## 1

#### a. Interpretation and violation---the affirmative should defend the desirability of topical government action

#### Most predictable—the agent and verb indicate a debate about hypothetical government action

Jon M Ericson 3, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4

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

#### “Restrict” is to prevent

Corpus Juris Secundum, 1931

(Volume 54, p. 735)

RESTRICT: To confine; to limit; to prevent (a person or thing) from passing a certain limit in any kind of action; to restrain; to restrain without bounds.

#### “War powers” refers to the authority to use military force

Waxman, Professor of Law, Columbia Law School, 13

(Matthew, Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power To Threaten War,” Draft, Forthcoming in YALE LAW JOURNAL, vol. 123 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777, accessed 8-28-13, CMM)

As to the constitutional issues, there is wide agreement among legal scholars on¶ the general historical saga of American war powers – by which I mean here the authority¶ to use military force, and not the specific means or tactics by which war is waged once¶ initiated7 – though there remains intense disagreement about whether this is an optimistic¶ or pessimistic story from the perspective of constitutional values and protection of¶ American interests. Generally speaking, the story goes like this: The Founders placed¶ decisions whether actively to engage in military hostilities in Congress’s hands, and¶ Presidents mostly (but not always) respected this allocation for the first century and a half¶ of our history.8 At least by the Cold War, however, Presidents began exercising this¶ power unilaterally in a much wider set of cases, and Congress mostly allowed them to;9¶ an effort to realign legislatively the allocation after the Vietnam War failed, and today the¶ President has a very free hand in using military force that does not rise to the level of¶ “war” (in constitutional terms, which is usually confined to large-scale and long-duration¶ uses of ground forces).10 From a functional standpoint, this dramatic shift in¶ constitutional power is seen as either good, because decisions to use force require policy¶ dexterity inherent in the presidency, or bad, because unilateral presidential decisions to¶ use force are more prone than congressionally-checked ones to be dangerously rash.11

#### Debate over a controversial point of action creates argumentative stasis—the resolution is key to decision making

Steinberg and Freely 08

(David L., lecturer of communication studies – University of Miami, and Austin J.,Boston based attorney who focuses on criminal, personal injury and civil rights law, “Argumentation and Debate: Critical Thinking for Reasoned Decision Making” p. 45//wyoccd)

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

#### Debate needs middle of the road constraints; unbridled affirmation destroys dialogue that are key to political discussion

Hanghoj 08

(Thorkild Hanghøj, Phd, DREAM (Danish Research Centre on Education and Advanced Media Materials at the Institute of Literature, Media and Cultural Studies at the University of Southern Denmark. 2008 http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf//wyoccd)

Debate games are often based on pre-designed scenarios that include descriptions of issues to be debated, educational goals, game goals, roles, rules, time frames etc. In this way, debate games differ from textbooks and everyday classroom instruction as debate scenarios allow teachers and students to actively imagine, interact and communicate within a domain-specific game space. However, instead of mystifying debate games as a “magic circle” (Huizinga, 1950), I will try to overcome the epistemological dichotomy between “gaming” and “teaching” that tends to dominate discussions of educational games. In short, educational gaming is a form of teaching. As mentioned, education and games represent two different semiotic domains that both embody the three faces of knowledge: assertions, modes of representation and social forms of organisation (Gee, 2003; Barth, 2002; cf. chapter 2). In order to understand the interplay between these different domains and their interrelated knowledge forms, I will draw attention to a central assumption in Bakhtin’s dialogical philosophy. According to Bakhtin, all forms of communication and culture are subject to centripetal and centrifugal forces (Bakhtin, 1981). A centripetal force is the drive to impose one version of the truth, while a centrifugal force involves a range of possible truths and interpretations. This means that any form of expression involves a duality of centripetal and centrifugal forces: “Every concrete utterance of a speaking subject serves as a point where centrifugal as well as centripetal forces are brought to bear” (Bakhtin, 1981: 272). If we take teaching as an example, it is always affected by centripetal and centrifugal forces in the on-going negotiation of “truths” between teachers and students. In the words of Bakhtin: “Truth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction” (Bakhtin, 1984a: 110). Similarly, the dialogical space of debate games also embodies centrifugal and centripetal forces. Thus, the election scenario of The Power Game involves centripetal elements that are mainly determined by the rules and outcomes of the game, i.e. the election is based on a limited time frame and a fixed voting procedure. Similarly, the open-ended goals, roles and resources represent centrifugal elements and create virtually endless possibilities for researching, preparing, presenting, debating and evaluating a variety of key political issues. Consequently, the actual process of enacting a game scenario involves a complex negotiation between these centrifugal/centripetal forces that are inextricably linked with the teachers and students’ game activities. In this way, the enactment of The Power Game is a form of teaching that combines different pedagogical practices (i.e. group work, web quests, student presentations) and learning resources (i.e. websites, handouts, spoken language) within the interpretive frame of the election scenario. Obviously, tensions may arise if there is too much divergence between educational goals and game goals. This means that game facilitation requires a balance between focusing too narrowly on the rules or “facts” of a game (centripetal orientation) and a focusing too broadly on the contingent possibilities and interpretations of the game scenario (centrifugal orientation). For Bakhtin, the duality of centripetal/centrifugal forces often manifests itself as a dynamic between “monological” and “dialogical” forms of discourse. Bakhtin illustrates this point with the monological discourse of the Socrates/Plato dialogues in which the teacher never learns anything new from the students, despite Socrates’ ideological claims to the contrary (Bakhtin, 1984a). Thus, discourse becomes monologised when “someone who knows and possesses the truth instructs someone who is ignorant of it and in error”, where “a thought is either affirmed or repudiated” by the authority of the teacher (Bakhtin, 1984a: 81). In contrast to this, dialogical pedagogy fosters inclusive learning environments that are able to expand upon students’ existing knowledge and collaborative construction of “truths” (Dysthe, 1996). At this point, I should clarify that Bakhtin’s term “dialogic” is both a descriptive term (all utterances are per definition dialogic as they address other utterances as parts of a chain of communication) and a normative term as dialogue is an ideal to be worked for against the forces of “monologism” (Lillis, 2003: 197-8). In this project, I am mainly interested in describing the dialogical space of debate games. At the same time, I agree with Wegerif that “one of the goals of education, perhaps the most important goal, should be dialogue as an end in itself” (Wegerif, 2006: 61).

