# Round 3 – CEDA

## 1AC

### Advantage

#### Scenario One is Miscalculation:

#### US drone policy is destabilizing and causes increased likelihood of escalation and violent confrontations with drones as they lower the threshold for war

Kreps and Zenko, 2014

[Sarah and Micah, SARAH KREPS is Stanton Nuclear Security Fellow at the Council on Foreign Relations and Assistant Professor of Government at Cornell University. MICAH ZENKO is Douglas Dillon Fellow in the Center for Preventive Action at the Council on Foreign Relations, The Next Drone Wars, http://www.foreignaffairs.com/articles/140746/sarah-kreps-and-micah-zenko/the-next-drone-wars] /Wyo-MB

During World War II, a top commander in what was then the U.S. Army Air Forces, General Henry “Hap” Arnold, developed a new way to attack U-boat stations and other heavily fortified German positions: he turned old B-17 and B-24 bombers into remotely piloted aircraft and loaded them with explosives. “If you can get mechanical machines to do this,” Arnold wrote in a memo to his staff, “you are saving lives at the outset.” The missions had a poor track record, but that did not deter Arnold from declaring in 1945 that “the next war may be fought by airplanes with no men in them at all.”¶ Nearly seven decades later, Arnold’s prophecy is slowly being realized: armed drones are starting to rule the skies. So far, the United States has had a relative monopoly over the use of such drones, but it cannot count on maintaining that for much longer. Other states are quickly catching up. And although these new weapons will not transform the international system as fundamentally as did the proliferation of nuclear weapons and ballistic missiles, they could still be used in ways that are highly destabilizing and deadly.¶ Countries will not be deterred from launching drone attacks simply because an adversary has drones in its arsenal, too. If anything, the inherent advantages of drones -- most of all, not placing pilots or ground forces at risk of being killed or captured -- have lowered the threshold for the use of force. Spurred by the United States’ example, other countries are likely to threaten or conduct drone strikes in ways that are harmful to U.S. interests, whether by provoking regional adversaries or targeting domestic enemies.¶ Fortunately for the United States, it still has the ability to shape how and whether the use of drones will spread and whether these threatening scenarios will come to pass. Countries adopt new military capabilities based on how other states have -- or have not -- already used them and on their perceived effectiveness. Therefore, as other countries develop their own drone technology, they could follow Washington’s lead.¶ In 2004, only 41 states had drones of any kind. By 2011, that number had reached 76.¶ John Brennan, director of the CIA and chief architect of the Obama administration’s drone policy, acknowledged as much in a speech in April 2012: “If we want other nations to use these technologies responsibly, we must use them responsibly.” Yet so far, the Obama administration has ignored its own advice, failing to develop a comprehensive strategy to limit the proliferation of armed drones and promote their responsible use. The longer the United States delays, the less influence it will have to shape the rules of the game. Without U.S. leadership, it will be extremely difficult to get an international coalition to agree on a credible arrangement governing the use of armed drones.¶ Such an arrangement would not necessarily require new treaties or international laws; rather, it would necessitate a more broadly accepted understanding of which existing laws apply and when and a faithful and transparent adherence to them. It would also require updating the multilateral regime that was originally designed to prevent the proliferation of nuclear weapons and their delivery systems. Taken together, these measures would help minimize the spread of the most capable and lethal drones to countries that are the most conflict-prone and increase the likelihood that emerging drone powers would adopt policies that reduce the prospects for violent confrontations.

#### Drones cause miscalculation that leads to war

Kreps and Zenko, 2014

[Sarah and Micah, SARAH KREPS is Stanton Nuclear Security Fellow at the Council on Foreign Relations and Assistant Professor of Government at Cornell University. MICAH ZENKO is Douglas Dillon Fellow in the Center for Preventive Action at the Council on Foreign Relations, The Next Drone Wars, http://www.foreignaffairs.com/articles/140746/sarah-kreps-and-micah-zenko/the-next-drone-wars] /Wyo-MB

These obstacles will likely keep the number of drone powers low, but even a few more states fielding a few armed drones could seriously threaten international security. Drones have already been used in ways that go beyond their originally intended applications. For example, the U.S. Customs and Border Protection at first deployed drones to watch the Canadian and Mexican borders, but it has since repurposed them so that other agencies could use them for surveillance missions, and they have, for nearly 700. And drones themselves have created new and unforeseen missions: actual human forces must protect and recover downed drones, for example. It would therefore be myopic and misguided to assume that other states will use drones in the future only in the way the United States has.¶ The mere possession of drones will not make traditional interstate warfare, which is already relatively rare these days, more likely. Having armed drones, given their limitations, is unlikely to convince states to go to war, attempt to capture or control foreign territory, or try to remove a foreign leader from power. But armed drones could still increase the possibility of more limited military conflicts, especially in disputed areas where the slightest provocation could lead to strife.¶ In such settings, drones could encourage countries to act in ways that they might not if they had only manned aircraft. China already flies drones over the Senkaku/Diaoyu Islands, which has prompted the Japanese Defense Ministry to develop drone-specific rules of engagement. Japanese officials say they would be less hesitant to shoot down Chinese drones than they would manned Chinese aircraft. A similar dynamic can be seen in practice in the Persian Gulf, where Iran has fired on U.S. drones while carefully avoiding attacking manned American planes. In November 2012, for example, an Iranian fighter jet fired on a Predator drone that it claimed had entered Iran’s airspace (the U.S. military contended that the drone was over international waters). Martin Dempsey, chairman of the Joint Chiefs of Staff, called Iran’s behavior “clearly a hostile act against our assets” necessitating “a measured response,” which included using additional, manned U.S. military assets to protect the drones and the information they collect.¶ The fact that drones heighten the potential for miscalculation and military escalation is especially worrisome in maritime disputes. The CIA has identified 430 bilateral maritime boundaries, most of which are not defined by formal agreements between states. In the East China and South China seas, nationalist sentiments and the discovery of untapped oil and gas reserves have already made armed conflict over disputed borders among the littoral states more likely. And that prospect would only increase if these countries deployed drones in the area, which they would likely do more aggressively than if they were deploying piloted aircraft.

#### Escalates to war—probability, timeframe, and magnitude are on our side

Brimley et al, 2013

[Foreign Policy, SHAWN BRIMLEY, BEN FITZGERALD, ELY RATNER SEPTEMBER 24, 2013 The Drone War Comes to Asia How China sparked a dangerous unmanned arms race. http://www.foreignpolicy.com/articles/2013/09/17/the\_drone\_war\_comes\_to\_asia#sthash.EnOImSFu.dpuf] /Wyo-MB

But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control.¶ Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. ¶ The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict.¶ At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability.¶ This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities.¶ Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict.¶ Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first?¶ These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace.¶ Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory.¶ One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon.¶ It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw.¶ The rapid diffusion of advanced military technology is not a future trend. These capabilities are being fielded -- right now -- in perhaps the most geopolitically dangerous area in the world, over (and soon under) the contested seas of East and Southeast Asia. These risks will only increase with time as more disruptive capabilities emerge. In the absence of political leadership, these technologies could very well lead the region into war.

#### Scenario Two is Groupthink:

#### Exclusive executive decision making in drone strikes makes groupthink and errors inevitable

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

The practical, pragmatic justification for the COAACC derives largely from considering¶ social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147¶ Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153¶ Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making.

#### Impact is nuclear war

Wright, 2003

[Rusty, former associate speaker and writer with Probe Ministries, is an international lecturer, award-winning author, and journalist who has spoken on six continents. He holds Bachelor of Science (psychology) and Master of Theology degrees from Duke and Oxford universities, JFK and Groupthink: Lessons in Decision Making, http://www.probe.org/site/c.fdKEIMNsEoG/b.4221087/] /Wyo-MB

