coalition building in the interest of dismantling white supremacy are often forgotten. Much has happened to obscure that history. The construction of reservations (many of which were and are located in areas where there are not large populations of black people) isolated communities of Native Americans from black liberation struggle. And as time passed both groups began to view one another through Eurocentric stereotypes, internalizing white racist assumptions about the other. Those early coalitions were not maintained. Indeed the bonds between African Americans struggling to resist racist domination, and all other people of color in this society who suffer from the same system, continue to be fragile, even as we all remain untied by ties, however frayed and weakened, forged in shared anti-racist struggle. ¶ Collectively, within the United States people of color strengthen our capacity to resist white supremacy when we build coalitions. Since white supremacy emerged here within the context of colonization, the conquering and conquest of Native Americans, early on it was obvious that Native and African Americans could best preserve their cultures by resisting from a standpoint of political solidarity. The concrete practice of solidarity between the two groups has been eroded by the divide-and-conquer tactics of racist white power and by the complicity of both groups. Native American artist and activist of the Cherokee people Jimmie Durham, in his collection of essays A Certain Lack of Coherence, talks about the 1960’s as a time when folks tried to regenerate that spirit of coalition: “In the 1960’s and ‘70’s American Indian, African American and Puerto Rican activists said, as loudly as they could, “This country is founded on the genocide of one people and the enslavement of another.” This statement, hardly arguable, was not much taken up by white activists.” As time passed, it was rarely taken up by anyone. Instead the fear that one’s specific group might receive more attention has led to greater nationalism, the showing of concern for one’s racial or ethnic plight without linking that concern to the plight of other non-white groups and their struggles for liberation. ¶ Bonds of solidarity between people of color are continuously ruptured by our complicity with white racism. Similarly, white immigrants to the United States, both past and present, establish their right to citizenship within white supremacist society by asserting it in daily life through acts of discrimination and assault that register their contempt for and disregard of black people and darker-skinned immigrants mimic this racist behavior in their interactions with black folks. In her editorial “On the Backs of Blacks” published in a recent special issue of TIME magazine Toni Morrison discusses the way white supremacy is reinscribed again and again as immigrants seek assimilation: ¶ All immigrants fight for jobs and space, and who is there to fight but those who have both? As in the fishing ground struggle between Texas and Vietnamese shrimpers, they displace what and whom they can…In race talk the move into mainstream America always means buying into the notion of American blacks as the real aliens. Whatever the ethnicity or nationality of the immigrant, his nemesis is understood to be African American…So addictive is this ploy that the fact of blackness has been abandoned for the theory of blackness. It doesn’t matter anymore what shade the newcomer’s skin is. A hostile posture toward resident blacks must be struck at the Americanizing door. ¶ Often people of color, both those who are citizens and those who are recent immigrants, hold black people responsible for the hostility they encounter from whites. It is as though they see blacks as acting in a manner that makes things harder for everybody else. This type of scapegoating is the mark of the colonized sensibility which always blames those victimized rather than targeting structures of domination. ¶ Just as many white Americans deny both the prevalence of racism in the United States and the role they play in perpetuating and maintaining white supremacy, non-white, non-black groups, Native, Asian, Hispanic Americans, all deny their investment in anti-black sentiment even as they consistently seek to distance themselves from blackness so that they will not be seen as residing at the bottom of this society’s totem pole, in the category reserved for the most despised group. Such jockeying for white approval and reward obscures the way allegiance to the existing social structure undermines the social welfare of all people of color. White supremacist power is always weakened when people of color bond across differences of culture, ethnicity, and race. It is always strengthened when we act as though there is no continuity and overlap in the patterns of exploitation and oppression that affect all of our lives. ¶ To ensure that political bonding to challenge and change white supremacy will not be cultivated among diverse groups of people of color, white ruling groups pit us against one another in a no-win game of “who will get the prize for model minority today.” They compare and contrast, affix labels like “model minority,” define boundaries, and we fall into line. Those rewards coupled with internalized racist assumptions lead non-black people of color to deny the way racism victimizes them as they actively work to disassociate themselves from black people. This will to disassociate is a gesture of racism. ¶ Even though progressive people of color consistently critique these standpoints, we have yet to build a contemporary mass movement to challenge white supremacy that would draw us together. Without an organized collective struggle that consistently reminds us of our common concerns, people of color forget. Sadly forgetting common concerns sets the stage for competing concerns. Working within the system of white supremacy, non-black people of color often feel as though they must compete with black folks to receive white attention. Some are even angry at what they wrongly perceive as a greater concern on the part of white of the dominant culture for the pain of black people. Rather than seeing the attention black people receive as linked to the gravity of our situation and the intensity of our resistance, they want to make it a sign of white generosity and concern. Such thinking is absurd. If white folks were genuinely concerned about black pain, they would challenge racism, not turn the spotlight on our collective pain in ways that further suggest that we are inferior. Andrew Hacker makes it clear in Two Nations that the vast majority of white Americans believe that “members of the black race represent an inferior strain of the human species.” He adds: “In this view Africans-and Americans who trace their origins to that continent-are seen as languishing at a lower evolutionary level than members of other races.” Non-black people of color often do not approach white attention to black issues by critically interrogating how those issues are presented and whose interests the representations ultimately serve. Rather than engaging in a competition that sees blacks as winning more goodies from the white system than other groups, non-black people of color who identify with black resistance struggle recognize the danger of such thinking and repudiate it. They are politically astute enough to challenge a rhetoric of resistance that is based on competition rather than a capacity on the part of non-black groups to identify with whatever progress blacks make as being a positive sign for everyone. Until non-black people of color define their citizenship via commitment to a democratic vision of racial justice rather than investing in the dehumanization and oppression of black people, they will always act as mediators, keeping black people in check for the ruling white majority. Until racist anti-black sentiments are let go by other people of color, especially immigrants, and complain that these groups are receiving too much attention, they undermine freedom struggle. When this happens people of color war all acting in complicity with existing exploitative and oppressive structures. ¶ As more people of color raise our consciousness and refuse to be pitted against one another, the forces of neo-colonial white supremacist domination must work harder to divide and conquer. The most recent effort to undermine progressive bonding between people of color is the institutionalization of “multiculturalism”. Positively, multiculturalism is presented as a corrective to a Eurocentric vision of model citizenship wherein white middle-class ideals are presented as the norm. Yet this positive intervention is undermined by visions of multiculturalism that suggest everyone should live with and identify with their own self contained group. If white supremacist capitalist patriarchy is unchanged then multiculturalism within that context can only become a breeding ground for narrow nationalism, fundamentalism, identity politics, and cultural, racial, and ethnic separatism. Each separate group will then feel that it must protect its own interests by keeping outsiders at bay, for the group will always appear vulnerable, its power and identity sustained by exclusivity. When people of color think this way, white supremacy remains intact. For even though demographics in the United States would suggest that in the future the nation will be more populated by people of color, and whites will no longer be the majority group, numerical presence will in no way alter white supremacy if there is no collective organizing, no efforts to build coalitions that cross boundaries. Already, the white Christian Right is targeting large populations of people of color to ensure that the fundamentalist values they want this nation to uphold and represent will determine the attitudes and values of these groups. The role Eurocentric Christianity has played in teaching non-white folks Western metaphysical dualism, the ideology that under girds binary notion of superior/inferior, good/bad, white/black, cannot be ignored. While progressive organizations are having difficulty reaching wider audiences, the white-dominated Christian Right organizes outreach programs that acknowledge diversity and have considerable influence. Just as the white-dominated Christian church in the U.S. once relied on biblical references to justify racist domination and discrimination, it now deploys a rhetoric of multiculturalism to invite non-white people to believe that racism can be overcome through a shared fundamentalist encounter. Every contemporary fundamentalist white male-dominated religious cult in the U.S. has a diverse congregation. People of color have flocked to these organizations because they have felt them to be places where racism does not exist, where they are not judged on the basis of skin color. While the white-dominated mass media focus critical attention on black religious fundamentalist groups like the Nation of Islam, and in particular Louis Farrakhan, little critique is made of white Christian fundamentalist outreach to black people and other people of color. Black Islamic fundamentalism shares with the white Christian Right support for coercive hierarchy, fascism, and a belief that some groups are inferior and others superior, along with a host of other similarities. Irrespective of the standpoint, religious fundamentalism brainwashes individuals not to think critically or see radical politicization as a means of transforming their lives. When people of color immerse themselves in religious fundamentalism, no meaningful challenge and critique of white supremacy can surface. Participation in a radical multiculturalism in any form is discouraged by religious fundamentalism. ¶ Progressive multiculturalism that encourages and promotes coalition building between people of color threatens to disrupt white supremacist organization of us all into competing camps. However, this vision of multiculturalism is continually undermined by greed, one group wanting rewards for itself even at the expense of other groups. It is this perversion of solidarity the authors of Night Vision address when they assert: “While there are different nationalities, races and genders in the U.S., the supposedly different cultures in multiculturalism don’t like to admit what they have in common, the glue of it all-parasitism. Right now, there’s both anger among the oppressed and a milling around, edging up to the next step but uncertain what it is fully about, what is means. The key is the common need to break with parasitism.” A based identity politics of solidarity that embraces both a broad based identity politics which acknowledges specific cultural and ethnic legacies, histories, etc. as it simultaneously promotes a recognition of overlapping cultural traditions and values as well as an inclusive understanding of what is gained when people of color unite to resist white supremacy is the only way to ensure that multicultural democracy will become a reality.

### \*\*\*2AC – Law Bad

***\*\*\*Institutional checks effectively limit war, are compatible with broader critique and are a pre-requisite to the alt***

Eric **Grynaviski 13**, Professor of Political Science at The George Washington University, “The Bloodstained Spear: Public Reason and Declarations of War”, International Theory, 5(2), Cambridge Journals

Conclusion

The burden of the argument, thus far, has been to show that no war is justified unless it has been justified. States have an obligation intent on war to ensure that third parties and the target are given reasons for the war, as well as a chance to respond and reason with the belligerent state. Furthermore, **without a declaration of war, war is not a last resort** and therefore belligerent states are fully responsible for the harms that wars inevitably do to the innocent.

**One broader implication of the argument for declarations of war is to relate *institutional solutions* for moral questions. Some argue that declarations of war are an old and moribund ritual, antiquated and old-fashioned**. Ian Holliday (2002, 565), noting the irregularity with which wars are declared, writes ‘we would not want to make a just war verdict hang on such a rare political practice’. **This argument is *deeply wrong***. If ***declaring war is important***, than we can and should criticize states for failing to do so. **Others might suggest** that **even if states** do **declare war, they might still lie and misrepresent their case**. Of course, **there is nothing particular to declarations** of war **that would make misrepresentations** of one's case **more likely; we are pretty good at lying now. If arguments are given publicly**, however**, it might lead to a greater degree of precision in argumentation. This precision may make misrepresentations more noticeable. Alternatively, one might suspect that requiring states to declare war is not enough. Rather than simply requiring states to make a case, we should institutionalize rules of war so that states will pay a price if the cases they make are repugnant. *These arguments, of course, do not exclude the importance of declarations*. In fact, requiring that states explain their case is *perfectly compatible* with any reasonable institutional solution to the problem of war. Some *mechanism* to ensure that states make a case is probably an *important condition for any of these schemes to work***.

**The international system likely will *not include* robust, impartial international institutions that can make enforceable decisions about war and peace in the near future. Declarations of war are a *tool* that might *actually be appropriated* by states, *especially if the public and the international community demand them*. *Half-formed cosmopolitan proposals*, while interesting thought exercises, may *deflect attention from practical measures* that can be reached here and now. Declarations may be only first steps, but they are *important* ones**. Moral arguments make a difference, even if that difference is too often small. They mattered during slavery, decolonization, and have altered citizenship policies in Israel, the Ukraine, and elsewhere (Checkel 2001; Crawford 2002). Moreover, **forcing states to explain the moral case may make unjust wars less likely by preventing executives from overselling conflicts** (Goodman 2006) **or by leading states to face hypocrisy costs if they intervene despite target states’ concessions on just cause or inflict humanitarian causalities in wars declared for humanitarian reasons** (Finnemore 2009).