#### b. Vote neg

#### Preparation and clash—changing the topic post facto manipulates balance of prep, which structurally favors the aff because they speak last and permute alternatives—strategic fairness is key to engaging a well-prepared opponent

#### Topical fairness requirements are key to effective dialogue—monopolizing strategy and prep makes the discussion one-sided and subverts any meaningful neg role

#### 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.

## 2

#### Trading autobiographical narrative for the ballot commodifies one’s identity and has limited impact on the culture that one attempt’s to reform – when autobiographical narrative “wins,” it subverts its own most radical intentions by becoming an exemplar of the very culture under indictment

Coughlin 95—associate Professor of Law, Vanderbilt Law School. (Anne, REGULATING THE SELF: AUTOBIOGRAPHICAL PERFORMANCES IN OUTSIDER SCHOLARSHIP, 81 Va. L. Rev. 1229)

Although Williams is quick to detect insensitivity and bigotry in remarks made by strangers, colleagues, and friends, her taste for irony fails her when it comes to reflection on her relationship with her readers and the material benefits that her autobiographical performances have earned for her. n196 Perhaps Williams should be more inclined to thank, rather than reprimand, her editors for behaving as readers of autobiography invariably do. When we examine this literary faux pas - the incongruity between Williams's condemnation of her editors and the professional benefits their publication secured her - we detect yet another contradiction between the outsiders' use of autobiography and their desire to transform culture radically. Lejeune's characterization of autobiography as a "contract" reminds us that autobiography is a lucrative commodity. In our culture, members of the reading public avidly consume personal stories, n197 which surely explains why first-rate law journals and academic presses have been eager to market outsider narratives. No matter how unruly the self that it records, an autobiographical performance transforms that self into a form of "property in a moneyed economy" n198 and into a valuable intellectual [\*1283] asset in an academy that requires its members to publish. n199 Accordingly, we must be skeptical of the assertion that the outsiders' splendid publication record is itself sufficient evidence of the success of their endeavor. n200

Certainly, publication of a best seller may transform its author's life, with the resulting commercial success and academic renown. n201 As one critic of autobiography puts it, "failures do not get published." n202 While writing a successful autobiography may be momentous for the individual author, this success has a limited impact on culture. Indeed, the transformation of outsider authors into "success stories" subverts outsiders' radical intentions by constituting them as exemplary participants within contemporary culture, willing to market even themselves to literary and academic consumers. n203 What good does this transformation do for outsiders who are less fortunate and less articulate than middle-class law professors? n204 Although they style themselves cultural critics, the [\*1284] storytellers generally do not reflect on the meaning of their own commercial success, nor ponder its entanglement with the cultural values they claim to resist. Rather, for the most part, they seem content simply to take advantage of the peculiarly American license, identified by Professor Sacvan Bercovitch, "to have your dissent and make it too." n205

#### Resistance via the ballot can only instill an adaptive politics of being and effaces the institutional constraints that reproduce structural violence

Brown 95—prof at UC Berkeley (Wendy, States of Injury, 21-3)