A fascinating facet of Kennedy's legacy involves the decision- making procedures he used among his closest advisors. Some brought great successes. Others were serious failures. This article looks at two specific examples: the 1961 Bay of Pigs invasion, an attempt to invade Cuba and overthrow Fidel Castro that became a fiasco, and the 1962 Cuban missile crisis that saw the world come perilously close to nuclear war.¶ Yale social psychologist Irving Janis studied these episodes carefully and concluded that too often decision makers are blinded by their own needs for self-esteem they get from being an accepted member of a socially important insiders group. Fears of shattering the warm feelings of perceived unanimity -- of rocking the boat -- kept some of Kennedy's advisors from objecting to the Bay of Pigs plan before it was too late. After that huge blunder, JFK revamped his decision-making process to encourage dissent and critical evaluation among his team. In the Cuban missile crisis, virtually the same policymakers produced superior results.{2}¶ "Groupthink" was the term Janis used for the phenomenon of flawed group dynamics that can let bad ideas go unchallenged and can sometimes yield disastrous outcomes. This article will consider how groupthink might have affected JFK and a major television enterprise, and how it can affect you.¶ The Bay of Pigs Invasion¶ "How could I have been so stupid?"{3} President John F. Kennedy asked that after the Bay of Pigs fiasco. He called it a "colossal mistake."{4} It left him feeling depressed, guilty, bitter, and in tears.{5} One historian later called the Bay of Pigs, "one of those rare events in history -- a perfect failure."{6}¶ What happened? In 1961, CIA and military leaders wanted to use Cuban exiles to overthrow Fidel Castro. After lengthy consideration among his top advisors, Kennedy approved a covert invasion. Advance press reports alerted Castro to the threat. Over 1,400 invaders at the Bahía de Cochinos (Bay of Pigs) were vastly outnumbered. Lacking air support, necessary ammunition and an escape route, nearly 1,200 surrendered. Others died.¶ Declassified CIA documents help illuminate the invasion's flaws. Top CIA leaders blamed Kennedy for not authorizing vital air strikes. Other CIA analysts fault the wishful thinking that the invasion would stimulate an uprising among Cuba's populace and military. Planners assumed the invaders could simply fade into the mountains for guerilla operations. Trouble was, eighty miles of swampland separated the bay from the mountains. The list goes on.{7}¶ Irving Janis felt that Kennedy's top advisors were unwilling to challenge bad ideas because it might disturb perceived or desired group concurrence. Presidential advisor Arthur Schlesinger, for instance, presented serious objections to the invasion in a memorandum to the president, but suppressed his doubts at the team meetings. Attorney General Robert Kennedy privately admonished Schlesinger to support the president's decision to invade. At one crucial meeting, JFK called on each member for his vote for or against the invasion. Each member, that is, except Schlesinger -- whom he knew to have serious concerns. Many members assumed other members agreed with the invasion plan.{8}¶ Schlesinger later lamented, "In the months after the Bay of Pigs I bitterly reproached myself for having kept so silent during those crucial discussions in the cabinet room." He continued, "I can only explain my failure to do more than raise a few timid questions by reporting that one's impulse to blow the whistle on this nonsense was simply undone by the circumstances of the discussion."{9}¶ Have you ever kept silent when you felt you should speak up? President Kennedy later revised his group decision-making process to encourage dissent and debate. The change helped avert a nuclear catastrophe, as we will see.¶ The Cuban Missile Crisis¶ Ever face tough decisions? How would you feel if your wrong decision might mean nuclear war? Consider a time when the world teetered on the brink of disaster.{10}¶ Stung by the Bay of Pigs debacle, President Kennedy determined to ask hard questions during future crises.{11} A good opportunity came eighteen months later.¶ In October 1962, aerial photographs showed Soviet missile sites in Cuba.{12} The missile program, if allowed to continue, could reach most of the United States with nuclear warheads.{13} Kennedy's first inclination was an air strike to take out the missiles.{14} His top advisors debated alternatives from bombing and invasion to blockade and negotiation.{15}¶ On October 22, Kennedy set forth an ultimatum in a televised address: A U.S. naval "quarantine" would block further offensive weapons from reaching Cuba. Russia must promptly dismantle and withdraw all offensive weapons. Use of the missiles would bring attacks against the Soviet Union.{16}¶ The U.S. Navy blockaded Cuba. Soviets readied their forces. The Pentagon directed the Strategic Air Command to begin a nuclear alert. On October 24, the world held its breath as six Soviet ships approached the blockade. Then, all six ships either stopped or reversed course.{17} Secretary of State Dean Rusk told a colleague, "We're eyeball to eyeball, and I think the other fellow just blinked."{18}¶ A maze of negotiations ensued. At the United Nations, U.S. ambassador Adlai Stevenson publicly pressed his Soviet counterpart to confirm or deny Soviet missiles' existence in Cuba. Saying he was prepared to wait for an answer "until hell freezes over," Stevenson then displayed reconnaissance photos to the Security Council.{19} Eventually, Soviet premier Nikita Khrushchev removed the missiles.{20}¶ Kennedy's decision-making process -- though imperfect -- had evolved significantly. He challenged military leaders who pressured him to bomb and invade. He heard the CIA's case for air strikes and Stevenson's counsel for negotiation. Advocates for different views developed their arguments in committees then met back together.{21} Robert Kennedy later wrote, "The fact that we were able to talk, debate, argue, disagree, and then debate some more was essential in choosing our ultimate course."{22} Many groupthink mistakes of the Bay of Pigs, in which bad ideas went unchallenged, had been avoided.{23}¶ Groupthink has serious ramifications for government, business, academia, neighborhood, family, and the ministry. One area it has affected is Christian television.

#### The impact is empirically proven

Jervis, 4 **(**Robert, political science and international politics professor at Columbia University and a consultant to the CIA, The Record, 7/14, lexis)

But was that indeed what happened? "Groupthink" - identified in the early 1970s by the late Yale psychologist Irving Janis - refers to a process by which conformity grows out of deliberations in small groups. It can indeed be quite powerful. The way Janis explained it, groupthink operates when individuals work closely together over a sustained period. It isn't merely that members of the group come to think alike but that they come to overvalue the harmonious functioning of the group. In their eagerness to reach consensus, they become inhibited from questioning established assumptions or from raising questions that might disturb their colleagues and friends. A vicious circle begins as the group feels good about itself because it has discovered the truth, and this truth is accepted by each person because it is believed by the others. In this way, a group of intelligent individuals can confidently arrive at conclusions that are wildly removed from reality. Most social scientists agree that groupthink has contributed to many disastrous decisions in business, families, and foreign policy. President Kennedy and his top advisers, for instance, fell into a groupthink trap, believing that the landings of the Cuban exiles at the Bay of Pigs in April 1961 might overthrow Fidel Castro. Intense face-to-face meetings among the president's top foreign policy planners formed strong bonds that no one wanted to loosen. In hindsight, their plans were so badly flawed that it is hard to understand how such world-wise leaders could have endorsed them. But apparently each individual grew confident because the others were - each was reassured because the group was functioning so well and without discord; no one felt the need, or had the nerve, to insist they consider the possibility that the group was on the totally wrong track.

Richard Nixon's Watergate cover-up was in part maintained by the same dynamic. To many outsiders even at the time, it was obvious that the only way for Nixon to survive was to air the full truth early on. But the Nixon White House was a small group, closed-mouthed and predisposed to keeping everything secret.

#### Scenario Three is Violence at home:

#### The violence of drones abroad boomerangs to recreate oppressive practices at home – the foreign spaces “targeted” by drones serve as a testing grounds for technologies and techniques of militarization and security that spillover to police domestic urban spaces

Stephen Graham, Professor of Cities and Society at Newcastle University and previously taught at Durham and MIT, among other universities, 2010, Cities Under Siege: the New Military Urbanism, p. xiii-xvii