A broader implication relates to public reason and just war thinking. Showing that poorly justified, undeclared wars are unjust highlights the way that public reason conditions our understanding of just war theory. This argument is not new. In the last year of his life, Cicero (1913, 37) elaborated a theory of war that emphasized discussion and persuasion. His claim, discussed above, is worth reiterating: ‘there are two ways of settling a dispute; first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion’. Cicero's approach to war highlights mechanisms of public diplomacy – the importance of maintaining agreements with enemies, the use of declarations of war to inform enemies of the rationale for war, and discussion and diplomacy to peacefully resolve conflict – to explain the conditions under which a resort to force is justified. Cicero's comments presaged his end; when Anthony's men executed Cicero, they cut off his hands – the device used by Cicero to write criticisms of Anthony – and nailed them to rostra (the platform in the forum where speakers could be heard).

Cicero's distinction between force and argument is central to his thinking about the conditions under which violence is justly used. After Cicero, the centrality of discussion and argument fades, disappearing by the 20th century. Consider several recent examples. Jean Bethke Elshtain (2003, 19) – a noted just war theorist – describes terrorists as groups that are unwilling to accept compromises and refuse diplomacy: ‘terrorists are not interested in the subtleties of diplomacy or in compromise solutions. They have taken leave of politics’. Michael Walzer (1977), a just war theorist often credited for the revival of moral thinking about war after Vietnam, barely mentions obligations to settle disputes through negotiation in his key text Just and Unjust Wars. More amusingly in many ways, moral philosophers often construct hypothetical examples designed to showcase the types of moral dilemmas involved in war that unrealistically exclude the possibility of successful diplomacy. David Rodin (2002, 80), for example, describes a person trapped at the bottom of a well who has to decide whether to shoot a ray gun at a fat man falling into the well above his head, knowing that if he does not shoot the ray gun he will die. Discussion with the fat man – of course – is impossible; he is falling and no longer has control over his actions.22

Modern **discussions of ethics in war** usually **discount diplomatic solutions. In doing so, they are rooted in an *extraordinarily pessimistic version of realism*, where only power and force have the ability to settle conflict**. When painting war as a solution to pressing concerns related to self-defense against terrorists who have no interest in compromise, or the rescue of populations from genocide by regimes who will take any delay as cause to continue killing innocents, diplomacy does not loom large as a central component of just war reasoning.

#### Radical rejection fails --- the plan’s the most pragmatic check on militarism

Plan’s essential to restrain short-term effects of militarism —- sweeping critique of war is too extreme to reach broad acceptance

Andrew Bacevich 13, Professor of History and International Relations at Boston University and Ph.D. in American Diplomatic History from Princeton University, The New American Militarism, p. 205-210

There is, wrote H. L. Mencken, “always a well-known solution to every human problem—neat, plausible, and wrong.”1 Mencken’s aphorism applies in spades to the subject of this account. To imagine that there exists a simple antidote to the “military metaphysic” to which the people and government of the United States have fallen prey is to misconstrue the problem. As the foregoing chapters make plain, the origins of America’s present-day infatuation with military power are anything but simple. American militarism is not the invention of a cabal nursing fantasies of global empire and manipulating an unsuspecting people frightened by the events of 9/11. Further, it is counterproductive to think in these terms— to assign culpability to a particular president or administration and to imagine that throwing the bums out will put things right. Yet neither does the present-day status of the United States as sole superpower reveal an essential truth, whether positive or negative, about the American project. Enthusiasts (mostly on the right) who interpret America’s possession of unrivaled and unprecedented armed might as proof that the United States enjoys the mandate of heaven are deluded. But so too are those (mostly on the left) who see in the far-flung doings of today’s U.S. military establishment substantiation of Major General Smedley Butler’s old chestnut that “war is just a racket” and the American soldier “a gangster for capitalism” sent abroad to do the bidding of Big Business or Big Oil.2 Neither the will of God nor the venality of Wall Street suffices to explain how the United States managed to become stuck in World War IV. Rather, the new American militarism is a little like pollutionthe perhaps unintended, but foreseeable by-product of prior choices and decisions made without taking fully into account the full range of costs likely to be incurred. In making the industrial revolution, the captains of American enterprise did not consciously set out to foul the environment, but as they harnessed the waters, crisscrossed the nation with rails, and built their mills and refineries, negative consequences ensued. Lakes and rivers became choked with refuse, the soil contaminated, and the air in American cities filthy. By the time that the industrial age approached its zenith in the middle of the twentieth century, most Americans had come to take this for granted; a degraded environment seemed the price you had to pay in exchange for material abundance and by extension for freedom and opportunity. Americans might not like pollution, but there seemed to be no choice except to put up with it. To appreciate that this was, in fact, not the case, Americans needed a different consciousness. This is where the environmental movement, beginning more or less in the 1960s, made its essential contribution. Environmentalists enabled Americans to see the natural world and their relationship to that world in a different light. They argued that the obvious deterioration in the environment was unacceptable and not at all inevitable. Alternatives did exist. Different policies and practices could stanch and even reverse the damage. Purists in that movement insisted upon the primacy of environmental needs, everywhere and in all cases. Theirs was (and is) a principled position deserving to be heard. To act on their recommendations, however, would likely mean shutting down the economy, an impractical and politically infeasible course of action. Pragmatists advanced a different argument. They suggested that it was possible to negotiate a compromise between economic needs and environmental imperatives. This compromise might oblige Americans to curtail certain bad habits, but it did not require changing the fundamentals of how they lived their lives. Americans could keep their cars and continue their love affair with consumption; but at the same time they could also have cleaner air and cleaner water. Implementing this compromise has produced an outcome that environmental radicals (and on the other side, believers in laissez-faire capitalism) today find unsatisfactory. In practice, it turns out, once begun negotiations never end. Bargaining is continuous, contentious, and deeply politicized. Participants in the process seldom come away with everything they want. Settling for half a loaf when you covet the whole is inevitably frustrating. But the results are self-evident. Environmental conditions in the United States today are palpably better than they were a half century ago. Pollution has not been vanquished, but it has become more manageable. Furthermore, the nation has achieved those improvements without imposing on citizens undue burdens and without preventing its entrepreneurs from innovating, creating, and turning a profit. Restoring a semblance of balance and good sense to the way that Americans think about military power will require a similarly pragmatic approach. Undoing all of the negative effects that result from having been seduced by war may lie beyond reach, but Americans can at least make them more manageable and thereby salvage their democracy. In explaining the origins of the new American militarism, this account has not sought to assign or to impute blame. None of the protagonists in this story sat down after Vietnam and consciously plotted to propagate perverse attitudes toward military power any more than Andrew Carnegie or John D. Rockefeller plotted to despoil the nineteenth-century American landscape. The clamor after Vietnam to rebuild the American arsenal and to restore American self-confidence, the celebration of soldierly values, the search for ways to make force more usable: all of these came about because groups of Americans thought that they glimpsed in the realm of military affairs the solution to vexing problems. The soldiers who sought to rehabilitate their profession, the intellectuals who feared that America might share the fate of Weimar, the strategists wrestling with the implications of nuclear weapons, the conservative Christians appalled by the apparent collapse of traditional morality: none of these acted out of motives that were inherently dishonorable. To the extent that we may find fault with the results of their efforts, that fault is more appropriately attributable to human fallibility than to malicious intent. And yet in the end it is not motive that matters but outcome. Several decades after Vietnam, in the aftermath of a century filled to overflowing with evidence pointing to the limited utility of armed force and the dangers inherent in relying excessively on military power, the American people have persuaded themselves that their best prospect for safety and salvation lies with the sword. Told that despite all of their past martial exertions, treasure expended, and lives sacrificed, the world they inhabit is today more dangerous than ever and that they must redouble those exertions, they dutifully assent. Much as dumping raw sewage into American lakes and streams was once deemed unremarkable, so today “global power projection”—a phrase whose sharp edges we have worn down through casual use, but which implies military activism without apparent limit—has become standard practice, a normal condition, one to which no plausible alternatives seem to exist. All of this Americans have come to take for granted: it’s who we are and what we do. Such a definition of normalcy cries out for a close and critical reexamination. Surely, the surprises, disappointments, painful losses, and woeful, even shameful failures of the Iraq War make clear the need to rethink the fundamentals of U.S. military policy. Yet a meaningful reexamination will require first a change of consciousness, seeing war and America’s relationship to war in a fundamentally different way. Of course, dissenting views already exist. A rich tradition of American pacifism abhors the resort to violence as always and in every case wrong. Advocates of disarmament argue that by their very existence weapons are an incitement to violence. In the former camp, there can never be a justification for war. In the latter camp, the shortest road to peace begins with the beating of swords into ploughshares. These are principled views that deserve a hearing, more so today than ever. By discomfiting the majority, advocates of such views serve the common good. But to make full-fledged pacifism or comprehensive disarmament the basis for policy in an intrinsically disordered world would be to open the United States to grave danger. The critique proposed here—offering not a panacea but the prospect of causing present-day militaristic tendencies to abate—rests on ten fundamental principles. First, heed the intentions of the Founders, thereby restoring the basic precepts that animated the creation of the United States and are specified in the Constitution that the Framers drafted in 1787 and presented for consideration to the several states. Although politicians make a pretense of revering that document, when it comes to military policy they have long since fallen into the habit of treating it like a dead letter. This is unfortunate. Drafted by men who appreciated the need for military power while also maintaining a healthy respect for the dangers that it posed, the Constitution in our own day remains an essential point of reference. Nothing in that compact, as originally ratified or as subsequently amended, commits or even encourages the United States to employ military power to save the rest of humankind or remake the world in its own image nor even hints at any such purpose or obligation. To the contrary, the Preamble of the Constitution expressly situates military power at the center of the brief litany of purpose enumerating the collective aspirations of “we the people.” It was “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity” that they acted in promulgating what remains the fundamental law of the land. Whether considering George H. W. Bush’s 1992 incursion into Somalia, Bill Clinton’s 1999 war for Kosovo, or George W. Bush’s 2003 crusade to overthrow Saddam Hussein, the growing U.S. predilection for military intervention in recent years has so mangled the concept of common defense as to make it all but unrecognizable. The beginning of wisdom—and a major first step in repealing the new American militarism—lies in making the foundational statement of intent contained in the Preamble once again the basis of actual policy. Only if citizens remind themselves and remind those exercising political authority why this nation exists will it be possible to restore the proper relationship between military power and that purpose, which centers not on global dominance but on enabling Americans to enjoy the blessings of liberty. Such a restoration is long overdue. For over a century, since the closing of the frontier, but with renewed insistence following the end of the Cold War, American statesmen have labored under the misconception that securing the well-being of the United States requires expanding its reach and influence abroad. From the invasion of Cuba in 1898 to the invasion of Iraq in 2003, policymakers have acted as if having an ever larger perimeter to defend will make us safer or taking on burdens and obligations at ever greater distances from our shores will further enhance our freedoms.3 In fact, apart from the singular exception of World War II, something like the opposite has been the case. The remedy to this violation of the spirit of the Constitution lies in the Constitution itself and in the need to revitalize the concept of separation of powers. Here is the second principle with the potential to reduce the hazards by the new American militarism. In all but a very few cases, the impetus for expanding America’s security perimeter has come from the executive branch. In practice, presidents in consultation with a small circle of advisers decide on the use of force; the legislative branch then either meekly bows to the wishes of the executive or provides the sort of broad authorization (such as the Tonkin Gulf Resolution of 1964) that amounts in effect to an abrogation of direct responsibility. The result, especially in evidence since the end of World War II, has been to eviscerate Article I, Section 8, Clause 11 of the Constitution, which in the plainest of language confers on the Congress the power “To declare War.” The problem is not that the presidency has become too strong. Rather, the problem is that the Congress has failed—indeed, failed egregiously—to fulfill its constitutional responsibility for deciding when and if the United States should undertake military interventions abroad. Hiding behind an ostensible obligation to “support our commander-in-chief” or to “support the troops,” the Congress has time and again shirked its duty. An essential step toward curbing the new American militarism is to redress this imbalance in war powers and to call upon the Congress to reclaim its constitutionally mandated prerogatives. Indeed, legislators should insist upon a strict constructionist definition of war such that any use of force other than in direct and immediate defense of the United States should require prior congressional approval. The Cold War is history. The United States no longer stands eyeball-toeyeball with a hostile superpower. Ensuring our survival today does not require, if it ever did, granting to a single individual the authority to unleash the American military arsenal however the perception of threats, calculations of interest, or flights of whimsy might seem to dictate. Indeed, given all that we have learned about the frailties, foibles, and strange obsessions besetting those who have occupied the Oval Office in recent decades—John Kennedy’s chronic drug abuse, Richard Nixon’s paranoia, and Ronald Reagan’s well-documented conviction that Armageddon was drawing near, to cite three examples—it is simply absurd that elevation to the presidency should include the grant of such authority.4 The decision to use armed force is freighted with implications, seen and unseen, that affect the nation’s destiny. Our history has shown this time and again. Such decisions should require collective approval in advance by the people’s elected representatives, as the Framers intended. Granted, one may examine the recent past—for instance, the vaguely worded October 2002 joint resolution authorizing the use of force against Iraq—and despair of those representatives actually stirring themselves to meet their responsibilities.5 But the errors and misapprehensions, if not outright deceptions, that informed the Bush administration’s case for that war—and the heavy price that Americans subsequently paid as a result— show why Cold War–era deference to the will of the commander-in-chief is no longer acceptable. If serving members of Congress cannot grasp that point, citizens should replace them by electing people able to do so.