For some, fueled by opprobrium toward regulatory norms or other mo- dalities of domination, the language of "resistance" has taken up the ground vacated by a more expansive practice of freedom. For others, it is the discourse of “empowerment” that carries the ghost of freedom's valence ¶ 22¶. Yet as many have noted, insofar as resistance is an effect of the regime it opposes on the one hand, and insofar as its practitioners often seek to void it of normativity to differentiate it from the (regulatory) nature of what it opposes on the other, it is at best politically rebellious; at worst, politically amorphous. Resistance stands against, not for; it is re-action to domination, rarely willing to admit to a desire for it, and it is neutral with regard to possible political direction. Resistance is in no way constrained to a radical or emancipatory aim. a fact that emerges clearly as soon as one analogizes Foucault's notion of resistance to its companion terms in Freud or Nietzsche. Yet in some ways this point is less a critique of Foucault, who especially in his later years made clear that his political commitments were not identical with his theoretical ones (and un- apologetically revised the latter), than a sign of his misappropriation. For Foucault, resistance marks the presence of power and expands our under- standing of its mechanics, but it is in this regard an analytical strategy rather than an expressly political one. "Where there is power, there is resistance, and yet. or rather consequently, this resistance is never in a position of exteriority to power. . . . (T]he strictly relational character of power relationships . . . depends upon a multiplicity of points of resis- tance: these play the role of adversary, target, support, or handle in power relations.\*39 This appreciation of the extent to which resistance is by no means inherently subversive of power also reminds us that it is only by recourse to a very non-Foucaultian moral evaluation of power as bad or that which is to be overcome that it is possible to equate resistance with that which is good, progressive, or seeking an end to domination. ¶ If popular and academic notions of resistance attach, however weakly at times, to a tradition of protest, the other contemporary substitute for a discourse of freedom—“empowerment”—would seem to correspond more closely to a tradition of idealist reconciliation. The language of resistance implicitly acknowledges the extent to which protest always transpires inside the regime; “empowerment,” in contrast, registers the possibility of generating one’s capacities, one’s “self-esteem,” one’s life course, without capitulating to constraints by particular regimes of power. But in so doing, contemporary discourses of empowerment too often signal an oddly adaptive and harmonious relationship with domination insofar as they locate an individual’s sense of worth and capacity in the register of individual feelings, a register implicitly located on some- thing of an other worldly plane vis-a-vis social and political power. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is key to the fictional sovereign individualism of liberalism. Moreover, in its almost exclusive focus on subjects’ emotionalbearing and self-regard, empowerment is a formulation that converges with a regime’s own legitimacy needs in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also draw so heavily on an undeconstructed subjectivity that they risk establishing a wide chasm between the (experience of) empowerment and an actual capacity to shape the terms of political, social, or economic life. Indeed, the possibility that one can “feel empowered” without being so forms an important element of legitimacy for the antidemocratic dimensions of liberalism.

#### Our alternative is to recognize debate as a site of contingent commonality in which we can forge bonds of argumentation beyond identity---the affirmative’s focus on subjectivity abdicates the flux of politics and debate for the incontestable truth of identity

Brown 95—prof at UC Berkely (Wendy, States of Injury, 47-51)