Such fantasies of high-tech omnipotence are much more than science fiction.¶ As well as constructing the UK’S e-Borders programme, for example, Raytheon¶ is also the leading manufacturer of both cruise missiles and the unmanned¶ drones used regularly by the CIA to launch assassination raids across the¶ Middle East and Pakistan since 2002. Raytheon is also at the heart of a range¶ of very real US military projects designed to use computer software to allow¶ robotic weapons to target and kill their foes autonomously without any human¶ involvement whatsoever, as Huber and Mills have envisioned.¶ TIlE NEW MILITARY URBANISM¶ The crossover between the military and the civilian applications of advanced¶ technology — between the surveillance and control of everyday life in Western¶ cities and the prosecution of aggressive colonial and resource wars — is at the heart¶ of a much broader set of trends that characterize the new military urbanism.¶ Of course, the effects observed in the urban Western setting differ wildly from¶ those seen in the war-zone. But, crucially, whatever the environment, these hi-¶ tech acts of violence are predicated on a set of shared ideas.¶ Fundamental to the new military urbanism is the paradigmatic shift that¶ renders cities’ communal and private spaces, as well as their infrastructure —¶ along with their civilian populations — a source of targets and threats. This is¶ manifest in the widespread use of war as the dominant metaphor in describing¶ the perpetual and boundless condition of urban societies — at war against drugs, against crime, against terror, against insecurity itself. This development¶ incorporates the stealthy militarization of a wide range of policy debates,¶ urban landscapes, and circuits of urban infrastructure, as well as whole realms¶ of popular and urban culture. It leads to the creeping and insidious diffusion¶ of militarized debates about ‘security’ in every walk of life. Together, once¶ again, these work to bring essentially military ideas of the prosecution of, and¶ preparation for, war into the heart of ordinary, day-to-day city life.¶ The insidious militarization of urban life occurs at a time when humankind¶ has become a predominantly urban species for the first time in its 150,000-¶ year history. It gains its power from multiple circuits of militarization and¶ securitizatjon which, thus far, have not been considered together or viewed as a¶ whole. It is this task to which the current book is devoted.¶ By way of introduction, and to give a flavour of the remarkable range of¶ political, social and cultural circuits currently being colonized by the new¶ military urbanism, it is worth introducing its five key features. As with Huber and Mills’s prescriptions for the future, the new military urbanism,¶ in all its complexity and reach, rests on a central idea: militarized techniques of¶ tracking and targeting must permanently colonize the city landscape and the¶ spaces of everyday life in both the ‘homelands’ and domestic cities of the West¶ as well as the world’s neo-colonial frontiers. To the latest security and military¶ gurus, this is deemed imperative, the only adequate means to address the new¶ realities of what they call ‘asymmetric’ or ‘irregular’ war.¶ Such wars pitch non-state terrorists or insurgents against the high-tech security,¶ military and intelligence forces of nation-states and their burgeoning array of private¶ and corporate afliliates-in-arms. Non-uniformed and largely indistinguishable from¶ the city populace, non-state fighters, militia, insurgents and terrorists lurk invisibly¶ thanks to the anonymity offered by the world’s burgeoning cities (especially the¶ fast-growing informal districts). They exploit and target the spiralling conduits and¶ arteries which link modem cities: the Internet, YouTube, GPS technology; mobile¶ phones, air travel, global tourism, international migration, port systems, global¶ finance, even postal services and power grids.¶ The terrorist outrages in New York, Washington, Madrid, London and¶ Mumbai (to name but a few sites of attack), along with state military assaults¶ on Baghdad, Gaza, Nablus, Beirut, Grozny, Mogadishu and South Ossetia,¶ demonstrate that asymmetric warfare is the vehicle for political violence across¶ transnational spaces. More and more, contemporary warfare takes place in supermarkets, tower blocks, subway tunnels, and industrial districts rather¶ than open fields, jungles or deserts.¶ All this means that, arguably for the first time since the Middle Ages. the¶ localized geographies of cities and the systems that weave them together are¶ starting to dominate discussions surrounding war, geopolitics and security¶ In the new military doctrine of asymmetric war — also labelled ‘low-intensity¶ conflict ‘nebvar the ‘long var or ‘fourth-generation war’ — the prosaic and¶ everyday sites, circulations and spaces of the city are becoming the main¶ ‘battlespace’ both at home and abroad.¶ In such a context, ‘Western security and military doctrine is being rapidly¶ reimagined in ways that dramatically blur the juridical and operational¶ separation between policing, intelligence and the military; distinctions between¶ war and peace; and those between local, national and global operations.¶ Increasingly, wars and associated mobilizations cease to be constrained by time¶ and space and instead become both boundless and more or less permanent.¶ At the same time, state power centres increasingly expend resources trying to¶ separate bodies deemed malign and threatening from those deemed valuable¶ and threatened within the everyday spaces of cities and the infrastructures¶ that lace them together. Instead of legal or human rights and legal systems¶ based on universal citizenship, these emerging security politics are founded¶ on the profiling of individuals, places, behaviours, associations, and groups.¶ Such practices assign these subjects risk categories based on their perceived¶ association with violence, disruption or resistance against the dominant¶ geographical orders sustaining global, neoliberal capitalism. In the West, this shift threatens to re-engineer ideas of citizenship and¶ national boundaries central to the concept of the Western nation-state since the¶ mid-seventeenth century. An increasing obsession with risk profiling may use¶ the tools of national security to unbundle ideas that feed into the conception¶ of universal national citizenship. For example, the United States is already¶ pressuring Britain to bring in a special visa system for UK citizens who want to¶ visit America with close links to Pakistan. In other words, such developments¶ threaten to establish border practices within the spaces of nation-states —¶ challenging the definition of the geographical and social ‘insides’ and ‘outsides’¶ of political communities. This process parallels, in turn, the eruption of national¶ border points within the territorial limits of nations at airports, cargo ports,¶ Internet terminals and the railway stations of express trains. Meanwhile, the policing, security and intelligence arms of governments¶ are also reaching out beyond national territorial limits as global surveillance¶ systems arc created to monitor the world’s airline, port, trade, finance and¶ communications systems. Electronic border programmes, for example — like¶ Raytheon’s in the UK — are being integrated into transnational systems so¶ that passengers’ behaviour and associations can be data-mined before they¶ attempt to board planes bound for Europe and the US. Policing powers are¶ also extending beyond the borders of nation-states. The New York Police¶ Department, for example, has recently established a chain of ten overseas¶ cilices as part of its burgeoning anti-terror efforts. Extra-national policing¶ proliferates around international political summits and sporting events. In a¶ parallel move, refugee and asylum camps are increasingly being ‘offshored’ to¶ keep them beyond the territorial limits of rich capitalist nations so that human¶ bodies deemed malign, unworthy or threatening can be stored and dealt with¶ invisibly and at a distance.¶ The expansion of police powers beyond national borders occurs just as¶ military forces are being deployed more regularly within Western nations. The¶ United States recently established a military command for North America for¶ the first time: the Northern Comrnandi Previously, this was the only part of the¶ world not covered in this way. The US Government has also gradually reduced¶ long-standing legal barriers to military deployment within US cities. Urban¶ warfare training exercises now regularly take place in American cities, geared¶ towards simulations of ‘homeland security’ crises as well as the challenges of¶ pacifying insurgencies in the cities of the colonial peripheries in the global¶ south. In addition, in a dramatic convergence of doctrine and technology, high¶ tech satellites and drones developed to monitor far-off Cold War or insurgent¶ enemies are increasingly being used within ‘Western cities. FOUCAULT’S BOOMERANG¶ The new military urbanism feeds on experiments with styles of targeting¶ and technology in colonial war-zones, such as Gaza or Baghdad, or security¶ operations at international sports events or political summits. These operations¶ act as testing grounds for technology and techniques to be sold on through¶ the world’s burgeoning homeland security markets. Through such processes of¶ imitation, explicitly colonial models of pacification, militarization and control,¶ honed on the streets of the global South, are spread to the cities of capitalist heartlands in the North. This synergy, between foreign and homeland security operations, is the second key feature of the new military urbanism.