### K

#### 3. We don’t embrace civil society. We’re not pro-State, but we’re "anti-anti State". Some things can ONLY be solved "through the system".

Dr. Richard **Barbrook**, Hypermedia Research Centre – U. of Westminster, 6-5-19**97**, “More Provocations,” Amsterdam.nettime.org/Lists-Archives/nettime-1-9706/msg00034.html

I thought that this position is clear from my remarks about the ultra-left posturing of the ‘zero-work’ demand. In Europe, **we have real social problems** of deprivation and **poverty which, in part, can only be solved by state action. This does not make me a statist, but rather *anti-anti-statist*. By opposing such intervention because they are carried out by the state anarchists are tacitly lining up with the neo-liberals. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties. I deeply admire direct action movements.** I was a radio pirate and we provide server space for anti-roads and environmental movements. **However, this doesn’t mean that I support political abstentionism** or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. **During the ‘70s**. I was a pro-situ punk rocker until Thatcher got elected. Then **we learnt the hard way that voting did change things and lots of people suffered if state power was withdrawn** from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

***4. Whiteness isn’t a monolithic root cause---they shut off productive debate over solutions – means the alt fails***

**Shelby 7** – Tommie Shelby, Professor of African and African American Studies and of Philosophy at Harvard, 2007, We Who Are Dark: The Philosophical Foundations of Black Solidarity

**Others** might **challenge the distinction between** **ideological and structural causes of black disadvantage**, on the grounds that **we are rarely**, if ever, **able to** so **neatly separate these factors**, an epistemic situation that is only made worse by the fact that these causes interact in complex ways with behavioral factors. These distinctions, while perhaps straightforward in the abstract, are difficult to employ in practice. For example, **it would be** difficult, if not **impossible**, **for the members of a poor black community to determine** **with any accuracy** **whether their impoverished condition is due** **primarily to institutional racism**, the impact of past racial injustice, **the increasing technological basis of the economy**, **shrinking state budgets**, the vicissitudes of **world trade**, the ascendancy of **conservative ideology**, **poorly funded schools**, lack of personal initiative, **a violent drug trade** that deters business investment, **some combination of these factors**, **or some other explanation altogether**. Moreover, it is notoriously difficult to determine when the formulation of putatively race-neutral policies has been motivated by racism or when such policies are unfairly applied by racially biased public officials.¶ **There are** very real **empirical difficulties** **in determining the** **specific causal significance** **of the factors that create and perpetuate black disadvantage**; nonetheless, it is clear that these factors exist and that **justice will demand** **different practical remedies according to** **each factor's relative impact** **on blacks' life chances**. **We must acknowledge that our social world is complicated** and not immediately transparent to common sense, **and thus that** **systematic empirical inquiry**, **historical studies, and rigorous social analysis are required to reveal its systemic structure** and sociocultural dynamics. There is, moreover, no mechanical or infallible procedure for determining which analyses are the soundest ones. In addition, given the inevitable bias that attends social inquiry, legislators and those they represent cannot simply defer to social-scientific experts. **We must instead rely on** **open public debate**—among politicians, scholars, policy makers, intellectuals, and ordinary citizens—**with the aim of garnering** **rationally motivated** and informed **consensus**. And even if our practical decision procedures rest on critical deliberative discourse and thus live up to our highest democratic ideals, some trial and error through actual practice is unavoidable.¶ These difficulties and complications notwithstanding, a general recognition of the distinctions among the ideological and structural causes of black disadvantage could help blacks refocus their political energies and self-help strategies. **Attention to these distinctions might help** **expose the superficiality of theories** **that seek to** **reduce all the social obstacles that blacks face to** contemporary forms of racism or white supremacy. **A more** penetrating, **subtle, and empirically grounded** **analysis** **is needed to** **comprehend the causes of racial inequality and black disadvantage**. Indeed, these distinctions highlight the necessity to probe deeper to find the causes of contemporary forms of racism, as some **racial conflict may be a symptom of broader problems or recent social developments** (**such as immigration policy** or reduced federal funding for higher education).

#### B) Their pessimistic view of racial gains becomes a self-fulfilling prophecy that turns the kritik

**Thernstrom**, Harvard University Winthrop Research Professor of History, **98**

(Steven, “Black Progress: How far we've come, and how far we have to go” http://www.brookings.edu/research/articles/1998/03/spring-affirmativeaction-thernstrom)

**Black progress** over the past half-century **has been impressive**, conventional wisdom to the contrary notwithstanding. And yet the nation has many miles to go on the road to true racial equality. "I wish I could say that racism and prejudice were only distant memories, but as I look around I see that even educated whites and African American...have lost hope in equality," Thurgood Marshall said in 1992. A year earlier The Economist magazine had reported the problem of race as one of "shattered dreams." In fact, **all hope has not been "lost," and "shattered" was much too strong a word, but certainly in the 1960s the civil rights community failed to anticipate just how tough the voyage would be.** (Thurgood Marshall had envisioned an end to all school segregation within five years of the Supreme Court s decision in Brown v. Board of Education.) **Many blacks**, particularly, **are now discouraged**. A 1997 **Gallup poll found a sharp decline in optimism** since 1980; only 33 percent of blacks (versus 58 percent of whites) thought both the quality of life for blacks and race relations had gotten better.

Thus, ***progress—by many measures seemingly so clear—is viewed as an illusion***, **the sort of fantasy to which intellectuals are particularly prone**. **But the ahistorical sense of nothing gained is in itself bad news**. ***Pessimism is a self-fulfilling prophecy***. **If all our efforts as a nation to resolve the "American dilemma" have been in vain—if we've been spinning our wheels in the rut of ubiquitous and permanent racism**, as Derrick Bell, Andrew Hacker, and others argue—**then racial equality is a hopeless task, an unattainable ideal**. **If both blacks and whites understand and celebrate the gains of the past, however, we will move forward with the optimism, insight, and energy that further progress surely demands.**

#### 6. State’s not inherently racist – it’s bad now because of poor engagement. Admittedly scary empirics shouldn’t close-off reformism. Their arg is net worse.

Farber ‘98

\*\* Associate Dean for Faculty and Research, and Henry J. Fletcher Professor of Law, University of Minnesota. J.D., summa cum laude, University of Illinois School of Law, 1975. Richard Delgado, \* Jean N. Lindsley Professor of Law, University of Colorado Law School. J.D., U.C. Berkeley School of Law, 1974. Thomas M. Cooley Law Review¶ 1998¶ 15 T.M. Cooley L. Rev. 361, KRINOCK LECTURE SERIES: IS AMERICAN LAW INHERENTLY RACIST?, Lexis

PROFESSOR KENDE: On behalf of Thomas M. Cooley Law School, I want to welcome you to the Krinock Lecture. My name is Mark Kende and I am an Associate Professor of Law here at Thomas M. Cooley. The Krinock Lecture is in honor of the distinguished service rendered by a former Dean of the law school, the late Robert Krinock. The Krinock Lecture is unique because it has been funded entirely by personal contributions form the faculty. Its purpose is to enrich the intellectual environment of the law school and the community by bringing in prominent speakers on law-related topics. This term, we are doing something a little bit different though with the lecture. Instead of just having one person giving a speech, we are having a debate. The topic of the debate will be: "Is American Law Inherently Racist?" We are honored to have two nationally renowned legal scholars join us this evening to conduct the debate. They are Professor Richard Delgado of the University of Colorado Law School, who will be arguing the affirmative side of the topic, and Professor Daniel Farber of the University of Minnesota Law School, who will be arguing the negative side, and I will be moderating the debate. Before I more fully introduce each of our speakers and describe their impressive credentials, I want to explain the format of the debate so everyone understands how we are going to do things. Initially Professor Delgado will make a two-minute opening statement followed by Professor Farber who will make his two-minute opening statement. Professor Delgado will then have twenty minutes to present his case in chief and after he has concluded, he will have five minutes to answer audience questions that are solely about his particular argument. Professor Farber will then have twenty-five minutes to present his responsive case in chief. He too will then answer audience questions for five minutes related solely to his [\*362] remarks. Professor Delgado will then have ten minutes of rebuttal time to reply to Professor Farber. Professor Farber will follow with ten minutes of time, and then Professor Delgado will conclude with a five-minute statement. After the debate part of the event has concluded, Professor Delgado and Farber will answer questions for up to twenty minutes. This is basically the format of this debate.¶ Now let me introduce our distinguished debaters more thoroughly. Richard Delgado is the Jean N. Lindsley Professor of Law at the University of Colorado Law School, where he has taught classes in civil procedure, civil rights, and biotechnology and the law since 1990. He has also taught at Arizona State, Washington, UCLA, University of California at Davis, and Wisconsin. Professor Delgado graduated from the University of California at Berkeley Law School in 1974, where he served as the Notes and Comments Editor of the University of California Law Review. Professor Delgado is a prolific scholar having authored numerous books and more than one hundred law review articles. His books have won six national book awards including the American Library Association's Outstanding Academic Book (for his book "The Coming Race War"), four Gustavus Myers prizes for the Outstanding Book on human rights, and a Pulitzer Prize nomination. His award winning book "The Rodrigo Chronicles" is a dialogue between a law student and a professor.¶ Professor Delgado is most well known for being one of the leading commentators and authors in the field of race and law in America. He is considered one of the founders of the critical race theory movement, which argues that American law is based on racist assumptions and tendencies. He has appeared as a commentator about race on programs such as Good Morning America, the McNeil-Lehrer Report, PBS, and NPR. We are honored to have Professor Delgado arguing the affirmative side of the topic.¶ Daniel A. Farber is the Henry J. Fletcher Professor of Law and Associate Dean for Faculty at the University of Minnesota Law School where he has taught constitutional law, environmental law, civil procedure, and legislation since 1987. He was a visiting professor at the Harvard Law School during the spring of 1998 and has also taught at Stanford and the University of Illinois. Professor Farber graduated summa cum laude and first in his class from the University of Illinois in 1975, where he was Editor-in-Chief of the University of Illinois Law Review. He served as a law clerk to United States Supreme Court Justice John Paul Stevens.¶ Professor Farber has also authored numerous books and law review articles on constitutional law and environmental law topics. [\*363] He has authored a casebook on constitutional law and environmental law and has just had a treatise entitled "The First Amendment" published by Foundation Press. He is currently the Editor of the journal "Constitutional Commentary." Along with his colleague, Professor Phil Frickey, he has authored a leading book on public choice theory. Professor Farber's book "Beyond All Reason: The Radical Assault on Truth and American Law," co-authored with Professor Suzanna Sherry, is perhaps the most comprehensive critique yet of the critical race theorists. Professor Farber will be arguing the negative side of the debate.¶ On a personal note, I want to thank both speakers for being willing to come here to Cooley today, for braving this debate format, and for being so easy to work with. So if we could, I would like to give them a round of applause before we begin. Without further adieu, let me now turn the podium over to Professor Delgado for his two-minute introduction and to begin the debate.¶ Introductory Remarks¶ PROFESSOR DELGADO: Thank you Mark. As the first speaker, and I hope before the clock starts to run, I would like to thank Professor Kende and the faculty of Thomas M. Cooley Law School for sponsoring this debate, and of course for inviting me. It seems to me that in just the last few months and years, this country has returned to an examination of race in a way that did not characterize the ten or fifteen years just before that. All to our good, I think. I am thinking of books like William Bowen and Derek Bok's recently issued book, n1 evaluating twenty years of affirmative action. I am thinking, as well, of John Hope Franklin's Presidential Commission and its workshops and community events around the nation. You could see today's event as part of a series that reexamines this nation's oldest and perhaps most intractable problem-race. I would like to commend Thomas M. Cooley Law School for scheduling it.¶ Probably most of you know me through my writing on race and racism. You know, that way of disseminating one's ideas is a whole lot easier. You just stay at your desk and spin the ideas out and someone else takes it from there and publishes them. I am very happy, however, to be able to take part in a public event like this [\*364] even though it entails removing myself 2,000 miles from my home base and living out of a suitcase for three days because I think the whole thing is terribly important.¶ It struck me this morning that my friend Dan Farber over there has much the easier task of the two of us-purely in debate terms. For I am the one who has to prove a superlative-namely, that American law is inherently racist. Not just sometimes, occasionally, or often racist, but inherently so. I am reminded of those automobile executives who argued that a model of car was not inherently unsafe merely because it burst into flames upon light rear-end contact, since the rest of the time it provided safe transportation for American families at a price that they could afford. Or that character in the Russian novel n2 who did his landlady in, and then defended himself by pointing out all the good deeds he expected to do later in life.¶ To make today's question more manageable, not to mention easier for me, I will define a system as inherently racist if it is recurrently so-that is, it keeps coming back to the behavior time and again and for each of the different minority groups. And second, it does so for reasons seemingly imbedded in its very structure and makeup, its social DNA, so to speak. Particularly if you are White, I hope you will listen with an open mind to the evidence that I will present today during my case-in- chief. Some of what you hear may be unfamiliar-not in standard history or constitutional law textbooks. It may go against your sense that things are better today for persons of color, as indeed they are for some.¶ White folks tend to see, literally, fewer acts of out and out racism than their brothers and sisters of color do. A merchant who is in the practice of hassling well-behaved black teenagers in his or her store, will generally not do so if white shoppers are there watching. A police officer who routinely stops motorists of color driving through certain neighborhoods may refrain from doing so if a well-dressed Caucasian is in the back seat of the car. Talk of racism also makes people feel defensive and want to change the subject-perhaps to that other group's responsibility for their low estate.¶ Yet as recent events show, denial is rarely a successful, much less helpful strategy. Coming to terms with the continuing legacy of race and racism, fairly and openly, is the path to a stronger society and a legal system that we can all be proud of. Thank you.¶ [\*365] ¶ PROFESSOR FARBER: When Suzanna Sherry and I wrote a book n3 about critical race theory, radical feminism, and some related movements, our greatest hope was to spark a dialogue. So I am especially pleased to have the opportunity to be here today to discuss this issue with Professor Delgado. Too often people on different sides of these issues simply send manifestos out that repeat their own point of view and do not really try to engage the other side. So I think this is a tremendously constructive occasion, at least I hope it will be.¶ I was very struck in his introductory remarks by Professor Delgado's statement that, in a sense, racism is part of the DNA of the American legal system, a sort of genetic flaw. I think that really is a fair statement of the heart of critical race theory. Although I understand the frustration that leads people to that conclusion, I continue to think that it is wrong. It underestimates our capacity to change the legal system, and it ignores important parts of our legal history. In the end, despite the good intentions of people who favor that view, this thesis of inherent racism will only interfere with public dialogue about racial issues and make it more difficult for us to confront our important racial problems today.