The postmodern exposure of the imposed and created rather than dis- covered character of all knowledges—of the power-surtuscd, struggle-¶48¶produced quality of all truths, including reigning political and scientific ones—simultaneously exposes the groundlessness of discovered norms or visions. It also reveals the exclusionary and regulatory function of these norms: white women who cannot locate themselves in Nancy Hartsock’s account of women’s experience or women s desires, African American women who do not identify with Patricia Hill Collinss account of black women’s ways of knowing, are once again excluded from the Party of Humanism—this time in its feminist variant. ¶Our alternative to reliance upon such normative claims would seem to be engagement in political struggles in which there are no trump cards such as “morality” or “truth."Our alternative, in other words, is to struggle within an amoral political habitat for temporally bound and fully contestable visions of who we are and how we ought to live. Put still another way, postmodernity unnerves feminist theory not merely because it deprives us of uncomplicated subject standing, as Christine Di Stefano suggests, or of settled ground for knowledge and norms, as Nancy Hartsock argues, or of "centered selves and “emancipatory knowledge," as Seyla Bcnhabib avers. Postmodernity unsettles feminism because it erodes the moral ground that the subject, truth, and nor- mativity coproduce in modernity. When contemporary feminist political theorists or analysts complain about the antipolitical or unpolitical nature of postmodern thought—thought that apprehends and responds to this erosion—they arc protesting, inter' aha, a Nictzschcan analysis of truth and morality as fully implicated in and by power, and thereby dplegiti- mated qua Truth and Morality Politics, including politics with passion- ate purpose and vision, can thrive without a strong theory of the subject, without Truth, and without scientifically derived norms—one only need reread Machiavelli, Gramsci, or Emma Goldman to see such a politics flourish without these things. The question is whether fnninist politics can prosper without a moral apparatus, whether feminist theorists and activists will give up substituting Truth and Morality for politics. Are we willing to engage in struggle rather than recrimination, to develop our faculties rather than avenge our subordination with moral and epistemological gestures, to fight for a world rather than conduct process on the existing one? Nictzschc insisted that extraordinary strengths of character and mind would be necessary to operate in thce domain of epistemological and religious nakedness he heralded. But in this heexcessively individualized a challenge that more importantly requires the deliberate development of postmoral and antirelativist political spaces, practices of deliberation, and modes of adjudication.¶49¶The only way through a crisis of space is to invent a new space —Fredric Jameson. “Postmodernism"¶Precisely because of its incessant revelation of settled practices and identi- ties as contingent, its acceleration of the tendency to melt all that is solid into air. what is called postmodernity poses the opportunity to radically sever the problem of the good from the problem of the true, to decide “what we want” rather than derive it from assumptions or arguments about “who we are.”Our capacity to exploit this opportunity positively will be hinged to our success in developing new modes and criteria for political judgment. It will also depend upon our willingness to break certain modernist radical attachments, particularly to Marxism’s promise (however failed) of meticulously articulated connections betwreen a com- prehensive critique of the present and norms for a transformed future—a science of revolution rather than a politics of oneResistance, the practice most widely associated with postmodern polit- ical discourse, responds to without fully meeting the normativity chal- lenge of postmodernity. A vital tactic in much political w’ork as wrcll as for mere survival, resistance by itself does not contain a critique, a vision, or grounds for organized collective efforts to enact either. Contemporary affection for the politics of resistance issues from postmodern criticism’s perennial authority problem: our heightened consciousncss of the will to power in all political “positions” and our wrariness about totalizing an- alyses and visions. Insofar as it eschew’s rather than revisesthese problematic practices, resistance-as-politics does not raise the dilemmas of responsibility and justification entailed in “affirming” political projects and norms. In this respect, like identity politics, and indeed sharing with identity politics an excessively local viewpoint and tendency toward positioning without mapping, the contemporary vogue of resistance is more a symptom of postmodernity’s crisis of political space than a coherent response to it.Resistance goes nowhere in particular, has no inherent attachments, and hails no particular vision; as Foucault makes clear, resistance is an effect of and reaction to power, not an arrogation of it.¶What postmodernity disperses and postmodern feminist politics requires are cultivated political spaces for posing and questioning feminist political norms, for discussing the nature of “the good” for women. Democratic political space is quite undcrtheonzed in contemporary femi- nist thinking, as it is everywhere in latc-twentieth-ccntury political the- ory, primarily bccausc it is so little in evidence. Dissipated by the increasing tcchnologizing of would-be political conversations and pro- cesses, by the erosion of boundaries around specifically political domains¶50¶and activities, and by the decline of movement politics, political spaces are scarcer and thinner today than even in most immediately prior epochs of Western history. In this regard, their condition mirrors the splayed and centrifuged characteristics of postmodern political power. Yet precisely because of postmodernity’s disarming tendencies toward political disori- entation, fragmentation, and technologizing, the creation of spaces where political analyses and norms can be proffered and contested is su- premely important.¶Political space is an old theme in Western political theory, incarnated by the polis practices of Socrates, harshly opposed by Plato in the Repub- lic, redeemed and elaborated as metaphysics by Aristotle, resuscitated as salvation for modernity by Hannah Arendt. jnd given contemporary spin in Jurgen Habermas's theories of ideal speech situations and com- municative rationality. The project of developing feminist postmodern political spaces, while enriched by pieces of this tradition, necessarily also departs from it. In contrast with Aristotle’s formulation, feminist politi- cal spaces cannot define themselves against the private sphere, bodies, reproduction and production, mortality, and all the populations and is- sues implicated in these categories. Unlike Arendt’s, these spaces cannot be pristine, ratified, and policed at their boundaries but are necessarily cluttered, attuned to earthly concerns and visions, incessantly disrupted, invaded, and reconfigured. Unlike Habermas, wc can harbor no dreams of nondistorted communication unsullied by power, or even of a ‘com- mon language,’\* but wc recognize as a permanent political condition par- tiality of understanding and expression, cultural chasms whose nature may be vigilantly identified but rarely “resolved,” and the powers of words and images that evoke, suggest, and connote rather than transmit meanings.42 Our spaces, while requiring some definition and protection, cannot be clean, sharply bounded, disembodied, or permanent: to engage postmodern modes of power and honor specifically feminist knowledges, they must be heterogenous, roving, relatively noninstitutionalized, and democratic to the point of exhaustion.¶Such spaces are crucial for developing the skills and practices of post- modern judgment, addressing the problem of “how to produce a discourse on justicc . . . when one no longer relies on ontology or epistemology.”43 Postmodemity’s dismantling of metaphysical foundations for justice renders us quite vulnerable to domination by technical reason ¶51¶unless we seize the opportunity this erosion also creates to develop democratic processes for formulating postepistemelogical and postontological judgments. Such judgements require learning how to have public conversations with each other, arguing from a vision about the common (“what I want for us") rather than from identity (“who I am”),and from explicitly postulated norms and potential common values rather than false essentialism or unreconstructed private interest.44 Paradoxically, such public and comparatively impersonal arguments carry potential for greater accountability than arguments from identity or interest. While the former may be interrogated to the ground by others, the latter are insulated from such inquiry with the mantle of truth worn by identity-based speech. Moreover, postidentitypolitical positions and conversations potentially replace a politics of difference with a politics of diversity—differences grasped from a perspective larger than simply one point in an ensemble.Postidentity public positioning requires an outlook that discerns structures of dominance within diffused and disorienting orders of power, thereby stretching toward a more politically potent analysis than that which our individuated and fragmented existences can generate. In contrast to Di Stefano's claim that 'shared identity” may constitute a more psychologically and politically reliable basis for “attachment and motivation on the part of potential activists,” I am suggesting that political conversation oriented toward diversity and the common, toward world rather than self, and involving a conversion of ones knowledge of the world from a situated (subject) position into a public idiom,offers us the greatest possibility of countering postmodern social fragmentations and political disintegrations.¶Feminists have learned well to identify and articulate our "subject positions —we have become experts at politicizing the “I”that is produced through multiple sites ofpower and subordination. But the very practice so crucial to making these elements of power visible and subjectivity political may be partly at odds with the requisites for developing political conversation among a complex and diverse “we.” We may need to learn public speaking and the pleasures of public argument not to overcome our situatedness, but in order to assume responsibility for our situations and to mobilize a collective discourse that will expand them. For the political making of a feminist future that does not reproach the history on which it is borne, we may need to loosen our attachments to subjectivity, identity, and morality and to redress our underdeveloped taste for political argument.