### Solvency

#### Thus, we demand that the United States Federal Government should statutorily prohibit the use of targeted killing using unpiloted aerial vehicles

#### Only Banning the use of drones solves—provides a framework for challenging American exceptionalism and violence—citizen debates over drones are key to solve militarism and targeted killings establishment of war as a norm in international relations

Flowers and Zeese, 2013

[Kevin Zeese JD and Margaret Flowers MD, 11-13-13, Armed Drones Becoming the Norm? At the Crossroads of Robotic Warfare, http://www.truth-out.org/news/item/20008-armed-drones-becoming-the-norm-at-the-crossroads-of-robotic-warfare] /Wyo-MB

The Crossroads: Which Path on Drones?¶ Fueled by the Military Industrial Complex's drive for profit and the hegemony of US Empire, we can expect the use of drones to proliferate, and so it is urgent that the public becomes engaged in this issue. As more information comes out about the harm to civilians and to our national security from drone warfare, we must question whether that harm is outweighed by any benefits. We must also consider whether the use of drones falls within the rule of law, and if so, how the law is defined and enforced.¶ We are at a crossroads, and it is time for an informed public debate to choose the appropriate path. Three approaches are currently being proposed:¶ 1. The current path, which allows the commander-in-chief to make decisions about when drones are used. This is being conducted without transparency or public accountability.¶ 2. The path promoted by US-based human rights groups of holding drone strikes to the same standards as current air strikes and reviewing all drone strikes on a case-by-case basis to determine if they were legal. If laws were broken, those responsible should be held accountable.¶ 3. The path supported by international human rights groups, groups within the affected countries and peace advocates of banning drones by defining them as a weapon of mass destruction akin to land mines and chemical weapons because they kill innocent civilians. Drones also make the conduct of war easier at a time when we should be working toward ending war.¶ It is tempting, when provided with this range of options, to choose the middle path. We argue that the path which falls within the rule of law and the human rights framework is to ban drone warfare.¶ Executive Power to Regulate Drone Attacks in Secrecy¶ The first approach allows the president to make decisions on the use of drones without disclosing the legal framework or being held accountable to the public. President Obama has personally approved many drone attacks, reportedly reviewing the kill list each Tuesday. His administration claims that the Department of Justice issued a memorandum explaining the legal basis for drone use, but this has not been shared publicly.¶ This concentration of power raises the question of how easily it can be abused. It appears that President Obama has become desensitized to the use of drones. A recent book by two Washington Post reporters indicates that in discussing drones, Obama said he is "really good at killing people," a report not disputed by the White House. In 2010 at the White House Correspondents Dinner, the President quipped about using Predator Drones to kill the Jonas Brothers if they came near his daughters.¶ The Obama administration has treated the Authorization for the Use of Military Force approved after 9/11 as a license to make the world a battle zone to attack members of Al-Qaeda and their associates wherever they are. Obama admitted to killing four Americans with drones, but has not explained the justifications and claimed three were not targeted. And Obama has gone so far as to authorize the murder of people with drones who were unidentified, just based on their actions, i.e. "pattern of life" data, in so-called "signature strikes." ¶ In May, President Obama announced there would be new guidelines for the use of drones. While the guidelines themselves were not made public, a limited version was. As reported by the Associated Press: "Among the newly public rules is a preference for capturing suspects instead of killing them, which gives the US an opportunity to gather intelligence and disrupt terrorist plots. The guidelines also state that a target must pose a continuing and imminent threat to the US." In addition there must be "a near certainty" that no civilians will be killed in a strike."¶ These guidelines raise more questions, e.g. what does "imminent threat" mean; in what situations will suspects be captured rather than killed; what is a "continuing" threat; and how is "near certainty" defined. Shahzad Akbar, a Pakistani lawyer who has filed many court cases on behalf of drone victims' families, told AP, "The problem remains the same because there is no transparency and accountability for the CIA because it will remain inside the system and not be visible to outsiders."¶ On September 13, 2013, the UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions reviewed the use of drones under current law. The report described several areas where the United States is violating current law - including lack of transparency about the development and use of armed drones; failure to provide legal basis for use of drones; failure to provide information about investigations and prosecutions; failure to apply rules of engagement; violating humanitarian law, especially that a person must be considered a civilian if there is any doubt; lack of oversight of drone use; lack of reparations for their misuse; lack of consideration of human rights laws protecting the right to life; requiring drone operators to report in a chain of command that keeps operations secret; failure to submit a report claiming self-defense to the Security Council; and the failure to capture, rather than kill, during an armed conflict, where feasible.¶ President Obama has repeatedly claimed that the United States is a nation of laws that lives under the rule of law. If so, his approach to the use of weaponized drones must be rejected, as it is illegal.¶ Making Drone Strikes Conform to Current Law¶ The second approach is represented in two recent reports by Human Rights Watch, ¶ "Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen"; and Amnesty International, "Will I Be Next: Drone Strikes in Pakistan." These reports do an excellent job of exposing the reality of drone use in Pakistan and Yemen, showing the human impact of drones and discussing drones in the context of current humanitarian law. Both reports found that the United States is violating international law in some cases, but neither report called for a ban on armed drones.¶ Human Rights Watch examined six attacks in Yemen. The author of the report, Letta Tayler, writes, "The US says it is taking all possible precautions during targeted killings, but it has unlawfully killed civilians and struck questionable military targets in Yemen. Yemenis told us that these strikes make them fear the US as much as they fear Al-Qaeda in the Arabian Peninsula."¶ Amnesty International (AI) describes the use of armed drones as "one of the most controversial human rights issues in the world." Amnesty, which did detailed reviews of nine drone attacks in Pakistan, is also critical of the United States and says it may be committing war crimes, writing:¶ "Because the US government refuses to provide even basic information on particular strikes, including the reasons for carrying them out, Amnesty International is unable to reach firm conclusions about the context in which the US drone attacks on Mamana Bibi and on the 18 laborers took place, and therefore their status under international law. However, based on its review of incidents over the last two years, Amnesty International is seriously concerned that these and other strikes have resulted in unlawful killings that may constitute extrajudicial executions or war crimes."¶ AI indicates that under international law the US is obligated to conduct "thorough, impartial and independent investigations" of all reports of civilian casualties. If there are violations of law, the people involved should be prosecuted, and victims or their families must be provided compensation and full reparations. Medea Benjamin discovered that US reparations are not going to their victims, but to US nonprofits, which are misusing them. AI also warns that countries like Australia, Germany and the UK, which are providing intelligence for drone killings, are also violating international law.¶ Many of the US attacks occur in nations where the United States is not in armed conflict. These human rights groups emphasize that under international law there is a difference between the use of armed drones in armed conflict and their use outside of war. Even so, AI concludes that the use of drones in war, as the US is using them, may be illegal, writing: "To be a lawful target, an individual must be directly participating in hostilities; so-called membership in an armed group is not in itself sufficient." There are also issues of proportionality, the killing of civilians and the timing of attacks.¶ AI points out that the United States' practice of conducting a second strike on first responders who come to the aid of the injured, called a "Double Tap," is illegal under international law. They conclude that these killings may violate "the prohibition of the arbitrary deprivation of life and may constitute war crimes or extrajudicial executions."¶ These human rights groups do not find all drone killings to violate current law and express the difficulty in evaluating the cases they reviewed because of the secrecy surrounding the US drone program. While some of the cases seemed to be clear violations, others were not clear. Under international law, arbitrary deprivation of life is illegal, whether in armed conflict or not, but the facts and circumstances which can be difficult to ascertain are especially important in an armed conflict to determine whether the killing is arbitrary.¶ When there is no armed conflict, drone killings could be considered extrajudicial executions. In those circumstances, "US authorities must demonstrate, in each strike, that intentional lethal force was only used when strictly unavoidable to protect life, no less harmful means such as capture or non-lethal incapacitation was possible, and the use of force was proportionate in the prevailing circumstances."¶ Naureen Shah told us that AI has never looked at whether a war in quesion was legal or not. Their rationale is that they want to be able to report on the actions of both sides in an armed conflict without appearing biased in their analysis. This complicates the analysis of the use of drones, and we question this approach. If a war is illegal, i.e. does not meet the standards of international law, that it was either authorized by the UN or the nation was under threat of immediate attack, then how can the laws of war apply? If a war is illegal, every killing is a war crime, whether by drones or any other means.¶ The complexity of applying laws for armed conflict and laws when there is no armed conflict leads AI to be unable to say that all the killings they reviewed in Pakistan were illegal. This was made even more difficult by the secrecy of the Obama administration in not sharing its rationale for the use of drones. AI would review each situation on a case-by-case basis after the fact. With the Obama administration authorizing hundreds of drone strikes, this becomes an impractical approach very quickly. In the future, multiple nations may be using drones, so there are likely to be even more cases needing an impractical case-by-case review.¶ Shah emphasizes that existing law regarding aerial strikes should be applied to the use of drones rather than creating new law because new laws may have lower standards than current law. While we agree that applying the law and holding those responsible for breaking it accountable are important, we are not confident that the US government can investigate and judge itself adequately.¶ The Argument for Banning Drones¶ Author David Swanson is an advocate for banning the use of drones. While he sees the Amnesty International and Human Rights reports as providing a lot of good information and better than the Obama administration policy, he sees the first two approaches as authorizing a new kind of war. He points out that finding some drone killings legal authorizes a new form of robotic killing.¶ Swanson reveals the flaw in their approach because even these top researchers and legal analysts have a very hard time applying the law to a handful of cases. He describes the approach: "The general lawyerly consensus is that killing people with drones is fine if it's not a case where they could have been captured, it's not 'disproportionate,' it's not too 'collateral,' it's not too 'indiscriminate,' etc., - the calculation being so vague that nobody can measure it."¶ He makes a broader case in a series of rhetorical questions:¶ "What is it that makes weaponized drones more humane than land mines, poison gas, cluster bombs, biological weapons, nuclear weapons and other weapons worth banning? Are drone missiles more discriminate than cluster bombs (I mean in documented practice, not in theory)? Are they discriminate enough, even if more discriminate than something else? Does the ease of using them against anyone anywhere make it possible for them to be 'proportionate' and 'necessary'? If some drone killing is legal and other not, and if the best researchers can't always tell which is which, won't drone killing continue? The UN Special Rapporteur says drones threaten to make war the norm. Why risk that? Why not ban weaponized drones?"¶ In a follow-up article, Swanson points to a Swiss human rights group, Alkarama, which issued a stronger condemnation of drones than the two US human rights reports. Their report is titled: "License to Kill: Why the American Drone War on Yemen Violates International Law." In the report, Alkarama recognizes that even the ongoing buzzing of drones overhead is a form of terrorism.¶ Alkarama looked at 10 cases in Yemen in the context of the overall US drone program. They looked at the same intricacies of international law as the two US reports, but found that no matter what, the drone killings are illegal because none of them occurred within a judicial process. In none of the cases were the targets notified of their crime, tried in a court and sentenced to death. Alkarama advises that the United States should stop all extrajudicial killings by armed drones.¶ Swanson points out that this conclusion "agrees with Pakistan's courts, Yemen's National Dialogue, Yemen's Human Rights Ministry, statements by large numbers of well-known figures in Yemen, and the popular movement in Yemen protesting the slaughter." Alkarama sees the United States as not only violating the law, but trying to alter international law.¶ For these reasons, Swanson concludes that the world needs to ban the use of drones, rather than make them a norm that expands the use of war by making it easier for nations to wage.¶ The Confusion of American Exceptionalism and Humanitarian War¶ Swanson views the confusion of the US groups as part the overall confusion in the United States regarding American "exceptionalism" and the nation's perceived right to wage war and kill wherever the country's leaders deem necessary. It is a confusion borne out of allegiance to the United States as the superior force in the world with a responsibility to use its military to correct perceived wrongs (whenever in the national interest of the United States).¶ Swanson sees, as many others have claimed, that some organizations have supported war for "humanitarian reasons," also known as "killing to save lives." This became especially clear a year ago for AI, when they hired Suzanne Nossel as their executive director. Nossel is herself credited as having coined the term "Smart Power," which embraces both the United States ' use of military power as well as other forms of "soft power" to gain influence. Secretary of State Hillary Clinton announced her support for this approach at her confirmation as the new basis of State Department policy. Nossel has since left AI for another controversial human rights appointment at PEN American Center.¶ Perhaps at this critical juncture in US and world history, when the United States has shown itself to be very good at destroying countries, e.g. Afghanistan, Iraq and Libya, but not very good at creating stable countries (or even winning wars), the drone issue is an opportunity for a broader change in direction toward a policy that ends the dominance of militarism in US foreign policy.¶ The doctrines put forward by people like Nossel that favor humanitarian wars result in the deaths of thousands of innocents. And the so-called targeted killings of people with drones inevitably results in the mass deaths of civilians as well. From these conflicts the United States needs to learn lessons - one very old lesson - violence begets violence. US violence around the world is undermining the nation's national security and making the United States a nation hated by many.¶ The movement pushing for a ban on armed drones should use the opportunity to push for much more - an end to war as an instrument of foreign policy. This is not a new idea, in 1928, an international pact, the Kellogg–Briand Pact also known as the Pact of Paris - and officially as the General Treaty for Renunciation of War as an Instrument of National Policy - was signed by the major powers and sought to put an end to war. The creation of the United Nations in 1945 sought to facilitate cooperation between nations and achieve lasting peace.¶ The persistent work of many who are opposed to drones has elevated the discussion of robotic warfare. Many first events regarding drones have taken place recently: The first reports on and discussion of drone use on the floor of the United Nation; the first Congressional briefing that included testimony from drone victims; and the first discussion of drone use at the Organization of American States. Robert Greenwald just released a new film, Unmanned: America's Drone Wars. The opportunity is here to continue to build this momentum. Perhaps now that the bloody 20th Century is behind us, it is time for humanity to make the end of war a reality before robotic killings become entrenched and war is made the norm.

#### Academic resistance to drones starts from “Just saying no”—this is key to generate resistance to the impact of militarism in the academy—solves groupthink, drone violence and militarism at home

Sparrow, 2012

[Robert, School of Philosophical, Historical and Inter- national Studies, “Just say no” to drones, IEEE TECHNOLOGY AND SOCIETY MAGAZINE | SPRING 2012] /Wyo-MB