#### 9. Their assumption of ontological blackness essentializes blackness as a racial category subservient to whiteness

Welcome 2004– completing his PhD at the sociology department of the City University of New York's Graduate Center (H. Alexander, "White Is Right": The Utilization of an Improper Ontological Perspective in Analyses of Black Experiences, Journal of African American Studies, Summer-Fall 2004, Vol. 8, No. 1 & 2, pp. 59-73)

**In many of the studies of blacks, the experiences of whites, not blacks, are used as the backing for the construction of the warrants/rules that are employed to evaluate black experiences**, delimiting the "concepts and relationships that can exist" in the black community. **The life histories of whites are used as the standard against which black experiences are measured and as the goals to which blacks are encouraged to strive. The employment of this ontology fallaciously limits the range of black agency, producing deceitful narratives where the navigation of the social environment by blacks is dictated by either a passive response to, or a passive adoption of, white scripts.** This ontology erroneously limits descriptions and evaluations of black experiences, excluding viable causal determinants of the socio-economic status of blacks and constructing restricted descriptions of black agency. **The utilization of whiteness to determine and/or evaluate blackness begins when whiteness and white life histories come to represent what is "right."** "White is right" is a sarcastic phrase that was an extremely popular slur during the Black Power movement in the mid-1960s to the early 1970s; the utilization of this phrase represents a form of social critique that takes exception to both the privileging of white biographies as accurate descriptions of history and the reconstitution of these histories as a template that blacks and other people of color should follow for navigating social environments and achieving positive social mobility. Part of the prominence of the "white is right" perspective comes from the numerical superiority of whites. As a group, whites have been in the majority throughout the history of the United States and the prominence of the white experience has been used to argue that white experiences should be used as a social template. It has been used as such in the works of Robert Park (1939) and Gunnar Myrdal (1944), both of whom suggested that by copying the patterns of whites, blacks would achieve positive social mobility. However, use of the numerical superiority of whites to support claims about the "rightness" of white experiences relies on the equation of quantitative dominance with qualitative dominance and the employment of the fallacious argumentum ad populum. **The actual source of the dominance of the "white is right" perspective lies in the dynamics of power. The location of the origins of the dominant ideology in power relations is conceptualized in the work of Michel Foucault (1980), who theorized that power is imbricated with discourse:** We must make allowance for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it (p. 101). **Key to the deployment of discourses is an underlying strategy. As such, the prominence of the "white is right" perspective can be traced to attempts to create an "order,"** or a way of thinking. Foucault's theoretical lens supports the hypothesis that the **privileging of white experiences and the use of these experiences as an ontological framework for the analyses of black experiences is an effect of power imbalances.**

#### Our politics is necessary to celebrating life. The alternative denies our potential to affirm life and condemns others to unnecessary suffering.

**May ‘5** (Todd May, prof @ Clemson. “To change the world, to celebrate life,” Philosophy & Social Criticism 2005 Vol 31 nos 5–6 pp. 517–531)