## Case

#### There’s no way to meet their role of the ballot- using narratives in academic spaces are detrimental to political change. The aff ultimately leaves no way for a critic to adjudicate between competing narrative

Hyman 98

(David, Associate Professor, University of Maryland School of Law. B.A. 1983, J.D. 1989, M.D. 1991, University of Chicago Indiana law Journal, “Lies, Damned lies, and Narrative” 73 Ind. L.J. 797, Summer 1998)

As EMTALA demonstrates, an effective narrative can transform the legal landscape.247 However, the EMTALA narratives raise serious questions about the substantial potential for abuse inherent in this form of discourse.248 Narrative turns out to be exceedingly effective at transmitting untruthful, incomplete, and unrepresentative anecdotes-particularly those that trigger a "flash of recognition" because they confirm preexisting suspicions or stereotypes-or are themselves simply stereotypes.249 Consider the impact of similar narratives, endlessly repeated, on the prevalence of belief in "black helicopters" and other conspiracy theories among various fringe groups on the far right.250 At the other end of the political spectrum, what of the belief in some sectors of the African-American community that AIDS was created by European-American (usually Jewish) doctors as a tool for racial warfare, and that the government's drug policies are designed to the same effect?251 And what of the belief that UFOs visited Roswell, New Mexico in 1947, which crosses all political boundaries?252 Only blind optimism can explain the enthusiasm with which narrative has been embraced, and the degree to which its hazards have been discounted.253 Mark Twain attributed to Benjamin Disraeli the insight that there are three kinds of lies: "lies, damned lies, and statistics."254 Unfortunately, as this Article makes clear, both anecdotes and statistics can lie-but do so in different ways. Significant adverse consequences can follow when laws are based on falsehoods, half-truths, and truths that are not generalizable-whether the source of such information is anecdotal or statistical.255 The problem was nicely framed by Professor Saks: The trouble with legislation by anecdote is not just that some of them are false or misleading. Even if true and accurate, anecdotes contribute little to developing a meaningful picture of the situation about which we are concerned. It makes a difference if for every ten anecdotes in which an undeserving plaintiff bankrupts an innocent defendant, one, ten, one hundred, or one thousand equal and opposite injustices are done to innocent plaintiffs. The proportion of cases that results in one or the other error, and the ratio of one kind of error to the other, ought to be of greater interest to serious policy-makers than a handful of anecdotes on either side of the issue. Reforms are intended to change that ratio and the tens of thousands of anecdotes the ratio summarizes.256 Narrativists gloss over such difficulties, but that strategy is likely to be ineffective-and costly. Because narrative does not aspire to neutrality or typicality, its use in the public sphere is fraught with peril. "Good" narrative appeals directly to our passions and prejudices-and the better it is at doing so, the more likely it is to be credited as truthful and representative-whether it is or not. When statistics disagree, there are ways of sorting out matters-and experts to provide assistance in doing so.257 When narratives disagree, there is no appeal, except to innate persuasiveness (i.e., the degree to which the narrative coincides with our passions and prejudice).258 As the EMTALA narratives demonstrate, the predictable consequence is a tremendous gap between "narrative appeal" and empirical reality. Barring the unlikely development of a generalized sense of "statistical compassion,"259 anecdotal evidence will continue to play a major role in the formulation of public policy.260 As such, we need to develop strategies for dealing with the infirmities of both statistics and narrative. Although it is beyond the scope of this Article to suggest an optimal response, some tentative guidelines may be helpful. For anecdotes, the short version is "be exceedingly skeptical," "consider the source," and "don't generalize without additional (nonanecdotal) evidence." For empirical scholarship, "be skeptical," "consult the experts," and "consider the source" are probably sufficient safeguards. These simple rules should help minimize the tendency toward distorted decisionmaking which would otherwise result. Of course, the full effect of these checks and balances will only be felt if the academic community (re)developed a more skeptical stance toward anecdotal advocacy, instead of engaging in it themselves, and calling it "narrative."