It is difficult to find a figure for the exact percentage of robotics research ¶ that is currently funded by the military. However,¶ it is clear that military organiza- tions and budgets fund a signifi- cant amount of – and perhaps even most – robotics research today. Recent technological progress, which has greatly increased the number of roles that it is plau- sible for robots to undertake; the potential for robots to help keep soldiers “out of harm’s way”; and the perceived success of the U.S.’s Predator and Reaper drones in Afghanistan, have led to a mas- sive influx of funding from gov- ernments all around the world for research on military robots. Con- sequently, large numbers of engi- neers – at universities, in industry, and in military research labora- tories – are working to develop and perfect the technologies for the next generation of unmanned aerial vehicles, unmanned ground vehicles, unmanned surface vehi- cles, and unmanned submersibles. In many ways, this military fund- ing is like a drug for roboticists: constantly available, tempting to try, habit-forming, and hard to kick. Like drugs, funding from the military becomes more attractive still when times are hard and other sources of meaningful employ- ment become scarce. Most impor- tantly, like (some) drugs, military funding is bad for the moral and psychological health of those who grow to rely upon it.¶ This essay appeals to the engi- neering profession to “just say no” to drones – and to other military applications of robotics – and so to begin the difficult process of kick- ing the habit of military funding.1 My approach will be somewhat provocative: my primary aim is to encourage a conversation about the ethics of accepting military funding today rather than to try to settle the matter in this short essay. Moreover, I believe this conversation must include discus- sions about the nature of the mili- tary and about the armed conflicts in which robots are being used, which will inevitably be contro- versial. As I am a professional philosopher, writing for a reader- ship of engineers, my challenge is a challenge from outside the profession; I hope my readers will not dismiss my concerns out of hand on that basis. In the course of my research on the ethics of military robotics [1]–[4], I have spoken with many engineers who are concerned about the impact that military funding is having on robotics today; some have even refused to accept such fund- ing and have spoken and written eloquently about their reasons for doing so [5]–[6]. However, when the issue at hand is precisely how much robotics engineers have come to rely upon and identify with military funding, there may be virtue in an outsider’s perspec- tive. Moreover, many of the most important questions involved in determining the ethics of accept- ing military funding are political, social, and ethical questions that engineers typically have limited opportunity to study over the course of their training. It is not unreasonable, then, to think that a philosopher might have some- thing useful to contribute to a dis- cussion of these issues.¶ The Evils of War¶ and Militarism¶ Any discussion of the ethics and implications of accepting military funding must begin with an exami- nation of the military and the pur- poses towards which they direct research. Any examination of the military must begin – but not end – with the nature of war. It is hardly controversial to insist that war is a terrible thing and something to be avoided if at all possible. Yet, in an era in which the horrors of war are largely visited on people living in Africa and the Middle East, it is worth reminding ourselves of the reality of what hap- pens when weapons are used. War means death, destruction, suffer- ing, brutality, and environmental devastation. It means young men and women dying in agony in the dirt or coming home with traumatic brain injury or missing limbs. Even in this age of smart bombs and Predator drones, most of those killed in wars are civilians. The sol- diers who are killed or maimed are not the people who make the deci- sions that provoked the war. Indeed, overwhelmingly they are young men and women who were forced to fight or who joined the military because it offered one of the few ways out of poverty and entrenched lack of opportunities.¶ According to the most radi- cal critics of war – pacifists – war is never justified. The reasons for which wars are fought – defense of territory, culture, or a particu- lar government – never justify the death and suffering that results [7]- [8]. It follows reasonably straight- forwardly from this perspective that one should also not lend one’s efforts to the project of preparing for war.¶ Most people, however, will admit the possibility that some wars are justified. The “just war” tradition is the body of legal and philosophi- cal thought that has evolved to help settle when this might be the case. Just war theory sets out a number of tests that the justification for going to war must pass in order to consti- tute a “just cause” for war and also a number of further conditions that the means used to pursue military victory must meet [9]. A war that fails even one of these tests is not just war.¶ Because no state goes to war without arguing that its cause and means are just, it is not always prop- erly appreciated that the just war tradition implies that the chances that one is justified in fighting a par- ticular war are at best 50% and are usually much much lower than this. In every war, at least one side is fighting an unjust war and in many wars neither side will have just cause or use just means. Thus, even within the just war tradition, the vast majority of wars are not justi- fied. This means that if one is work- ing for the military, the chances are that one will ultimately be serving the cause of injustice.¶ Of course, everyone wants to think that their nation is different and only fights in a just cause. Per- haps this is true for some: it cannot be true for all. It is also true that many of those in the armed services think of themselves as serving the cause of peace by deterring pos- sible enemies and thus preventing conflict. Yet, if military prepared- ness is supposed to prevent war, it has a high failure rate! Nor should this be a surprise: arms races are just as likely to provoke as prevent conflict.¶ The most radical critique of the military argues that it is an institu- tion that exists primarily to protect the rulers against the ruled rather than the nation against external threats [8], [10]. On this account, the use of the armed forces against a nation’s own citizens, as is occur- ring in Syria and Egypt as I write, and as occurred in Tiananmen Square, Kent State, the former Soviet Union, and countless mili- tary coups throughout the ages, is not exceptional but rather the mili- tary carrying out its core mission. If this is true, the military has no virtuous purpose and all the time, money, and effort spent “prepar- ing” for war is wasted.¶ However, one need not believe this to recognize that, as suggested above, the costs of maintaining military forces do not stop at the costs of war. It is an ongoing trag- edy just how many of the world¶ scientists and engineers are work- ing to produce weapons and tech- nologies which, in the best case, will never be used [11]. The level of military spending by first world nations is especially obscene given that citizens of first world nations have never been safer from exter- nal military threats. It is even more offensive when we consider the number of non-military threats, such as global warming, massive species extinction, desertification, and the social and political conse- quences of global inequality, fac- ing us today [11]. The cost of not dealing with these problems needs to be included in the calculation of the ultimate cost of maintaining armed forces.¶ Maintaining military “prepared- ness” also has a number of other destructive social and political con- sequences. Societies that expend a lot of time and effort preparing for war are likely to become accus- tomed to the idea that obedience to authority and the capacity to wield force are virtues, which may in turn impact negatively on their cul- ture and thus on individuals. The nationalism necessary to sustain public support for military spend- ing encourages a “groupthink” mentality that corrodes democracy by discouraging dissent. The mili- tary represents a constant tempta- tion to other loci of social power to impose their views on society.¶ These considerations may be sufficient to convince some engi- neers that it is wrong to become involved in the military-industrial- scientific complex by accepting funding from the military. From many others, however, these argu- ments will be too abstract: what matters when it comes to the ethics of working to military ends is not the ethics of war in general but the ethics of particular wars.

#### And, resisting the logic of targeted killing in academic spaces is key to solve the drive for war—there is a direct connecting between resistance to drones in academic research and lowering the risk of conflict

Sparrow, 2012

[Robert, School of Philosophical, Historical and Inter- national Studies, “Just say no” to drones, IEEE TECHNOLOGY AND SOCIETY MAGAZINE | SPRING 2012] /Wyo-MB

Again, let me emphasize that my reason for discussing these matters here is the conviction that the ethics of working on military robotics today cannot be entirely divorced from the ethics of the ends to which military robots are used. Obviously, a full discussion of the justice of these two wars is much larger task than I can under- take here: I can only insist that it is¶ vital that roboticists consider these issues. Political arguments about the justification of the wars in Iraq and Afghanistan matter to the eth- ics of working on military robots in the current environment.¶ Engineers, War,¶ and Democracy¶ There are two important lines of argument that reject the idea that engineers should be making moral judgments about the wars their nations are involved in. The first asserts the importance of citizens in a democracy respecting and supporting the decisions of their elected leaders. The second empha- sizes the moral weight of the obli- gations we have to fellow citizens.¶ Democracy requires that minor- ities be willing to abide by the deci- sion of majorities. It might therefore be argued that it would be improper for engineers to second-guess the decisions of the government and to refuse to support the wars or weap- ons projects it has decided upon.¶ This argument is flawed in two respects. First, while the social contract that underpins a demo- cratic society requires that citizens abide by majority decisions about matters where it is not possible for citizens to “live and let live,” no individual citizen is morally obliged to support the state in any particular role. Thus it is simply untrue that just because the gov- ernment has decided upon a war we are duty-bound to contribute to the war effort. The second problem with this argument is that there are important limits to the scope of the obligation that majority deci- sions may impose upon minori- ties. While these limits are hard to locate precisely, at the very least they prevent governments from demanding obedience in matters of conscience or contrary to duties to humanity. For instance, I pre- sume that few of my readers would feel comfortable designing gas chambers or instruments of torture just because the government had decided that these were necessary. Thefactthattherearesuchlimits also means that individuals must retain the right to judge when they have been reached. Thus, given that participation in an unjust war is one of the worst crimes a nation may commit, citizens – including engineers – must retain the right to withdraw their active support from wars they judge to be unjustified by refusing to work on military projects.¶ It might, however, be argued that an obligation to support the armed forces by building them bet- ter robots arises not out of a duty to the government but to the members of the armed forces themselves. Once a nation has gone to war then the lives of members of its armed forces will be at risk. Regardless of what we think of the decision of the government that sent them to war, we have a duty to defend the lives of our fellow citizens.¶ Clearly this is an admirable motive for military service. How- ever, whether it is sufficient to excuse us of an obligation to assess the justice of the cause in which our fellow citizens fight is less clear. To start with, this way of thinking places a lot of weight – arguably too much weight – on ties of nation- ality and not enough on justice or humanity. The lives of our compa- triots are not the only lives that we should care about. The “defense” of our fellow citizens in Afghanistan may involve killing Afghani civil- ians, who no more deserve to die than the young men and women that our own government has sent overseas to fight. Moreover, if the lives of our compatriots are at risk because our government has committed them to an unjust war then, in supporting them, we can- not avoid becoming complicit in this injustice. Our willingness to provide such support also allows the government to continue to risk their lives by fighting these wars. Thus, while it is understandable that many engineers feel that their¶ first duty is to defend the lives of their fellow citizens who are at war, a universalistic ethics suggests that it would be more ethical to sup- port our fellow citizens and foreign citizens by refusing to contribute to unjust wars, while a longer term perspective suggests that this might be a more effective way to defend our compatriots.¶ Peace, Security, and Robots¶ The question of the ethics of accepting military funding arises for people working in the sciences generally, given the depressingly high percentage of the funding availableforresearchthatisdedi- cated to military goals. Never- theless, I want to argue that it is an especially urgent problem for roboticists.¶ This might seem a surprising claim given that, as far as weapons go, robots have some distinct advan- tages over other military technolo- gies, including ethical advantages.4 Most robots will presumably take at least one person “out of harm’s way” when used in a military role, which is not an insignificant factor in the moral calculus. For various reasons that I have discussed else- where, robotic weapons will often make the use of lethal force more “precise,” perhaps reducing civil- ian casualties in doing so [1], [3].¶ Yet there are a number of other considerations that suggest that fur- ther development of robotic weap- ons may actually be disastrous for the cause of peace and stability [21]. Robotic weapons may render governments more willing to go to war, lower the threshold of conflict, trigger accidental wars, and thus ultimately lead to more death and destruction [2]. The capacity of robot weap- ons to keep warfighters out of harm’s way is, as Noel Sharkey has observed [22], a double-edged sword. While it will prevent deaths among the warfighters of nations that are able to field robots, it will also make it easier for governments to initiate wars by encouraging them to believe that they can fight a war without television images of soldiers returning in body bags costing votes in the next election. In particular, governments will be tempted to try to resolve political problems by carrying out “targeted killings” – assassinations – and “surgical strikes” [23]. Yet few political problems can be solved simply by killing people. Many conflicts can only be resolved by occupying territory and/or by win- ning “hearts and minds” – tasks that robots are highly unlikely to be able to succeed in for the fore- seeable future. Paradoxically, then, further developments in robotic weapons may result in more mem- bers of the armed forces being placed in harm’s way, as govern- ments are drawn into wars that they cannot win without placing human lives at risk [3].¶ Improvements in remotely- operated and autonomous weapon systems are also likely to sig- nificantly lower the threshold of conflict. Uninhabited systems, especially uninhabited aerial vehi- cles and uninhabited submersible vehicles, will have longer ranges, longer “loiter” times, and greater capacity for “stealth” attacks than manned systems. They will also be suitable for deployment in more hazardous roles. All of these fea- tures increase their usefulness for preemptive attacks and conse- quently the temptation to attempt such attacks. Thus, in the future, states will need to be prepared for the possibility of sophisticated attacks involving robotic weap- ons with very little warning time. This increases the risk of acciden- tal war and also the temptation to hand over responsibility for coun- termeasures to autonomous and robotic systems [2]. If autonomous weapon systems are granted the power to decide when to open fire in offensive operations this will further increase the risk of acci- dental war [25].¶ If one believes that there is any chance of “strong” Artificial Intel- ligence (AI) emerging out of con- temporary robotics research, this is yet another reason to hold that such research should not be conducted until there has been adequate pub- lic debate about the desirability of creating non-human human-level intelligences [26]. This debate is unlikely to take place if the research that might create AIs is being done in military laboratories or in university laboratories funded to do secret military research.¶ Another distressing consequence of the proportion of robotics research that is funded by the military is that it has resulted in a profound failure of the imagination as regards what robots might be capable of. These marvelous machines, which were supposed to liberate human beings from backbreaking labor and drudg- ery, are in fact mostly being built to kill people. Other, more imagina- tive and productive applications for robots are being neglected. In the long run, if the robotics community continues to devote most of its ener- gies to building robots that can only serve in such destructive roles, it risks losing the public support that currently exists alongside the public fascination with robots.¶ There are, therefore, real risks involved in the current program of research on military robotics. On the other hand, very few of the nations that are developing mili- tary robots would be threatened if they did not develop them. While robotic weapons may be “better weapons” they are not (yet) nec- essary ones. We are, I think, in a brief period where it might be pos- sible to avoid a destructive arms race to build more, more powerful,¶ and more sophisticated, robotic weapons. It is for this reason that Peter Asaro, Juergen Altmann, Noel Sharkey, and I convened the “International committee for robot arms-control” that held its first workshop in Berlin in September 2010 [27]. The risks involved in such an arms race, which would direct an even higher percentage of robotics engineers into military research, as well as increase the likelihood that robots will be used in wars, is itself a further reason why engineers should “just say no” to military funding [2].