**To change the world and to celebrate life. This**, as the theologian Harvey Cox saw, **is the struggle** within us. **It is a struggle in which** one cannot choose sides; or better, a struggle in which **one must choose both sides. The abandonment of one for the** sake of the **other can lead only to disaster or callousness. Forsaking the celebration of life for** the sake of **changing the world is the path of the sad revolutionary.** In his preface to Anti-Oedipus, Foucault writes that one does not have to be sad in order to he revolutionarv. The matter is more urgent than that, however. **One cannot** be both sad and revolutionary lacking a sense of the wondrous that is already here, among us, one who is bent upon changing the world can only become solemn or bitter. He or she is **focus**ed **only on the future; the present is** what is **to be overcome. The vision of what** is not but **must come to be overwhelms all** else, **and the point of change** itself **becomes lost**. The history of the left in the 20th century offers numerous examples of this, and the disaster that attends to it should be evident to all of us by now. **The alternative is surely not to shift one’s allegiance to the pure celebration of life**, although there are many who have chosen this path. **It is** at best **blindness not to see the misery that envelops so many** of our fellow humans, **to say nothing of what happens to** sentient **nonhuman creatures. The attempt to jettison world-changing for an uncritical assent to the world as it is requires** a **self-deception** that I assume would be anathema for those of us who have studied Foucault. Indeed, **it is anathema for all** of us **who awaken each day to an America whose expansive boldness is** matched **only by** an equally expansive **disregard for those we place in harm’s way. This is the struggle, then. The one between the desire for life celebration and** the **desire for world-changing. The struggle between reveling in the contingent and fragile joys that constitute our world and wresting it from its intolerability**. I am sure it is a struggle that is not foreign to anyone who is reading this. I am sure as well that the stakes for choosing one side over another that I have recalled here are obvious to everyone. **The question** then **becomes one of how to choose both sides at once.** III Maybe it happens this way. You walk into a small meeting room at the back of a local bookstore. There are eight or ten people milling about. They’re dressed in dark clothes, nothing fancy, and one or two of them have earrings or dreadlocks. They vary in age. You don’t know any of them. You’ve never seen them before. Several of them seem to know one another. They are affectionate, hugging, letting a hand linger on a shoulder or an elbow. A younger man, tall and thin, with an open face and a blue baseball cap bearing no logo, glides into the room. Two others, a man and a woman, shout, ‘Tim!’ and he glides over to them and hugs them, one at a time. They tell him how glad they are that he could make it, and he says that he just got back into town and heard about the meeting. You stand a little off to the side. Nobody has taken a seat at the rectangle of folding tables yet. You don’t want to be the first to sit down. Tim looks around the room and smiles. Several other people filter in. You’re not quite sure where to put your hands so you slide them into your jean pockets. You hunch your shoulders. Tim’s arrival has made you feel more of an outsider. But then he sees you. He edges his way around several others and walks up to you and introduces himself. You respond. Tim asks and you tell him that this is your first time at a meeting like this. He doesn’t ask about politics but about where you’re from. He tells you he has a friend in that neighborhood and do you know . . . ? Then several things happen that you only vaguely notice because you’re talking with Tim. People start to sit down at the rectangle of tables. One of them pulls out a legal pad with notes on it. She sits at the head of the rectangle; or rather, when she sits down there, it becomes the head. And there’s something you don’t notice at all. You are more relaxed, your shoulders have stopped hunching, and when you sit down the seat feels familiar. The woman at the head of the table looks around. She smiles; her eyes linger over you and a couple of others that you take to be new faces, like yours. She says, ‘Maybe we should begin.’ IV **I can offer only a suggestion of an answer** here today. It is a suggestion that brings together some thoughts from the late writings of Maurice Merleau-Ponty with those of Foucault, in order to sketch not even a framework for thought, but the mere outlines of a framework. It is not a framework that would seek to find the unconscious of each in the writings of the other. Neither thinker finishes or accomplishes the other. (Often, for example regarding methodology, they do not even agree.) Rather, it is a framework that requires both of them, from their very different angles, in order to be able to think it. My goal in constructing the outlines of this framework is largely philosophical. That is to say, **the suggestion I would like to make** here **is not one for resolving for each of us the struggle of life-celebration and world-changing, but of offering a way to conceive ourselves that allows us to embrace both sides** of this battle **at the same time**. Given the thinkers I have chosen as reference points, it will be no surprise when I say that that conception runs through the body. Let me start with Merleau-Ponty. In his last writings, particularly in The Visible and the Invisible, he offers a conception of the body that is neither at odds nor even entangled with the world, but is of the very world itself. His concept of the flesh introduces a point of contact that is also a point of undifferentiation. The flesh, Merleau-Ponty writes, ‘is the coiling over of the visible upon the seeing body, of the tangible upon the touching body, which is attested in particular when the body sees itself, touches itself seeing and touching the things, such that, as tangible it descends among them’.2 We must recall this economy of the flesh before we turn to Foucault. There is, for Merleau-Ponty, a single Being. Our world is of that Being, and we are of our world. We are not something that confronts the world from outside, but are born into it and do not leave it. This does not mean that we cannot remove ourselves from the immediacy of its grasp. What it means is that to remove ourselves from that immediacy is neither the breaking of a bond nor the discovery of an original dichotomy or dualism. What is remarkable about human beings is precisely our capacity to confront the world, to reflect upon it, understand it, and change it, while still being of a piece with it. To grasp this remarkable character, it is perhaps worth recalling Gilles Deleuze’s concept of the fold. The world is not composed of different parts; there is no transcendent, whether of God or of subjectivity. The world is one. As Deleuze sometimes says, being is univocal. This oneness is not, however, inert or inanimate. Among other things, it can fold over on itself, creating spaces that are at once insides and outsides, at once different from and continuous with one another. The flesh is a fold of Being in this sense. It is of the world, and yet encounters it as if from a perceptual or cognitive distance. It is a visibility that sees, a tangible that touches, an audible that hears. Merleau- Ponty writes: There is vision, touch when a certain visible, a certain tangible, turns back upon the whole of the visible, the whole of the tangible, of which it is a part, or when suddenly it finds itself surrounded by them, or when between it and them, and through their commerce, is formed a Visibility, a Tangible in itself, which belong properly neither to the body qua fact nor to the world qua fact . . . and which therefore form a couple, a couple more real than either of them.3 For Merleau-Ponty, thought and reflection do not attach themselves to this flesh from beyond it, but arise through it. As our body is of this world, our thought is of our bodies, its language of a piece with the world it addresses. ‘[I]f we were to make completely explicit the architectonics of the human body, its ontological framework, and how it sees itself and hears itself, we would see the possibilities of language already given in it.’4 This conception of the body as flesh of the world is not foreign to Foucault, although of course the terms Merleau-Ponty uses are not his. We might read Foucault’s politics as starting from here, inaugurated at the point of undifferentiation between body and world. The crucial addition he would make is that that point of undifferentiation is not historically inert. The body/world nexus is inscribed in a history that leaves its traces on both at the same time, and that crosses the border of the flesh and reaches the language that arises from it, and the thought that language expresses. How does this work?V Maybe it doesn’t happen that way. Maybe it happens another way. Maybe you walk into a room at a local community center. The room is large, but there aren’t many people, at least yet. There’s a rectangular table in the center, and everyone is sitting around it. A couple of people look up as you walk in. They nod slightly. You nod back, even more slightly. At the head of the table is someone with a legal pad. She does not look up. She is reading the notes on the pad, making occasional marks with the pen in her right hand. Other people come in and take places at the table. One or two of them open laptop computers and look for an outlet. Eventually, the table fills up and people start sitting in chairs behind the table. Your feel as though you’re in an inner circle where you don’t belong. You wonder whether you should give up your chair and go sit on the outside with the others who are just coming in now. Maybe people notice you, think you don’t belong there. At this moment you’d like to leave. You begin to feel at once large and small, visually intrusive and an object of scrutiny. You don’t move because maybe this is OK after all. You just don’t know. The room is quiet. A couple of people cough. Then the woman seated at the head of the table looks up. She scans the room as if taking attendance. She says, ‘Maybe we should begin.’ VI Merleau-Ponty’s discussion of the body as flesh is an ontological one. Although he does not see the body as remote from its historical inscription, his discussion does not incorporate the role such inscription plays. **For a body to be of the world is** also **for it to be temporal**, to be **encrusted in the continuous emerging of the world** over time. And **this** emerging **is not abstract;** rather, **it is concrete. The body/world nexus evolves during particular historical periods.** This fold of the flesh, this body, is not nowhere and at any time. It is there, then; or it is here, now. **A body is entangled within a web of specific events and relations that, precisely because it is of this world, are inescapably a part of that body’s destiny.** As Merleau-Ponty tells us in Phenomenology of Perception, ‘our open and personal existence rests on an initial foundation of acquired and stabilized existence. But it could not be otherwise, if we are temporality, since the dialectic of acquisition and future is what constitutes time.’5 **The medium for the body’s insertion into a particular net of events** and relations **is that of social practices. Our bodies are not first and foremost creatures of the state** or the economy, **no more than they are atomized** wholes **distinct from the world they inhabit.** Or better, **they are creatures of the state** and the economy **inasmuch as those appear through social practices, through** the **everyday practices** that are the ether of our lives. Social practices are the sedimentation of history at the level of the body. When I teach, when I write this article, when I run a race or teach one of my children how to ride a bicycle, my body is oriented in particular ways, conforming to or rejecting particular norms, responding to the constraints and restraints of those practices as they have evolved in interaction with other practices over time. Through its engagement in these practices, my body has taken on a history that is not of my making but is nevertheless part of my inheritance. It is precisely because, as Merleau-Ponty has written, the body and the world are not separate things but rather in a chiasmic relation that we can think this inheritance. And it is because of Foucault’s histories that we can recognize that this inheritance is granted through specific social practices. And of course, as Foucault has taught us, social practices are where the power is. It is not, or not simply, at the level of the state or the modes of production where power arises. It is, as he sometimes puts it, at the capillaries. One of the lessons of Discipline and Punish is that, if the soul is the prison of the body, this is because the body is inserted into a set of practices that create for it a soul. These practices are not merely the choices of an individual whose thought surveys the world from above, but instead the fate of a body that is of a particular world at a particular time and place. Moreover, these practices are not merely in service to a power that exists outside of them; they are mechanisms of power in their own right. It is not because Jeremy Bentham disliked the prison population that the Panopticon became a grid for thinking about penal institutions. It is instead because the evolution of penal practices at that time created an opening for the economy of visibility that the Panopticon represented. When Foucault writes that . . . the soul has a reality, it is produced permanently around, on, within the body by the functioning of a power that is exercised on those punished – and, in a more general way, on those one supervises, trains and corrects, over madmen, children at home and at school, the colonized, over those who are stuck at a machine and supervised for the rest of their lives6 his claim is informed by four other ones that lie behind it: that bodies are of a piece with the world, that the body/world nexus is a temporal one, that the medium of that corporeal temporality is the practices a body is engaged in, and that that medium is political as well as social. The last three claims are, of course, of the framework of Foucault’s thought. The first one is the ontological scaffolding provided by Merleau-Ponty. And it is by means of all four that we can begin to conceive things so as to be able to choose both world-changing and lifecelebrating at the same time. VII It could happen yet another way. Increasingly, it does. There is no meeting. There are no tables and no legal pads. Nobody sits down in a room together, at least nobody sits down at a place you know about. There may not even be a leaflet. Maybe you just got an email that was forwarded by someone you know slightly and who thought you might be interested. At the bottom there’s a link, in case you want to unsubscribe. If you don’t unsubscribe you get more notices, with petitions to sign or times and places for rallies or teach-ins or marches. Maybe there’s also a link for feedback or a list for virtual conversations or suggestions. If you show up, it’s not to something you put together but to something that was already in place before you arrived. How did you decide on this rally or teach-in? You sat in front of your computer screen, stared at it, pondering. Maybe you emailed somebody you know, asking for their advice. Is it worth going? If it’s on campus you probably did. It matters who will see you, whether you have tenure, how much you’ve published. There are no Tims here. You’ve decided to go. If it’s a teach-in, you’ve got plausible deniability; you’re just there as an observer. If it’s a rally, you can stand to the side. But maybe you won’t do that. The issue is too important. You don’t know the people who will be there, but you will stand among them, walk among them. You will be with them, in some way. Bodies at the same time and place. You agree on the issue, but it’s a virtual agreement, one that does not come through gestures or words but through sharing the same values and the same internet connections. As you march, as you stand there, nearly shoulder to shoulder with others of like mind, you’re already somewhere else, telling this story to someone you know, trying to get them to understand the feeling of solidarity that you are projecting back into this moment. You say to yourself that maybe you should have brought a friend along. **There are many ways to conceive the bond between world-changing and life-celebrating.** Let me isolate two: one that runs from Merleau-Ponty to Foucault, from the body’s chiasmic relation with the world to the politics of its practices; and the other one running back in the opposite direction. **The ontology Merleau-Ponty offers** in his late work **is one of wonder. Abandoning** the **sterile philosophical debates** about the relation of mind and body, subject and object, about the relation of reason to that which is not reason, or the problem of other minds, **his ontology forges a unity of body and world that puts us in immediate contact with all** of **its aspects.** No longer are we to be thought the self-enclosed creatures of the philosophical tradition. **We are now in touch with the world, because we are of it.** Art, for example, does not appeal solely to our minds; its beauty is not merely a matter of the convergence of our faculties. We are moved by art, often literally moved, because our bodies and the work of art share the same world. As Merleau-Ponty says, ‘I would be at great pains to say where is the painting I am looking at. For I do not look at it as I do a thing; I do not fix it in its place. My gaze wanders in it as in the halos of Being. It is more accurate to say that I see according to it, or with it, than that I see it.’7 It is only because my body is a fold of this world that art can affect me so. But this affection is also a vulnerability. As my look can happen according to a work of art, so it can happen according to a social practice. And even more so in proportion as that social practice and its effects are suffused through the world in which I carry on my life, the world my body navigates throughout the day, every day. I do not have a chance to look according to a painting by Cezanne very often; but I do encounter the effects of normalization as it has filtered through the practices of my employment, of my students’ upbringing, and of my family’s expectations of themselves and one another. **The vulnerability of the body**, then, **is at once its exposure to beauty and its opening to what is intolerable.** We might also see things from the other end, starting from politics and ending at the body. I take it that this is what Foucault suggests when he talks about bodies and pleasures at the end of the first volume of the History of Sexuality. **If we are a product of our practices and** the **conception of ourselves and the world that those practices have fostered,** so **to change our practices is to experiment in new possibilities both for living and**, inseparably, for **conceiving the world**. To experiment in sexuality is not to see where the desire that lies at the core of our being may lead us; that is simply the continuation of our oppression by other means. Rather, it is to construct practices where what is at issue is no longer desire but something else, something that might go by the name of bodies and pleasures. In doing so, we not only act differently, we think differently, both about ourselves and about the world those selves are inseparable from. And **because these experiments are practices of our bodies, and because our bodies are encrusted in the world, these experiments become not merely acts of political resistance but new folds in the body/ world nexus. To construct new practices is to appeal to aspects or possibilities of the world that have been previously closed to us. It is to offer novel, and perhaps more tolerable, engagements in the chiasm of body and world.** Thus we might say of politics what Merleau-Ponty has said of painting, that we see according to it. **Here**, I take it, **is where** the idea of **freedom** in Foucault **lies**. For Foucault, freedom is not a metaphysical condition. It does not lie in the nature of being human, nor is it a warping, an atomic swerve, in the web of causal relations in which we find ourselves. **To seek** our **freedom** in a space **apart from our encrustation in the world is not** so much **to liberate ourselves from its influence as to build our own private prison.** Foucault once said: There’s an optimism that consists in saying that things couldn’t be better. **My optimism would consist** rather **in saying that so many things can be changed**, fragile as they are, bound up more with circumstances than with necessities, more arbitrary than self-evident, **more a matter of complex, but temporary, historical circumstances than with inevitable anthropological constraints . . .8 That is where to discover our freedom.** And what happens from there? From the meetings, from the rallies, from the petitions and the teach-ins? What happens next? **There is**, after all, **always a next.** If you win this time – end aid to the contras, divest from apartheid South Africa, force debt-forgiveness by technologically advanced countries – **there is always more to do**. There is the de-unionization of workers, there are gay rights, there is Burma, there are the Palestinians, the Tibetans. There will always be Tibetans, even if they aren’t in Tibet, even if they aren’t Asian. But is that the only question: Next? Or is that just the question we focus on? What’s the next move in this campaign, what’s the next campaign? **Isn’t there more going on than that?** After all, **engaging in political organizing is a practice, or a group of practices. It contributes to making you who you are. It’s where the power is, and where your life is, and where the intersection of your life and those of others** (many of whom you will never meet, even if it’s for their sake that you’re involved) and the buildings and streets of your town **is. This moment when you are seeking to change the world, whether by making a suggestion** in a meeting **or** singing at a rally or **marching** in silence or asking for a signature on a petition, **is not a moment in which you don’t exist. It’s not a moment of yours that you sacrifice for others so that it no longer belongs to you. It remains a moment of your life**, sedimenting in you to make you what you will become, emerging out of a past that is yours as well. What will you make of it, this moment? How will you be with others, those others around you who also do not cease to exist when they begin to organize or to protest or to resist? **The illusion is to think that this has nothing to do with you. You’ve made a decision to participate in world-changing.** Will that be all there is to it? Will it seem to you a simple sacrifice, for this small period of time, of who you are for the sake of others? Are you, for this moment, a political ascetic? Asceticism like that is dangerous. **Freedom lies not in our distance from the world but in the** historically fragile and contingent **ways we are folded into it, just as we ourselves are folds of it.** If we take Merleau-Ponty’s Being not as a rigid foundation or a truth behind appearances but as the historical folding and refolding of a univocity, then **our freedom lies in the possibility of other foldings.** Merleau-Ponty is not insensitive to this point. His elusive concept of the invisible seems to gesture in this direction. Of painting, he writes: the proper essence of the visible is to have a layer of invisibility in the strict sense, which it makes present as a certain absence . . . There is that which reaches the eye directly, the frontal properties of the visible; but there is also that which reaches it from below . . . and that which reaches it from above . . . where it no longer participates in the heaviness of origins but in free accomplishments.9 Elsewhere, in The Visible and the Invisible, he says: if . . . the surface of the visible, is doubled up over its whole extension with an invisible reserve; and if, finally, in our flesh as the flesh of things, the actual, empirical, ontic visible, by a sort of folding back, invagination, or padding, exhibits a visibility, a possibility that is not the shadow of the actual but its principle . . . an interior horizon and an exterior horizon between which the actual visible is a partitioning and which, nonetheless, open indefinitely only upon other visibles . . .10 What are we to make of these references? We can, to be sure, see the hand of Heidegger in them. But we may also, and for present purposes more relevantly, see an intersection with Foucault’s work on freedom. **There is an ontology of freedom at work here,** one **that situates freedom not in the private reserve of an individual but in the unfinished character of any historical situation. There is more to our historical juncture,** as there is to a painting, **than appears to us on the surface** of its visibility. **The trick is to recognize this, and to take advantage of it, not only with our thoughts but with our lives.** And **that is why,** in the end, **there can be no such thing as a sad revolutionary. To seek to change the world is to offer a new form of life-celebration. It is to articulate a fresh way of being, which is at once a way of seeing, thinking, acting, and being acted upon. It is to fold Being once again upon itself,** this time at a new point, **to see what that might yield. There is,** as Foucault often reminds us, **no guarantee** that **this fold will not** itself **turn out to contain the intolerable. In a complex world** with which we are inescapably entwined, a world we cannot view from above or outside, **there is no certainty about the results of our experiments.** Our politics are constructed from the same vulnerability that is the stuff of our art and our daily practices. **But to refuse to experiment is to resign oneself to the intolerable; it is to abandon both the struggle to change the world and the opportunity to celebrate living within it.** § Marked 15:57 § And **to seek one aspect without the other – life-celebration without world-changing, world-changing without life-celebration – is to refuse to acknowledge the chiasm of body and world that is the wellspring of both.**  **If we are to celebrate our lives, if we are to change our world,** then perhaps **the best place to begin** to think **is our bodies, which are the openings to celebration and to change**, and perhaps the point at which the war within us that I spoke of earlier can be both waged and resolved. That is the fragile beauty that, in their different ways, both Merleau- Ponty and Foucault have placed before us. The question before us is whether, in our lives and in our politics, we can be worthy of it. **So how might you be a political body, woven into the fabric of the world as a celebrator and as a changer?** **You went to the meeting, and then to the demonstration. How was it there?** Were the bodies in harmony or in counterpoint? Did you sing with your feet, did your voice soar? Did your mind come alive? Did you see possibilities you had not seen before? Were there people whose words or clothes, or even the way they walked hand in hand (how long has it been since you’ve walked hand in hand with someone out in public?) offer you a possibility, or make you feel alive as well as righteous? And how about those people off to the side, the ones on the sidewalk watching? Maybe they just stared, or maybe nodded as you went past. Or maybe some of them shouted at you to stop blocking the streets with your nonsense. Did you recoil within yourself, see yourself as in a mirror, or as the person at Sartre’s keyhole who’s just been caught? Did you feel superior to them, smug in your knowledge? Or did they, too, show you something you might learn from? Are they you at another moment, a moment in the past or in the future? Are they your parents that you have not explained to, sat down beside, or just shared a meal with? That one over there, the old man slightly stooped in the long overcoat: whom does he remind you of? What message might he have unwittingly brought for you? And why does it have to be a demonstration? **You go to a few meetings, a few more demonstrations**. You write some letters to legislators. You send an email to the President. And then more meetings. The next thing you know, you’re involved in a political campaign. **By then you may have stopped asking why**. This is how it goes: demonstrations, meetings with legislators, internet contacts. Does it have to be like this? Are demonstrations and meetings your only means? **Do they become, sooner or later, not only means but ends?** And what kinds of ends? In some sense they should always be ends: a meeting is a celebration, after all. But there are other ends as well. You go to the meeting because that fulfills your obligation to your political conscience**. Does it come to that? There are other means, other ends**. Other means/ends. **Some people ride bicycles, en masse**, slowly through crowded urban streets. You want environmentalism? Then have it. The streets are beautiful with their tall corniced buildings and wide avenues. To ride a bike through these streets instead of hiding in the armor of a car would be exhilarating. If enough of you do it together it would make for a pleasant ride, as well as a little lived environmentalism. Would you want to call it a demonstration? Would it matter? There are others as well who do other things with their bodies, more dangerous things. **Some people** have gone to Palestine in order to **put their bodies between** the **Palestinians and** the **Israeli soldiers** and settlers who attack them. They lie down next to Palestinians in front of the bulldozers that would destroy homes or build a wall through a family’s olive orchard. They feel the bodies of those they are in solidarity with. They smell the soil of Palestine as they lay there. Sometimes, they are harmed by it. A young woman, Rachel Corrie, was deliberately crushed by a US bulldozer operated by an Israeli soldier as she kneeled in front of a Palestinian home, hoping to stop its demolition. To do politics with one’s body can be like this. **To resist, to celebrate, is** also **to be vulnerable.** The world that you embrace, the world of which you are a part, can kill you too. And **so you experiment. You try this and you try that.** You are a phenomenologist and a genealogist. You sense what is around you, attend to the way your body is encrusted in your political involvements. And you know that that sensing has its own history, a history that often escapes you even as it envelops you. **There is always more to what you are, and to what you are involved in, than you can know. So you try to** keep vigilant, **seek**ing **the possibilities without scorning the realities.** **It’s a difficult balance. You can neglect it** if you like. Many do. **But your body is there, woven into the fabric of all the other bodies**, animate and inanimate. **Whether you like it or not**, whether you **recognize it or not. The only question is whether you will take up the world that you are of, or leave it to others, to those others who would be more than willing to take your world up for you.**