#### Their political strategy through reflecting on personal experience is particularly problematic in the context of war powers. Empirically, dominant forces have manipulated their conversational model to bolster masculine white supremacy and perpetuate military intervention.

Boor Tonn 2005 – Associate Professor of Communication at the University of Maryland (Mari Boor Tonn, “Taking Conversation, Dialogue, and Therapy Public” Rhetoric and Public Affairs Vol. 8, No. 3)
**This widespread recognition that access to public deliberative processes** and the ballot **is a baseline of any genuine democracy points to the most curious irony of the conversation movement: portions of its constituency**. Numbering **among the most fervid dialogic loyalists have been some feminists and multiculturalists who represent groups historically denied both the right to speak in public** and the ballot. Oddly, some feminists who championed the slogan “The Personal Is Political” **to emphasize ways relational power can oppress tend to ignore similar dangers lurking in the appropriation of conversation and dialogue in public deliberation**. Yet the **conversational model’s emphasis on empowerment through intimacy can duplicate the power networks that traditionally excluded females and nonwhites and gave rise to numerous, sometimes necessarily uncivil, demands for democratic inclusion. Formalized participation structures in deliberative processes obviously cannot ensure the elimination of relational power blocs, but**, as Freeman pointed out, **the absence of formal rules leaves relational power unchecked and potentially capricious**. **Moreover, the privileging of the self, personal experiences, and individual perspectives of reality intrinsic in the conversational paradigm mirrors justifications once used by dominant groups who used their own lives, beliefs, and interests as templates for hegemonic social premises to oppress women, the lower class, and people of color.** Paradigms infused with the therapeutic language of emotional healing and coping likewise flirt with the type of psychological diagnoses once ascribed to disaffected women. But as Betty Friedan’s landmark 1963 The Feminist Mystique argued, the cure for female alienation was neither tranquilizers nor attitude adjustments fostered through psychotherapy but, rather, unrestricted opportunities.102 **The price exacted by promoting approaches to complex public issues— models that cast conventional deliberative processes, including the marshaling of evidence beyond individual subjectivity, as “elitist” or “monologic”—can be steep**. Consider comments of an aide to President George W. Bush made before reports concluding Iraq harbored no weapons of mass destruction, the primary justification for a U.S.-led war costing thousands of lives. Investigative reporters and other persons sleuthing for hard facts, he claimed, operate “in what we call the reality-based community.” Such people “believe that solutions emerge from [the] judicious study of discernible reality.” Then baldly flexing the muscle afforded by increasingly popular social-constructionist and poststructuralist models for conflict resolution, he added: “That’s not the way the world really works anymore . . . We’re an empire now, and when we act, we create our own reality. And while you’re studying that reality— judiciously, as you will—we’ll act again, creating other new realities.”103 **The recent fascination with** **public conversation and dialogue** **most likely is a product of frustration with the tone of much** public, **political discourse. Such concerns are neither new nor completely without merit. Yet, as Burke insightfully pointed out nearly six decades ago, “A perennial embarrassment in liberal apologetics has arisen from its ‘surgical’ proclivity: its attempt to outlaw a malfunction by outlawing the function**.” **The attempt to eliminate flaws in a process by eliminating the entire process, he writes, “is like trying to eliminate heart disease by eliminating hearts.”**104 **Because** public argument **and deliberative processes are the “heart” of true democracy, supplanting those models with social and therapeutic conversation and dialogue jeopardizes the very pulse and lifeblood of democracy itself.**

#### **Their role of the ballot calls upon us to confess our identity. This is a blackmail to confess your identity. This only serves as an operator of visibility, forcing us to bare our soul before the panel.**

Baudrillard '01

(Jean, “Dust Breeding” Ctheory.)

Foucault used to refer to self-expression as the ultimate form of confession. Keeping no secret. Speaking, talking, endlessly communicating. This is a form of violence which targets the singular being and his secrecy. It is also a form of violence against language. In this mode of communicability, language loses its originality. Language simply becomes a medium, an operator of visibility. It has lost its symbolic and ironic qualities, those which make language more important than what it conveys.

 The worst part of this obscene and indecent visibility is the forced enrollment, the automatic complicity of the spectator who has been blackmailed into participating. The obvious goal of this kind of operation is to enslave the victims. But the victims are quite willing. They are rejoicing at the pain and the shame they suffer. Everybody must abide by society's fundamental logic: interactive exclusion. Interactive exclusion, what could be better! Let’s all agree on it and practice it with enthusiasm!

 If everything ends with visibility (which, similar to the concept of heat in the theory of energy, is the most degraded form of existence), the point is still to make such a loss of symbolic space and such an extreme disenchantment with life an object of contemplation, of sidereal observation (sidération), and of perverse desire. "While humanity was once according to Homer an object of contemplation for the Gods, it has now become a contemplation of itself. Its own alienation has reached such a degree that humanity’s own destruction becomes a first rate aesthetic sensation" (Walter Benjamin).