#### We as academics are directly responsible for what we say or don’t say about drone violence—this space is not neutral since we chose to debate the war powers topic—we have a responsibility to make the choice to say no to drones

Sparrow, 2012

[Robert, School of Philosophical, Historical and Inter- national Studies, “Just say no” to drones, IEEE TECHNOLOGY AND SOCIETY MAGAZINE | SPRING 2012] /Wyo-MB

 “A Searching and Fearless Moral Inventory”¶ Nothing I have said here is intended to deny that there are many decent, well-intentioned, and conscientious people working on military robots – some of whom I would like to count as friends.5 As I said at the outset, my goal here is to provoke discus- sion and to emphasize the need for such discussion to include moral and political questions about the justification of military spending in current circumstances and also of particular conflicts. Yet it must also be acknowledged that those who are addicted to military funding are unlikely to admit that they have a problem. At least briefly, then, I want to respond to several uncon- vincing arguments that defend the ethics of military research and also acknowledge the pressures that lead many engineers to accept military funding despite their own reserva- tions about doing so.¶ I suspect that working on projects funded by the military is only possible for many engi- neers because of the psychologi- cal distance between their own activities and the consequences of war. Computer scientists work- ing on an algorithm for machine vision for the military may not see the connection between what they do and the mangled corpses that result from the operations of military robots. Moreover, engi- neers can quite properly point to the intervening responsibility of others for the uses to which their research is put.¶ It would be implausible to insist that the responsibility of engineers who design military robots was no different to that of the warfighters who operate or command them. Equally well, however, it is too swift to conclude that engineers have no responsibility for the ulti- mate uses to which their research is put. Most human projects involve a number of people who must share responsibility for the outcomes of their actions and there is a large literature on responsibility for joint and collective projects – much larger than I could plausibly survey here [28].¶ However, there are two consider- ations that are crucial to determin- ing when – and how much – people should be held responsible for con- sequences brought about by the actions of others. The first is the extent to which it is foreseeable that our actions will contribute to or facilitate the immoral acts of others. The second is the extent to which our actions and the actions of oth- ers constitute joint action – action to a common purpose – or collective action – as part of the activities of a collective agent such as a corpora- tion or nation.¶ Both of these considerations suggest that engineers working on projects funded by the military do have significant responsibility for the uses to which their research is put. If one is being funded by the military, it can hardly be a surprise when one’s research is put to use killing people. Fund- ing from the military will usually involve a group of people work- ing to a common purpose that will largely be defined by the reasons why the military provided the funding. All these individuals will then have some responsibility for the outcomes of the joint project as well as for their particular contribu- tion to it. Whether or not engineers funded by the military contribute to the actions of a collective agent is more controversial. However, military organizations are them- selves paradigmatic examples of collective agents, being so tightly structured and organized as to be capable of acting in ways (for instance, invading A fghanistan) that individuals are not. In cases where the links between research- ers and military organizations are particularly strong, as, for instance, when they are extensive and/or long-standing, when the military is the primary source of funding for a research group, or when engineers are directly employed by the mili- tary, engineers may well come to be part of a collective agent dedicated to military goals and to inherit some responsibility for the actions of this agent.¶ Another thought that allows people to rationalize working on projects that they themselves feel uneasy about is “If I don’t do it, someone else will”. This is often true – although equally well it sits uneasily alongside the belief that one is uniquely talented, which itself is often necessary to achieve success in highly competitive fields such as engineering. However, this argument neglects that we are responsible for what we do and not just for what happens as a result of our choices. That others might do what we choose not to does not absolve us of responsibility for our actions. There are always people willing to deal drugs, after all, but most of us do not conclude that it might as well be us.¶ A related argument emphasizes how much robotics research is “dual use” and then suggests that, as there is no way to prevent the results of civilian research being adopted by the military, there is little point in refusing military funding [5], [24]. Again, this elides the distinction between our own actions and the actions of unrelated parties. Other people will try to draw the line at working on offensive weaponry, while being happy to work on defen- sive systems. This distinction can sustain less moral weight than first appears because defensive systems make offensive operations possi- ble: one contributes to the military achieving its ends either way.¶ A particularly unconvinc- ing argument for participating in research on military projects is that it is justified by the civilian spin- offs it generates. This argument is too quick to concede that if research isn’t funded by the military then it will not be funded at all. Spending money on any project will gener- ate unanticipated benefits. Indeed, even “pure” research typically leads to spin-offs. If we are look- ing for technologies for civilian purposes, we would do much better to research them directly.¶ I do want to acknowledge, how- ever, that individuals, particularly aspiring engineers, may pay a high personal price for refusing to work on projects that receive mili- tary funding. Given just how much robotics research is funded by the military, engineering students look- ing for a job or a place to undertake their doctorates may face a choice between working on a military project or not gaining entry into their desired profession at all. This is a dilemma that is unlikely to be faced by philosophers! Even if one is a more senior researcher, if one refuses military funding, one’s research may not be funded, and one’s career may be seriously affected.

#### Even unsuccessful demands to say no generate debate that is key to change

Sparrow, 2012

[Robert, School of Philosophical, Historical and Inter- national Studies, “Just say no” to drones, IEEE TECHNOLOGY AND SOCIETY MAGAZINE | SPRING 2012] /Wyo-MB

An Appeal to the¶ Engineering Profession¶ For this reason, the argument that engineers should “just say no” to military funding is best addressed to the robotics community as a whole rather than to individual engineers. Asking individuals to “just say no” to military fund- ing has the same problem as ask- ing them to “just say no” to drugs. The reasons why people become hooked on these things are largely social and relate to their environ- ment and, in particular, to the alter- natives available to them. If we want people to be able to kick the habit, we need to look at these envi- ronmental factors

 and try to change them through social policy rather than just rely upon individuals’ strength of will. Those individu- als who do want to “say no” will be better able to resist the social pres- sures that lead to addiction if they band together to do so.¶ My hope, then, is that this essay will spur discussion within the robotics community as to how it might support those who do refuse military funding and whether it might encourage others to do so. When professional associations of engineers or computer program- mers meet, when codes of ethics are being drafted, or professional standards are being set, I hope the question of the ethics of accepting military funding will be raised and debated.6 The most ambitious goal, for those who have found the argu- ment I have made here compelling, would be to have a clear state- ment adopted by the association or written into the code of ethics or standards, that engineers should refrain from accepting military funding.¶ Given how thoroughly contem- porary robotics research is infused with military money, this is prob- ably unlikely. However, even an unsuccessful campaign to this end would generate many benefits in terms of encouraging engineers to carefully think through their own perspectives on this topic. It also would allow like-minded people, who do wish to refuse military funding, to become aware of each other’s presence and to support each other in their struggle by developing alternative programs of research. Campaigns to query the ethics of accepting military funding for robotics might also profitably be carried out at the level of individual universities and research institutions, with students and faculty coming together to debate the question and perhaps deciding to prioritize other, less morally compromised, sources of funding.