***No social death***

Wilderson is wrong --- the black body is not devoid of culture and fungible – slaves developed their own culture

**Olson**, Northern Arizona University, **10**

(Joel Olson, “Slavery in The United States”, 2010, http://jan.ucc.nau.edu/~jo52/Slavery-in-America-public.pdf)

In particular, American slavery was a struggle between masters’ attempt to impose “social death” on the slave and slaves’ efforts to seek freedom and build a community. Orlando **Patterson** (1982) **argues that slavery is a system in which the master seeks to strip the slave of all kinship ties and social standing so that the slave is physically alive** (and therefore able to labor for the master) **but socially dead**, **belonging to no recognized community and possessing no legitimate genealogy**. ***Slaves resisted this social death in three ways***. **First, they sought freedom, by purchasing it, suing for it, running away, or rebelling**. **Second, they sought to make the terms of labor more favorable, through work slowdowns, attempts to shorten the working day, subterfuge, sabotage, maintaining their own livestock or garden plots, participating in markets, or hiring out their labor and keeping a portion of their wages** (Berlin 1998). **Third, they created their own families and their own culture**. While masters sought to impose their rule from sunup to sundown, ***from sundown to sunup slaves created a community that denied the authority of the master and defied social death*** (Rawick 1972, Stuckey 1987). **Slaves shaped their own customs, religion, dialect, music, economy, and political perspectives, merging African, indigenous, and European practices into a uniquely and truly American culture**. **This conflict between “sunup to sundown” and “sundown to sunup,” or between social death and the resistance of the Black community, is one of the fundamental experiences of the American political tradition.**

***Even if continuing bias exists, the basis for reform is in Enlightenment ideals – we can’t abandon them***

**Bronner 4** Stephen Eric, Professor of Political Science and Comparative Literature at Rutgers University, “Reclaiming the Enlightenment” Columbia University Press p. 64-67

**Fighting against a world dominated by** monsters and saints, witches and gods, **myths and prejudices, misery and privilege, custom and laziness, demanded a mixture of courage and clarity.** The assault on metaphysics intro- duced by the authors of The Spectator, Joseph Addison and Richard Steele, prepared the way for the new egalitarian emphasis upon “common sense” offered by Thomas Paine. Utilitarianism, so boring in its shopkeeper mentality, nonetheless gave the individual a measure of respect by making clear that each was capable of discerning his or her interest and that social welfare was the primary aim of government. Lessing, Montesquieu, and Goethe challenged the church injunction against suicide. Most partisans **of the Enlightenment were repulsed by slavery and the subordination of women plays a role in many of their works. Their privileging of persuasion over coercion, their vision of the fully formed personality, their interest in matters outside their immediate expertise and experience, their emphasis upon tolerance, all project an eradication of what is brutal and unjust in the name of a better society with a new set of human relations. Resistance undertaken in the name of progressive, liberal, and ultimately socialist ideals served to separate critical from affirmative intellectuals and place some thinkers often associated with the Enlightenment**, such as Samuel Johnson and Edmund Burke**, outside the tradition that they might otherwise seem to espouse.** The result was what might be termed a great divide that separated intellectuals of the Enlightenment from those of the Counter-Enlightenment. Enlightenment **intellectuals were not pillars of political correctness.** Organizations condemning slavery were formed. Salons may have accorded women a new public presence,9 and the grosser expressions of anti-Semitism and even anti-Muslim attitudes were generally looked down upon. But the Enlightenment was still primarily a male, white, straight, and Christian world. In the United States, moreover, slavery was embedded in the national legislative process: Jefferson supported the idea that a slave is three-fifths of a person for purposes of representation, which won him the election of 1800, and Washington placed the national capital in slave territory. Admittedly, for such individuals, support for measures of this sort probably had less to do with their personal approval of slavery than with its political use to protect the economic base of the South: it remained the case into the twentieth century that no serious political career was open to Southerners opposed to slavery or supportive of civil rights.10 **But that doesn’t change the reality: it was what it was. Still, it would be misleading to lump the philosophes together with their adversaries. The principles underpinning the critique of slavery, sexism, and exclusion of the other derived from the Enlightenment.** Then, too, **the political stance of its advocates on such issues was generally qualitatively different from those of the Counter-Enlightenment.** It is instructive, for example, to consider the views on women and divorce expressed by archreactionaries like Justus Moeser or Bonald; the views on prejudice offered by Burke; the irrationalism of Hamann; the unyielding Christianity of De Maistre; the brutal anti-Semitism of the Abbé Bruelle; and the alternatives offered to cosmopolitanism, constitutionalism, and social equality by the rest of the reaction. It is also easy to forget the witch trials that cost thousands upon thousands of women their lives;11 the slaughters attendant upon the Crusades;12 the Inquisition, and the constant pogroms. Michel **Foucault may be correct in his assertions that the Enlightenment in its time had little sympathy for the “unreasonable”: the beggars, the petty criminals, and the insane.13 In practical terms, however, the more progressive programs for improving the conditions of these groups were again inspired by Enlightenment principles and intellectuals of the Counter-Enlightenment would historically show even less interest in these groups and the reforms capable of bettering their lot.** Above all, however, it wrong to suggest that the prejudices of the philosophes somehow invalidate the ideals associated with their republic of letters. **The logic of the Enlightenment suggested that citizenship should be open to everyone with a pen and an argument to make in the name of freedom. Sex, race, religion, property, and class, should—in principle—play no role in determining the ability of individuals to participate in the public realm and they should be able to pursue their private interests as they see fit.** Kant’s notion concerning the formal equality of all subjects, in fact, made possible a criticism of any such barriers to the public exercise of reason while the principles underpinning the liberal rule of law enabled suffragettes and civil libertarians as well as advocates of the excluded and insane to contest the existence of positive laws tainted by discrimination and regressive attitudes. It is only fair to note that: The Enlightenment public sphere assigned new importance to women as producers and consumers of culture, but often on the basis of values that served to justify their subordination. Its norms of openness and inclusion created new kinds of association, but also new forms of exclusion. For all this ambiguity, however, **we continue to invoke the norms of openness and transparency preached by the Enlightenment public sphere even as we criticize its failure to live up to them. For that reason its legacy is more enduring than it seems**, whatever its vicissitudes from the Enlightenment to our own day.14 “Enlightenment” was initially seen as depending upon the “courage” of the individual to exercise his or her intellect, question rather than obey and, according to the famous formulation, “leave behind his self-imposed immaturity.” Contrary to popular opinion, however, Kant did not leave the individual subject hovering in the metaphysical stratosphere. It was clear to him no less than to the rest of the philosophes that **summoning** such **courage becomes easier with the existence of liberal institutions and a “public” animated by civic interests.**15 **That is why liberating the “public” not merely from dogma, but from the institutions and conditions that promote it, became the primary goal of Enlightenment intellectuals. The philosophes understood that the right to criticism is the precondition for the exercise of autonomy and**, if not the pursuit of absolute truth, then **the rectification of error**. Thus, in contrast to thinkers of the Counter-Enlightenment like Burke and De Maistre, Kant and Paine would insist that no age can commit the future to a condition in which it would be impossible to extend knowledge or correct errors. 16