#### **You should welcome the 1AC gesture of speaking their identity, refuse their role of the ballot. Discerning the potential of their performance from the yardstick measurement of the role of the ballot is key to transformative politics**

Hogeven 2006 (Bryan, Sociology at U of Alberta with Andrew Woolford Sociology at U of Manitoba “Critical Criminology and Possibility in the Neo-liberal Ethos” [Canadian Journal of Criminology and Criminal Justice](http://www.synergiescanada.org/fr/journals/utp/120324) 48.5)

Thus, it is first imperative that criminologists reflect on the powers of, and limits on, thought under neo-liberal conditions - including those that burden their discourse. Wary from the hard lessons won of past engagements with the criminal-justice field, the criminologist should now move toward a criminology of possibility (Pavlich 2001b). This involves thinking and pushing the limits of the possible, which simultaneously includes thinking the impossible. But let us not get caught up in expecting an annulment of contemporary relations of domination from attempts at mind conversion through "social" education or from a vast logotherapy (Bourdieu 1997). It is delusory to maintain that the scaffolding of tyranny can be vanquished solely with the weapons of consciousness - it is both more insidious and firmly entrenched. Altering existing relations requires that the ways of meaning making - the vision of the world and the practical means through which suppression is (re)produced - be disjoined. Critical criminological efforts should thus be directed toward jimmying open the naturalized order, and doing so "by encountering experiences that peer past thresholds into vast seas of indeterminacy" (Pavlich 2005a: 112). To break out beyond the current limits of the human condition, beaten down into doxic submission by neo-liberal conditions, commands a denouncement of the silent, arbitrary, and taken-for-granted presuppositions and institutions of repression. Critical thought must, as Wacquant has urged, tirelessly pose the question of the social costs and benefits of the policies of economic deregulation and social dismantling which are now presented as the assured road to eternal prosperity and supreme happiness under the aegis of "individual responsibility" (2004:101) Discerning the mental structures that perpetually recreate the social order and the contingent arrangements therein is a precursor to liberating thought from the weight of doxa. To push the limits of what is and reveal what may be possible, critical criminology, in the throes of neo-liberalism, must analytically extirpate criminal-justice institutions, pronouncements, discourse, policy, practice, and vocabularies in order that their contingency be revealed, their lies uncovered, and their contradictions exposed. It must tirelessly question what is and what is yet to come, so as to rethink the world instead of being bound and constrained by it. It must be a criminology of possibility that transcend the giveness of the doxic order so as to interrogate the criminal-justice "reality" that emanates from it. Creating new criminal(?)-justice meaning horizons that puncture current ontology presents itself as a potentially fruitful direction for contemporary praxis. What configuration would criminal "justice" take if it did not rely on existing discourse and doxa as its point of departure? What conduct would be censured (i.e., incivility, disregard for the environment)? What would being "just" mean under such a formulation (e.g., respect for the "other")? What ethic would guide decision making and understanding? Whatever assault on the status quo reveals itself through criminology committed to possibility, it remains, nevertheless, imperative that such calculations remain open and subject to perpetual scrutiny (Pavlich 2005a). Making the world: Our argument should not be taken as fodder for criminologists who wish to sidestep "the political." We believe that today there is an enormous amount to do in all domains where alterity is (r)ejected and the powerful dispossess the marginalized in full face of the law (indeed, employing law to this end). It is in relation to this call of the other, or the dispossessed and downtrodden - those ravaged by the neo-liberal ethos - that calls to "justice" and for responsibility emerge. However, we do not offer an ontological substitute but counter that the possibilities of alternatives should remain open, even as "[they remain] empty, living on borrowed time, awaiting the content to fill [them] in" (Zizek 2000: 324). But our purposeful refusal to advance an a priori replacement or to utter the name of "the" universal subject of humanity who will liberate the totality should not be confused with a loss of nerve. Ours is a radical proposal - especially in criminological circles. What has been taken and understood as critical engagement - particularly as it relates to politics and its supporting ideologies - has been concerned with a priori rejection of all things present and ancient, such that new dogmas may take their place (Kristeva 1999). Interventions must develop in context, rather than approaching a particular (political) problem with a ready-made grid of intelligibility to lay over it and through which to judge its ultimate success (or failure?). To do otherwise holds the distinct possibility of legitimizing all manner of calamity and oppression in the name of the revolution or the spirit of the times. Merleau-Ponty's (1946) "wager," for example, seems to suggest Stalin's show trials were defensible in light of the greater good of revolutionary ends. If not legitimizing calamity, we can certainly question upon which "universal" sensibility foundations, criteria, and judgements are founded (Pavlich 2001a). Emancipatory gestures predicated upon revolutionizing the present in accordance with axiomatic idioms are negations that contain the trace of the present and threaten to swallow the drive to be otherwise whole. That is, such and such proposals are created out of the cloth of "the what is." The present becomes the muse and the spectre of the revolution. Instead of breaking beyond the present, reactive policy is forever fettered to it. Instead of employing one or another yardstick to judge the success and failure of critical moments, it is necessary to affirm and denounce the world as it is - "not to weigh out as best