## 2AC

#### Debating the law teaches us how to make it better

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism.¶ A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project.¶ Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes:¶ I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59¶ A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge.¶ The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject.¶ [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62¶ Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity).¶ What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests.¶ Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany.¶ This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7¶ There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order.¶ Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities.¶ Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition:¶ In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80¶ Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82¶ It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them.¶ 4. Conclusion¶ Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law.¶ This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their **legitimacy or** possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

u

#### We don’t say the state is ALWAYS good or necessary for all politics—however on the contingent question of drones we must engage the state because they are the only institution that engages in targeted killing. Debate over war powers allows for an engaged public that can expose the hypocrisy of the federal government—critical to exposing violence and the momentum for change

**Mellor 13**

The Australian National University, ANU College of Asia and the Pacific, Department Of International Relations,
“Why policy relevance is a moral necessity: Just war theory, impact, and UAVs,” European University Institute, Paper Prepared for BISA Conference 2013, DOA: 8-14-13

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 This paper has discussed the empirics of the policies of drone strikes in the ongoing conflict with those associate with al Qaeda. It has demonstrated that there are significant moral questions raised by the just war tradition regarding some aspects of these policies and it has argued that, thus far, just war scholars have not paid sufficient attention or engaged in sufficient detail with the policy implications of drone use. As such it has been argued that it is necessary for just war theorists to engage more directly with these issues and to ensure that their work is policy relevant, not in a utilitarian sense of abdicating from speaking the truth in the face of power, but by forcing policy makers to justify their actions according to the principles of the just war tradition, principles which they invoke themselves in formulating policy. By highlighting hypocrisy and providing the tools and language for the interpretation of action, the just war tradition provides the basis for the public engagement and political activism that are necessary for democratic politics.52

#### Avoiding nuclear war comes first—multiple warrants

David Krieger, President of the Nuclear Age Peace Foundation, May 17, 2007, “Responsibility in an Era of Consequences,” online: http://www.wagingpeace.org/articles/2007/05/17\_krieger\_Responsibility\_In\_An\_Era.htm, accessed August 12, 2007

The inaugural meeting of the World Future Council was recently held in Hamburg, Germany. It brought together 50 Councilors from all continents, chosen for their diversity and pioneering commitment to building a better world. At the conclusion of the four-day meeting, the Council released the Hamburg Call to Action, a document calling for action to protect the future of all life. It began, “Today we stand at the crossroads of human history. Our actions – and our failures to act – will decide the future of life on earth for thousands of years, if not forever.” The Call to Action is a challenge to each of us to take responsibility for assuring a positive future for humanity and for preserving life on our planet. The document states: “Today there is no alternative to an ethics of global responsibility for we are entering an era of consequences. We must share, co-operate and innovate together in building a world worthy of our highest aspirations. The decision lies with each one of us!” We are challenged to consider what we are individually and collectively doing not only to radically undermine our present world through war and its preparation, resource depletion, pollution and global warming, but also the effects of what we are doing upon future generations. Those of us alive now have the responsibility to pass the world on intact to the next generation, and to assure that our actions do not foreclose the future. The Hamburg Call to Action is a great document and I urge you to read and reflect upon it. But I draw your attention specifically to the section on nuclear weapons: “Nuclear weapons remain humanity’s most immediate catastrophic threat. These weapons would destroy cities, countries, civilization and possibly humanity itself. The danger posed by nuclear weapons in any hands must be confronted directly and urgently through a new initiative for the elimination of these instruments of annihilation.”

#### Preventing extinction needs to come first

Paul Wapner, associate professor and director of the Global Environmental Policy Program at American University, Winter 2003, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Pragmatic approaches to politics should be preferred because exclusively philosophical approaches will never completely describe a problem—you should default to the question of what should be done—these political questions should sequenced first or they get left unanswered—

David E. McClean, New School University, “The Cultural Left and the Limits of Social Hope,” Presented at the 2001 Annual Conference of the Society for the Advancement of American Philosophy, www.americanphilosophy.org/archives/2001%20Conference/Discussion%20papers/david\_mcclean.htm

There is a lot of philosophical prose on the general subject of social justice. Some of this is quite good, and some of it is quite bad. What distinguishes the good from the bad is not merely the level of erudition. Displays of high erudition are gratuitously reflected in much of the writing by those, for example, still clinging to Marxian ontology and is often just a useful smokescreen which shrouds a near total disconnect from empirical reality. This kind of political writing likes to make a lot of references to other obscure, jargon-laden essays and tedious books written by other true believers - the crowd that takes the fusion of Marxian and Freudian private fantasies seriously. Nor is it the lack of scholarship that makes this prose bad. Much of it is well "supported" by footnotes referencing a lode of other works, some of which are actually quite good. Rather, what makes this prose bad is its utter lack of relevance to extant and critical policy debates, the passage of actual laws, and the amendment of existing regulations that might actually do some good for someone else. The writers of this bad prose are too interested in our arrival at some social place wherein we will finally emerge from our "inauthentic" state into something called "reality." Most of this stuff, of course, comes from those steeped in the Continental tradition (particularly post-Kant). While that tradition has much to offer and has helped shape my own philosophical sensibilities, it is anything but useful when it comes to truly relevant philosophical analysis, and no self-respecting Pragmatist can really take seriously the strong poetry of formations like "authenticity looming on the ever remote horizons of fetishization." What Pragmatists see instead is the hope that we can fix some of the social ills that face us if we treat policy and reform as more important than Spirit and Utopia. Like light rain released from pretty clouds too high in the atmosphere, the substance of this prose dissipates before it can reach the ground and be a useful component in a discussion of medicare reform or how to better regulate a pharmaceutical industry that bankrupts senior citizens and condemns to death HIV patients unfortunate enough to have been born in Burkina Faso - and a regulatory regime that permits this. It is often too drenched in abstractions and references to a narrow and not so merry band of other intellectuals (Nietzsche, Bataille, Foucault, Luk�cs, Benjamin) to be of much use to those who are the supposed subject matter of this preternatural social justice literature. Since I have no particular allegiance to these other intellectuals, no particular impulse to carry their water or defend their reputations, I try and forget as much as I can about their writings in order to make space for some new approaches and fresh thinking about that important question that always faces us - "What is to be done?" I am, I think, lucky to have taken this decision before it had become too late. One might argue with me that these other intellectuals are not looking to be taken seriously in the construction of solutions to specific socio-political problems. They are, after all, philosophers engaged in something called philosophizing. They are, after all, just trying to be good culture critics. Of course, that isn't quite true, for they often write with specific reference to social issues and social justice in mind, even when they are fluttering about in the ether of high theory (Luk�cs, for example, was a government officer, albeit a minister of culture, which to me says a lot), and social justice is not a Platonic form but parses into the specific quotidian acts of institutions and individuals. Social justice is but the genus heading which may be described better with reference to its species iterations- the various conditions of cruelty and sadism which we wittingly or unwittingly permit. If we wanted to, we could reconcile the grand general theories of these thinkers to specific bureaucracies or social problems and so try to increase their relevance. We could construct an account which acts as a bridge to relevant policy considerations. But such attempts, usually performed in the reams of secondary literature generated by their devotees, usually make things even more bizarre. In any event, I don't think we owe them that amount of effort. After all, if they wanted to be relevant they could have said so by writing in such a way that made it clear that relevance was a high priority. For Marxians in general, everything tends to get reduced to class. For Luk�cs everything tends to get reduced to "reification." But society and its social ills are far too intricate to gloss in these ways, and the engines that drive competing interests are much more easily explained with reference to animal drives and fears than by Absolute Spirit. That is to say, they are not easily explained at all.

#### Simulated national security law debates preserve agency and enhance decision-making---avoids cooption

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, “National Security Law Pedagogy and the Role of Simulations”, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Finally, prefer a problem drive approach to IR—no priori questions

Owen 02, Reader in Political Theory at the University of Southampton (David, “Reorienting International Relations: On Pragmatism, Pluralism and Practical Reasoning”, Millennium: Journal of International Studies, Vol. 31, No. 3, <http://mil.sagepub.com/cgi/reprint/31/3/653>)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### Alt fails to create a sustainable model for our species- Using crisis driven politics is the only way to mobilize people in a way necessary to interrogate actions that threaten extinction

Schatz 12

(JL, Binghampton University, The Journal of Ecocentrism, “The Importance of Apocalypse: The Value of End-Of-The-World Politics While Advancing Ecocriticism,” 2012, <http://ojs.unbc.ca/index.php/joe/article/view/394/382>) /wyo-mm

Third, and most importantly, ecocritics must adopt tactics that can most effectively influence other ¶ people without proscribing end goals. By this I mean that ecocritics must use those tools that can ¶ appeal to the masses while simultaneously making their appeals in such a way as not to force a choice ¶ upon them. Apocalyptic imagery is ideal for this task. It appeals to notions of shared planetary concerns¶ that serve as motivation for others to act, even without fully knowing how the apocalypse can truly be ¶ averted. By creating a compelling urge to do something that arises out of the image of planetary ¶ annihilation ecocriticism can influence a variety of people to take up arms through a multitude of ¶ techniques. Society as a whole will never mobilize to halt the very practices that threaten life without ¶ such compelling inspiration. When ecocriticism helps other people see how certain actions risk their¶ very survival it will enable our planet to evolve differently. So long as ecocriticism never gives up on the struggle, even if this different direction may bring new scenarios of apocalypse, humanity as a species ¶ can continually evolve its patterns and behaviors to advert extinction. This is not to say we will live ¶ forever. Rather it is to say that as a species we can continue to exist in harmony with the lives all around ¶ us and give our deaths meaning. Ultimately, it is through imagining the end of the world that we will be ¶ able to envision how to save it.

.