# 1AR

### Olson

***No social death***

Wilderson is wrong --- the black body is not devoid of culture and fungible – slaves developed their own culture --- it is possible to deny the authority of the master and resist modernity within the status quo --- answers their Brady evidence that they use to say you cant hear the slave scream

**Olson**, Northern Arizona University, **10**

(Joel Olson, “Slavery in The United States”, 2010, http://jan.ucc.nau.edu/~jo52/Slavery-in-America-public.pdf)

In particular, American slavery was a struggle between masters’ attempt to impose “social death” on the slave and slaves’ efforts to seek freedom and build a community. Orlando **Patterson** (1982) **argues that slavery is a system in which the master seeks to strip the slave of all kinship ties and social standing so that the slave is physically alive** (and therefore able to labor for the master) **but socially dead**, **belonging to no recognized community and possessing no legitimate genealogy**. ***Slaves resisted this social death in three ways***. **First, they sought freedom, by purchasing it, suing for it, running away, or rebelling**. **Second, they sought to make the terms of labor more favorable, through work slowdowns, attempts to shorten the working day, subterfuge, sabotage, maintaining their own livestock or garden plots, participating in markets, or hiring out their labor and keeping a portion of their wages** (Berlin 1998). **Third, they created their own families and their own culture**. While masters sought to impose their rule from sunup to sundown, ***from sundown to sunup slaves created a community that denied the authority of the master and defied social death*** (Rawick 1972, Stuckey 1987). **Slaves shaped their own customs, religion, dialect, music, economy, and political perspectives, merging African, indigenous, and European practices into a uniquely and truly American culture**. **This conflict between “sunup to sundown” and “sundown to sunup,” or between social death and the resistance of the Black community, is one of the fundamental experiences of the American political tradition.**

### EXT #2 & 3 – Perm / Prag

***The alt’s all-or-nothing choice fails --- small reforms like the plan are key to institutional change and getting others to sign on to the alt***

Erik Olin **Wright 7**, Vilas Distinguished Professor of Sociology at the University of Wisconsin, “Guidelines for Envisioning Real Utopias”, Soundings, April, www.ssc.wisc.edu/~wright/Published%20writing/Guidelines-soundings.pdf

5. Waystations¶ The final guideline for discussions of envisioning real utopias concerns the importance of waystations. The central problem of envisioning real utopias concerns the **viability of institutional alternatives** that embody emancipatory values, but the practical achievability of such institutional designs often ***depends upon the existence of smaller steps***, intermediate institutional innovations **that move us in the right direction but only partially embody these values.** Institutional proposals which have an ***all-or-nothing quality*** to them are both ***less likely to be adopted in the first place, and may pose more difficult transition-cost problems*** if implemented. The catastrophic experience of Russia in the “shock therapy” approach to market reform is historical testimony to this problem.¶ Waystations are a difficult theoretical and practical problem because there are many instances in which partial reforms may have very different consequences than full- bodied changes. Consider the example of unconditional basic income. Suppose that a very limited, below-subsistence basic income was instituted: not enough to survive on, but a grant of income unconditionally given to everyone. One possibility is that this kind of basic income would act mainly as a subsidy to employers who pay very low wages, since now they could attract more workers even if they offered below poverty level¶ earnings. There may be good reasons to institute such wage subsidies, but they would not generate the positive effects of a UBI, and therefore might not function as a stepping stone.¶ What we ideally want, therefore, are **intermediate reforms** that have two main properties: first, they concretely **demonstrate the virtues of the fuller program of transformation, so they contribute to the ideological battle of *convincing people that the alternative is credible and desirable;*** and second, they ***enhance the capacity for action of people***, increasing their ability to push further in the future. Waystations that increase popular participation and ***bring people together in problem-solving deliberations*** for collective purposes are particularly salient in this regard. This is what in the 1970s was called “nonreformist reforms”: reforms that are ***possible within existing institutions*** and that ***pragmatically solve real problems*** while at the same time **empowering people in ways which** ***enlarge their scope of action in the future.***

#### Wilderson’s scholarship isn’t intended to preclude goal-oriented political change

Frank b. Wilderson 10 III, Prof at UC Irvine, speaking on a panel on literary activism at the National Black Writers Conference, March 26, "Panel on Literary Activism", transcribed from the video available at http://www.c-spanvideo.org/program/id/222448, begins at roughly 49:10

Typically what I mean when I ask myself whether or not people will like or accept my reading, what I'm really trying to say to myself whether or not people will like or accept me and this is a difficult thing to overcome especially for a black writer because we are not just black writers, we are black people and as black people we live every day of our lives in an anti-black world. A world that defines itself in a very fundamental ways in constant distinction from us, we live everyday of our lives in a context of daily rejection so its understandable that we as black writers might strive for acceptance and appreciation through our writing, as I said this gets us tangled up in the result. The lessons we have to learn as writers resonate with what I want to say about literature and political struggle. I am a political writer which is to say my writing is self consciously about radical change but when I have worked as an activist in political movements, my labor has been intentional and goal oriented. For example, I organized, with a purpose to say free Mumia Abu Jamal, to free all political prisoners, or to abolish the prison industrial complex here in the United States or in South Africa, I have worked to abolish apartheid and unsuccessfully set up a socialist state whereas I want my poetry and my fiction, my creative non fiction and my theoretical writing to resonate with and to impact and impacted by those tangible identifiable results, I think that something really debilitating will happen to the writing, that it the writing will be hobbled if and when I become clear in the ways that which I want my writing to have an impact on political struggle what I am trying to say when I say that I want to be unclear is I don't want to clarify, I do not want to clarify the impact that my work will have or should have on political struggle, is that the relationship of literature to struggle is not one of causality but one of accompaniment, when I write I want to hold my political beliefs and my political agenda loosely. I want to look at my political life the way I might look at a solar eclipse which is to say look indirectly, look arie, in this way I might be able to liberate my imagination and go to places in the writing that I and other black people go to all the time the places that are too dangerous to go to and too dangerous to speak about when one is trying to organize people to take risk or when a political organization is presetting a list of demands, I said at the beginning this is an anti-black world. Its anti black in places I hate like apartheid South Africa and apartheid America and it’s anti-black in the places I don't hate such as Cuba, I've been involved with some really radical political movements but none of them have called for an end of the world but if I can get away from the result of my writing, if I can think of my writing as something that accompanies political struggle as opposed to something that will cause political struggle then maybe just maybe I will be able to explore forbidden territory, the unspoken demands that the world come to an end, the thing that I can’t say when I am trying to organize maybe I can harness the energy of the political movement to make breakthroughs in the imagination that the movement can't always accommodate, if its to maintain its organizational capacity.

### EXT #4 – No Root Cause / No Impact

***Whiteness overtheorizes and underexplains violence – best historical analysis goes aff***

**Kolchin 2,** Professor of History at Delaware University, (Peter, “ Whiteness Studies: The New History of Race in America,” The Journal of American History, Vol. 89, No. 1 (Jun., 2002), pp. 154-173, JSTOR)