**form of communication ethics because it closes arguments off to refutation—that specifically turns their advocacy**

**Farber 99**

(Professor of Law and Associate Dean of Faculty, University of Minnesota, “Beyond All Criticism”, 83 Minn. L. Rev. 1735, June//wyoccd)

The difficulty of extracting any workable conception of social equality from radical multiculturalism is a sign of a larger set of problems. We argued in Beyond All Reason that radical multiculturalism is inherently destructive of dialogue and community. **Among the problems are its tendency to reduce argument to the exchange and criticism of personal stories; its inability to separate disagreement with a speaker's message from attacks on the speaker as a person; and its divisive entanglement in identity politics**. **Because radical multiculturalism replaces a belief in objective truth with a focus on power relations, it faces the temptation to slide away from democratic interchange toward nihilism or authoritarianism.** Anne **Coughlin summarizes** (and partially endorses) **our argument** in the following passage: Throughout the book, Farber and Sherry repeatedly **fault the radicals for politicizing scholarship, for confusing politics with truth, and for rejecting universal values in favor of an intellectual totalitarianism that privileges the subjective preferences of whoever happens to be in power**. Indeed, as Farber and Sherry notice, **some of the more extreme statements by the radical multiculturalists amount to an endorsement of the ugliest kind of fascism**... These criticisms are obvious, devastating, and, from the perspective of traditional liberal scholars, largely unanswerable. n102 In their contributions to this symposium, Matthew Finkin and Steven Gey expand upon the potentially antidemocratic implications of radical multiculturalism. Finkin draws a detailed and rather worrisome comparison between radical multiculturalism and the jurisprudential principles accepted in certain European fascist regimes. Indeed, he goes farther. He offers the hypothesis "that **radical multiculturalism has more than an "affinity' with Fascism; that it is Fascist to the bone**." n103 Gey argues that **radical multiculturalism leads to an essentially conservative politics**: "**since the social constructionists refuse to recognize the legitimacy of liberal institutional limits on political power, they implicitly give every group that obtains ultimate power the authority to impose that group's "truth' on everyone else**." n104 In various ways, and sometimes in language much more pointed than our own, Finkin, Gey, and Coughlin all raise the question of whether the hard-won virtues of a liberal society are compatible with a serious adherence to radical multiculturalism. As Coughlin points out, **much of the attention of the radical multiculturalists is focused on the academic world in which they live and work. We might begin, then, by asking whether their viewpoint is consistent with the values of intellectual and academic freedom that are central to the classical liberal vision of the university. The traditional arguments for academic freedom are based on the notion of searching for truth**, a concept that is made problematic by post-modernism. n105 Some criticisms of Beyond All Reason also suggest an intolerance for academic debate. The most obvious concern is raised by the intemperate response of radicals such as Calmore and Culp to any criticism of their school of thought. Such views, if held either by individuals with influence within universities or by administrators of speech codes, would pose a direct threat to free debate. Charges of racism, when issuing from those who advocate legal penalties against racist speakers, are not just empty rhetoric. In addition to the openly vituperative replies, some of the responses illustrate the attitude we criticized in Derrick Bell as a "knowing and dismissive sneer." n106 Calmore, for example, [\*1762] suggests that our book "should really be buried" n107 rather than discussed. Culp says that "the philosophical ideas expressed in this book... are to philosophy what lite is to beer." n108 Continuing Bell's reference to Louis Armstrong - if you don't know jazz, "don't mess with it" n109 - Calmore engages in an extended discussion of jazz and his ambivalence about its appeal to a broad audience, concluding that "it really is okay that Farber and Sherry are not happily within [the] audience" for radical multiculturalism. n110 **These shrugs of disdain do not exactly invite dialogue**. But the more significant point is not the defensive tone of the radicals, but their distorted picture of intellectual discourse. For instance, Abrams calls for a "truce" in which traditional scholars and radical multiculturalists will learn to live side by side. n111 This turns out to be a rather one-sided truce, however**. Traditional scholars**, according to Abrams, **should not "challenge" multiculturalists by asking about the truth or normative implications of their narratives**, n112 **but radical multiculturalists are free to accuse traditionalists of racism and sexism whenever they think it appropriate**. n113 For Delgado, scholarship is equivalent to a lawsuit (or political warfare), where each side is trying to win: thus it is unfair to write a favorable review of a scholar in the "same camp" or on your "side" unless you disclose your common affiliation. n114 This is a somewhat peculiar vision of academic discussion.

#### Personal experience at the expense of dialogue shuts down deliberation and makes debate useless

Subtonik 98

(Professor of Law, Touro College, Jacob D. Fuchsberg Law Center. Cornell J. L. & Pub. Pol'y 681)

Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain - assertions for which there are data to serve as grist for the academic mill - but that the minority scholar himself or herself hurts and hurts badly.¶ An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [\*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, "I hurt bad"? n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well- being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74¶ "Precarious." "Obliterating." These words will clearly invite responses only from fools and sociopaths; they will, by effectively precluding objection, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from abstracting themselves from their pain in order to gain perspective on their condition. n77¶ [\*696] Last, as we have seen, it precludes the possibility of open and structured conversation with others. n78 [\*697] It is because of this conversation-stopping effect of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience on the table, along with other relevant material, but to subject that experience to the same level of scrutiny.¶ If through the foregoing rhetorical strategies CRATs succeeded in limiting academic debate, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of cynicism in white audiences which, in turn, has had precisely the reverse effect of that ostensibly desired by CRATs. It drives the American public to the right and ensures that anything CRT offers is reflexively rejected.¶ In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are too important in their implications [\*698] for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of great importance that white thinkers and doers participate in open discourse to bring about change. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

#### Bearing witness fails and furthers suffering – the empathic response is experienced from a privileged and safe position which undermines the efficacy of its response, stories of suffering are appropriated and misrepresented by others which causes further pain, and witnessing violence in contemporary society contributes to compassion fatigue that makes empathetic response impossible.

Smaro Kamboureli, Canada Research Chair Tier 1 in Critical Studies in Canadian Literature University of Guelph, “Writing the Foreign in Canadian Literature and Humanitarian Narratives” University of Toronto Quarterly, 82(2), Spring 2013.

This epigraph from Spivak reflects this special issue’s overall focus and encapsulates one of the primary questions examined by the contributors: [End Page 87] how to respond to the violence suffered by others without inflicting further violence on them. ‘Writing the Foreign in Canadian Literature and Humanitarian Narratives’ thus contributes to the discussion about bearing witness and the politics of empathy. Empathy as a word may be only a little over 100 years old,2 but as a concept it constitutes a fundamental aspect of human nature. David Hume and Adam Smith, two of the first philosophers to talk about it, use the word ‘sympathy’ to refer to the same condition,3 and both stress that it is located in the imagination. ‘Sympathy,’ Hume writes, ‘is nothing but the conversion of an idea into an impression by the force of imagination’ (474). And here is what Smith says: ‘Though our brother is on the rack, as long as we ourselves are at ease, our senses will never inform us of what he suffers . . . It is by the imagination only that we can form any conception of what are his sensations . . . It is the impressions of our senses only, not those of his, which our imaginations copy’ (11–12). With the imagination being its primary organ, empathy registers a movement outward, beyond the self, albeit one experienced within a position of at least relative safety, if not privilege, that runs the risk of sabotaging its best intentions. As Richard Ashby Wilson and Richard D. Brown state, ‘[t]he recounting of stories of suffering is not only beneficial for the moral and emotional education of the listener, but, it is argued, for the victim and teller also’ (21). Kim Echlin also makes the same point by drawing attention to the telling act that links the self and the other: ‘Our stories help us to explore our connectedness with each other, to witness each other,’ she writes, for they ‘document what humans do to each other when they see one another as less than human, as “other,” as “foreign”’ (130). Nevertheless, such stories can also be ‘vulnerable to appropriation and misrepresentation’ (Wilson and Brown 25) and thus may cause further pain to the very subjects whose suffering they record. This is one of the concerns with which Suzanne Bailey engages in her essay on Margaret Laurence’s The Prophet’s Camel Bell in this volume. Seeing the foreign ‘not as a static object or concept but as an embodied field,’ Bailey examines Laurence’s moral dilemma as to how to respond to the plight of the child prostitute, Asha, she encounters while in Somalia; Laurence has ‘the strong suspicion’ that she ‘might easily make Asha’s life worse by interfering. I could not take her away from the situation entirely, and what else would do any good?’ (qtd. in Bailey 180). Learning to ‘navigate[] a [End Page 88] particular complex sequence of potential outcomes to a decision,’ as Laurence attempts to do, ‘to intervene or not intervene’ (181), is a challenge that is not easily overcome. This special issue addresses the affective and material politics, as well as ambivalent effects, of compassionate response to the suffering of those reduced to bare life.4 In the epigraph to this introduction, Spivak refers specifically to the ‘war on terror’ (372), but her comment applies as well to other manifestations of violence and their lingering aftermath. Regardless of how it is mediated, witnessing violence inflicted on others, especially when there seems to be no end ß Marked 15:55 ß to its proliferation, may produce atrocity-jaded subjects who immure themselves against the affect the spectacle, never mind the reality, of violence produces. But living as we do at a time when the ‘empire of trauma’ (Fassin and Rechtman) reigns large, being confronted with the impact of violence experienced by others elicits responses that range from intensifying our apprehension about the violence to which we respond to questioning the nature of our response in the first place. It is not just the irruption of violence – be it in the form of warfare between nation-states, genocide, civil war, ethnic conflict, or violations of human rights – that is at stake here. Rather, even though a growing number of scholars from different disciplines, including psychologist Steven Pinker and international studies scholar Andrew Mack, argue that our time is decidedly marked by a major ‘decline in violence,’ it is its mediatized explosion as a spectacle – as Heike Härting shows in this special issue – its relentless presence, that continues (not surprisingly) to have an impact. Pinker has amassed in The Better Angel of Our Nature: Why Violence Has Declined a voluminous body of evidence across time periods and at different scales through which he demonstrates that our world has never been less violent.5 He warns us that we should not ‘understand the decline of violence as an unstoppable force for progress that is carrying us toward an omega point of perfect peace,’ but even so he concludes that, ‘to [his] repeated astonishment, the global trends [of violence] . . . viewed from the vantage point of the present . . . point downward’ (5). Though methodologically different and limited in its scope to ‘organized violence,’ the Human Security Report Project (HSRP, Simon Fraser University), which Andrew Mack directs, released similarly optimistic [End Page 89] results in its The Human Security Report 2009/2010: The Causes of Peace and the Shrinking Costs of War.6