 **The central question one must confront in evaluating whiteness studies is the salience of whiteness as an explanation for exploitation, injustice, and**, more gener- ally, **the American past**. In addressing that question, the matter of context becomes crucial. Simply put, **in making whiteness omnipresent, whiteness studies authors risk losing sight of contextual variations and thereby undermining the very understand- ing of race and whiteness as socially constructed**. Nonhistorians are particularly prone to deprive whiteness of historical context. As Roediger notes in pointing to "tensions" within the field of whiteness studies, "much cultural studies work in the area lacks historical grounding and ignores or miscon- ceives the emphasis on class relations common among historians of whiteness." In Scenes of Subjection, for example, the literary scholar Saidiya V. Hartman portrays white racism as a constant unaffected by any change in the social order, including "the nonevent of emancipation," and sees virtually everything done to or for African Americans as an expression of that racism. A similar inattention to context underlies Brodkin's attribution of American prejudice against Jews (their "temporary darken- ing") to the desire to exploit them as industrial laborers, without bothering to place that prejudice in the framework of the long European history of anti-Semitism-an anti-Semitism that was not always rooted in economic interest and did not always require that Jews be seen as nonwhite. Writing as if racism were a uniquely American illness, the American studies scholar George Lipsitz muses that "it must be the con- tent of our character.'19 But inattention to context bedevils many of the historians as well. In White Women's Rights, for example, one of the few historical works to examine the way whiteness shaped the experiences and behavior of women, Louise Michele Newman too often strays from her intriguing exploration of the impact on feminism of a par- ticular form of evolutionary racism and generalizes about the views of "white women," who resisted patriarchy for themselves but sought to impose it on "inferior" races. Pushing far beyond the sensible observation that most white feminists shared the racial prejudices common among whites in the late nineteenth and early twenti- eth centuries, she understates the range and complexity of feminist thought and argues that racism was "an integral, constitutive element" of feminism itself, or as she puts it, "feminism developed . .. as a racialized theory of gender oppression."20 Such overgeneralization is especially prevalent among historians who rely heavily on image, representation, and literary depiction. Grace Elizabeth Hale's densely writ- ten but fascinating book, Making Whiteness, has the rare advantage among whiteness studies works of dealing with that part of the country where race has most pervasively shaped social relations: the South. But Hale loses much of that advantage by paying virtually no attention to social relations and confusing what is southern with what is more generally American until the reader is unsure whether she is describing south- ern whiteness or American whiteness, or whether she thinks that it does not make any difference. The South, she concludes, "lies not south of anywhere but inside us." Never really explaining what she means by "whiteness" (which at times she equates with segregation) or whose interests it served, she is on equally slippery ground in confronting chronological context. "Whites [all? most? some?] created the culture of segregation," she proclaims, "in large part to counter black success." This thesis is perfectly plausible, if undemonstrated. But in arguing that the myths of the happy slave and of criminal Reconstruction were products of the late-nineteenth-century imagination, Hale largely ignores earlier versions of those myths propounded by pro- tagonists in the struggles over slavery and Reconstruction; the arguments that she treats as new were appropriations and modifications of arguments previously forged in real social relations. Indiscriminately mixing fiction and nonfiction as documenta- tion, she confuses description (at which she is very good) with explanation and almost totally ignores interest and politics in her delineation of the "making" of whiteness .21 Although Jacobson pays more attention to contextual variation, he too can paint with a very broad brush, in the process placing a heavy explanatory burden-I believe too heavy-on whiteness. His focus on image and representation makes it difficult to judge the prevalence of particular ideas, because in quoting extensively from racist stereotypes, he makes no effort to give equal time to the opponents of such views. Brilliantly exploring racial depictions of diverse immigrant groups that Americans would later consider ethnic rather than racial and thereby showing the subjective character of race, he too often blurs a crucial distinction between "race" on the one hand and "nation," "nationality," and "ethnicity" on the other. For **if both race and nation are constructed** (imagined) **communities, they are differently con- structed: whereas race implies inherent, immutable characteristics, national and eth- nic identity can be conceived of as inherent but need not be**. **Throughout much of American history, Americans have promiscuously combined racial and nonracial thinking in differentiating among groups**; **sometimes they assumed that differences were inherent, sometimes not,** and often they failed to articulate clear positions on the question (no doubt because they had not formulated such positions). Jacobson himself notes in passing that discrimination was not always based on color or race- "**The loudest voices in the organized nativism of the 1 840s and 1 850s harped upon matters of Catholicism and economics, not race**"-but he tends to assume the bio- logical nature of arguments that could as easily be interpreted as cultural. (See, for example, his citation of the assertion in the 191 1 publication A Dictionary of Races or Peoples that "'the savage manners of the last century are still met with amongst some Serbo-Croatians of to-day"' as evidence for emphasis on the "physical properties" of race.)22 The role of whiteness in this process of distinguishing among groups remains murky. On one hand, Jacobson portrays the 1840s-1920s as a period of "variegated whiteness" in which white Americans saw some whites as whiter than others, warns us not to "reify a monolithic whiteness," and speaks of a "system of 'difference' by which one might be both white and racially distinct from other whites." On the other, he speaks of the "process by which Celts or Slavs became Caucasians." **The unresolved issue here is the extent to which Americans conceived of whiteness** (**rather than other criteria such as religion, culture, ethnicity, and class) as the main ingredi- ent separating the civilized from the uncivilized**.**23 There can be no doubt, for example, that many antebellum Americans viewed the Irish as a degraded and savage people, but whether they saw lack of whiteness as the key source of this inferior status is dubious; to most Americans, for whom Protestant- ism went hand in hand with both republicanism and Americanism, the Irish immi- grants' Catholicism was far more alarming than their color**. Indeed, **some abolitionists managed to combine a passionate belief in the goodness and intellectual potential of black people with an equally passionate conviction of the unworthiness of the Irish, and in the 1850s many nativists saw little difficulty in moving from the anti-Irish Know-Nothing party into the antislavery Republican party, a trajectory that would have been truly remarkable had their dominant perception of the Irish been that they were nonwhite**. And as Jacobson points out, **the 1790 law that limited naturalization to "free white persons" "allowed Irish immigrants entrance as 'white persons"'; in what sense, then, should one speak of their subsequently "becoming" white?** This can make sense if whiteness is to be understood metaphorically, meaning "acceptable," but Jacobson and other whiteness studies authors clearly intend the term to serve as more than a metaphor; indeed, if it is understood only metaphori- cally, much of their analysis collapses.24 The overworking of whiteness is especially noteworthy in the work of David Roe- diger, for he professes greater interest in specific social relations than many whiteness studies authors. Nevertheless, his argument too often depends on blurring important distinctions among whites, thereby belying the commonality of the "wages of white- ness" he outlines. His starting point is promising: living in a slaveholding republic, white workers in the (northern) United States increasingly defined themselves by what they were not blacks, slaves. But defining oneself as not-black and as not-slave are not at all the same, and Roediger's fudging on that crucial point is especially strik- ing coming from someone who usually pays such careful attention to language. The "not-slave" formulation led to the elaboration of a "free-labor" ideology that com- bined an emphasis on the dignity of labor with a condemnation of chattel slavery as the antithesis of free, republican (that is, American) values; the "not-black" variation led to a racist denigration of nonwhites and the insistence that the United States was a "white man's country." The two views could go together, but often they did not, and Roediger's argument that whiteness was an essential element of free-labor ideol- ogy is unpersuasive. If some labor radicals took what amounted to the proslavery position that slaves in the South were better off than "free" white workers in the North, others did not, and the argument in any case rested less on the degree of whiteness than on the degree of exploitation. Similarly, Roediger's thesis that in rejecting the term "servant" in favor of "hired hand" and "help," workingmen were "becoming" white conflates two very different forms of resistance to dependence that could be, but were not always, combined. The uppity domestics who tormented Frances Trollope in Cincinnati expressed little or no concern for whiteness as they asserted their American equality, and they contrasted their rights, not with black dependence, but with that stemming from English hierarchy. Responding disdain- fully to Trollope's expectation that she would eat in the kitchen, one servant typically "turned up her pretty lip, and said, 'I guess that's 'cause you don't think I'm good enough to eat with you. You'll find that won't do here."'25 **The question is not whether white racism was pervasive in antebellum America- it was-but whether it explains as much as Roediger and others maintain**. In an argu- ment further developed by Ignatiev, Roediger asserts that "it was by no means clear that the Irish were white." They present little evidence, however, that most Ameri- cans viewed the Irish as nonwhite. (To establish this point one would have to analyze the "racial" thought of Americans about the Irish, a task that neither Roediger nor Ignatiev undertakes.) Indeed, **the whiteness studies authors often display a notable lack of precision in asserting the nonwhite status of despised groups**. Roediger sug- gests that Irish whiteness was "by no means clear"; Ignatiev speaks of "strong tenden- cies . . . to consign the Irish, if not to the black race, then to an intermediate race located between white and black"; Neil Foley, in discussing prejudice against poor whites in central Texas, proclaims that "not all whites . . . were equally white" and suggests that landlords felt that their tenants "lacked certain qualities of whiteness"; Brodkin states that "for almost half a century, [Jews] were treated as racially not- quite-white." **What is at issue is not the widespread hostility to and discrimination against the Irish, Jews, poor whites, and multiple other groups, but the salience of whiteness in either explaining or describing such hostility and discrimination**. **The status of southern poor whites is especially telling, for despite persistent "racial" stereotypes of them as shiftless, slovenly, and degraded, such stereotypes did not usu- ally include denials of their whiteness**. **Americans have had many ways of looking down on people without questioning their whiteness**.26 **A brief consideration of the ideology of four prominent nineteenth-century Amer- icans-the Confederate vice president Alexander H. Stephens, Illinois's Democratic senator Stephen A. Douglas, Abraham Lincoln, and Ohio's Republican senator Ben- jamin F. Wade-illustrates the risk of overemphasizing whiteness**. Like most white Americans, **all four were in some sense committed to whiteness**. In his famous speech hailing the secession of the southern states, Stephens boldly identified as the "corner- stone" of the new government "the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition." In the Lincoln-Douglas debates of 1858, Douglas mercilessly denounced his Republican challenger as a supporter of black equality and boasted that "this gov- ernment was made on the white basis.... It was made by white men, for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men." **Lincoln responded that he did not favor "political and social equality between the white and black races"; noting the "physical difference" between the races, he proclaimed that "inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong, hav- ing the superior position**." Upon his arrival in Washington, D.C., in 1851, Wade complained that "the Nigger smell I cannot bear," adding that the food was "all cooked by Niggers until I can smell and taste the Nigger."27 **Yet any treatment of those four men that stopped at their common commitment to whiteness would be so incomplete as to be totally misleading.** **Stephens was an ardent Confederate whereas the other three were committed Unionists**. Their differ- ences on slavery and black rights were even more notable. **Stephens was a defender of slavery** and black racial subordination**. Douglas saw slavery as a minor issue whose fate should be left to local (white) control. Lincoln believed that slavery was morally wrong as well as socially degrading**, eschewed the race-baiting that Douglas and many other white Americans took for granted, **and in his debate with Douglas imme- diately qualified his support for white supremacy with the ringing assertion that whether or not "the negro" was equal in all respects**, "in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal ofJudge Douglas, and the equal of every living man." **Wade was an ardent opponent of slavery, who became one of the most enthusiastic proponents of a radical Reconstruc- tion policy designed to remake the South and provide equal rights for the former slaves**, as well as a sturdy champion of the rights of women and of labor. In short, **what is most significant about the careers of the four men lies, not in their shared expressions of whiteness, but in the sharply divergent positions they took on the major issues of their era. Whiteness turns out to be a blunt instrument for dissecting the nuances-or even the major outlines-of their political ideology and behavior.28**

**1AR #6 – State Can Be Reformed**

#### Try-or-die—rejection of the state will collapse into authoritarianism and racism.

Hogan ‘7

(Michael, Honorary Associate of Government and International Relations, University of Sydney, Australian Review of Public Affairs, Vol. 8, No. 1, August, p. 5-6)

The issues of ethnicity and concern for economic security came together in one of the ¶ most destructive tendencies of the 1920s and 1930s—the rise of anti-Semitism. Why is the economy in chaos? Blame the Jews. Again, this was a fundamentally anti-political ¶ ideology. Effective liberal politics seeks to find solutions that will protect the rights of ¶ minorities, while anti-politics too often seeks solutions by finding someone to blame ¶ and looking for conspiracies. That is part of the attraction of an authoritarian regime; ¶ only a dictator (so the popular thinking goes) can punish the culprits and root out the ¶ conspiracies which have infiltrated the institutions of democracy and capitalism.

#### ( ) Their argument cannot account for meaningful acts of reformism

Farber ‘98

\*\* Associate Dean for Faculty and Research, and Henry J. Fletcher Professor of Law, University of Minnesota. J.D., summa cum laude, University of Illinois School of Law, 1975. Richard Delgado, \* Jean N. Lindsley Professor of Law, University of Colorado Law School. J.D., U.C. Berkeley School of Law, 1974. Thomas M. Cooley Law Review¶ 1998¶ 15 T.M. Cooley L. Rev. 361, KRINOCK LECTURE SERIES: IS AMERICAN LAW INHERENTLY RACIST?, Lexis

PROFESSOR FARBER: As I was getting ready to leave for the airport, my wife gave me a final piece of advice about this debate. She said, "Don't be too reasonable." Nevertheless, I would like to begin by stressing some common ground that I think may get lost because the debate format naturally encourages us to take adversarial positions. In reality, Professor Delgado and I share a great deal in our views of law and American society. Both of us see the issue of racial inequality as being central and requiring the most serious possible attention. Both of us reject the conservative dogma of color blindness, and both of us, as I think will be shown tonight, believe that one imperative need is for dialogue and discussion of this topic if we are to make any progress. So we do have something in common. But we also have a fundamental disagreement, I think, a disagreement that is illustrated by the fact that we are on the opposite sides of this debate about the inherent racism of American law. As Professor Delgado said in his introductory remarks, critical race theory's view is essentially that racism is embedded in the DNA of American law. And that in effect, racism is not merely a widespread blemish on American law, but is instead, a radical infection that goes right to the heart of the legal system.¶ I disagree with that for reasons that I will hopefully make clear. [\*375] I think that this thesis rests on a one-sided view of the legal system. I think that it is based on a misunderstanding of some of the fundamental principles of the system. I think in the end, despite what I know are Professor Delgado's good intentions, that the inherent racism position (and critical race theory, in general) risks being more destructive than constructive in terms of advancing our national conversation on race. I noticed that Professor Delgado postponed the issue of inherent racism, or the inherency of racism, until his next ten minutes. I may also put off, to some extent, my discussion of that point as well, though I will refer to it briefly.¶ Let me begin with the vision of the American legal system that Professor Delgado presented in his first twenty minutes. I do not intend to deny the reality of the dark side of American law in American legal history, and that dark side has indeed been very bad at times. Nevertheless, I think one might equally point to some more positive aspects of American legal society, and that we get only a skewed and incomplete picture if we focus only on one side of the picture: if we ignore the Thirteenth, n15 Fourteenth, n16 and Fifteenth n17 Amendments; if we ignore Brown v. Board of Education n18 and the work of the Warren Court; if we ignore the Civil Rights Acts of 1964, n19 1965, n20 and 1990; n21 and if we ignore or minimize the commitment to affirmative action that many American institutions, especially educational institutions, have had for the past two decades. I do not think you have to be a triumphalist to think that these are important developments-you only have to be a realist.¶ Similarly, as serious as the problem of racial inequality remains in our society, it is also unrealistic to ignore the considerable amount of progress that has been made. Consider the emergence of the black middle class in the last generation or generation and a half, and the [\*376] integration of important American institutions such as big-city police forces, which are important in the day-to-day lives of many minority people. The military has sometimes been described as the most successfully integrated institution in American society. We all know, as well, that the number of minority lawyers has risen substantially. In state and federal legislatures, there was no such thing as a black caucus in Congress thirty or forty years ago, because there would not have been enough black people present to call a caucus. And do not forget the considerable evidence of sharp changes in white attitudes over that period in a more favorable and tolerant direction.