one can equal amounts of submission and revolt, and always end up halfway between reform and accommodation, but to make the world into place" (Nancy 1997: 158). That is, to manifest an art of critique that involves destabilizing seemingly well-anchored relations into new patterns of being that do not pander to established social logics or rely upon reactive judgements. Taken thus, criminology would multiply, not judgements about existing policy, programs, institutions, or societal structures, but logics of being; "it would summon them, drag them from their sleep. Perhaps it would invert them sometimes - all the better" (Foucault 1997: 323). Indeed, one could conceive a criminal justice beyond criminal justice, without recourse to law(yers), institutionalization, probation, and so on, which would take social harm, incivility, and environmental destruction to task without affirming its absolute certitude. This world would never remain still but would be perpetually (re)opened to its own aporias, irrationalities, and internal contradictions. Achievements that accrue from political engagement should never be considered fait accompli, such that the criminologist can sit back and admire her or his work. There is much to do. The outcomes of complacency are evident in the discourse of multiculturalism. Canada's version may seem, on first reading, an opening to the "other" that welcomes and offers hospitality. But, as Nandana Dutta (2004) argues, this position permits complacency and smugness to creep into our relations with the other. That is, with the Multiculturalism Act in tow, Canada as a country is a priori immune from claims of racism and intolerance. In other words, multiculturalism is finally reducible to a bland "rights-for-all" or a "live and let live" state that is quite immune to the other because, instead of celebrating difference and inviting a minutely calibrated response, it simply tolerates it. (Dutta 2004: 439) Multiculturalism is, then, an alibi for the continued inequalities between dominant and other. We are in no way negating the emancipatory effects of "multiculturalism" and its corresponding ontic, but we are making the point that every emancipatory step must be followed by reflexivity and further emancipatory movement. As it stands, the Multiculturalism Act promises that "every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination ... and guarantees those rights and freedoms equally to male and female persons" (Preamble). However, spending an hour in docket court or in your local remand centre will put an end to any illusion of tolerance and respect for/of the other heralded by the act. Quite simply, some groups are more equal than "others." As a result, we can never fully be aware in advance what is to be accomplished and to what ends, but the logic of intervention and investigation never closes off dialogue, debate, and critique. Rather, "each advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law such as they had previously been calculated or delimited" (Derrida 1997: 62). This mode of analysis permits us to think the political and think emancipation by granting space - even if it is cramped - to maneuver beyond the symbolic and hegemonic. But what will become of the criminal-justice field or of multiculturalism - even if they remain tied to these signs - is not something we can know in advance, and we can no longer be lulled into believing that we can predict or command the movement of the carnivorous beast. We can, however, act and intervene in a way that allows for the possibility of some illegality, the breaking of an implicit contract buttressing the established order, which, in effect, will disrupt the peaceful (symbolic) order of things. Efforts should not be directed solely toward fighting politically correct battles for inclusion that, while important in their own right, in effect maintain the foundational ontology of the neo-liberal order. Capital is expanding with increasing ruthlessness, leaving poverty, racism, homelessness, and general social misery in its wake. Attending to the latter while neglecting the former’s complicity in fostering conditions ripe for the spread of the vilest oppression diverts our attention. Thus, intervention should not fall into the trap of conceiving of programs that work well within the current ethos (Zˇ izˇek 1999). Rather, it is imperative to extend critique and thought beyond current ontological limits into the open spaces beyond criminal justice, law, and multiculturalism, using irrationality and contradictions as chaperon and source of urgency. We are certain that today’s criminal justice is spawning new and potentially more explosive contradictions. A long series of facts comes immediately to mind, including, but not limited to, the gross over-representation of Aboriginal peoples in the system, the almost exclusive targeting of the poorest segments of the population by the state’s policing arm, and the eerie absence of the most powerful from the courtroom – other than as officials whose Critical Criminology and Possibility in the Neo-liberal Ethos 695 main purpose it is to adjudicate and pass judgement upon the marginalized. The contradictions of criminal justice overflow the levies constructed to lend it the appearance of propriety, justice, fairness, blindness, and inevitability. The criminal-justice field is none of these things. It is in this realization that a criminology of possibility intervenes, unveiling the irrationalities and contradictions of the system in order to disrupt ontology and rethink the possibility of justice beyond what is.

#### Performance is not a mode of resistance - it gives too much power to the audience because the performer is structurally blocked from controlling the representations. Appealing to the ballot is a way of turning over one’s identity to the same reproductive economy that underwrites liberalism

Phelan 96—chair of New York University's Department of Performance Studies (Peggy, Unmarked: the politics of performance, ed published in the Taylor & Francis e-Library, 2005, 146

Performance’s only life is in the present. Performance cannot be saved, recorded, documented, or otherwise participate in the circulation of representations of representations: once it does so, it becomes something other than performance. To the degree that performance attempts to enter the economy of reproduction it betrays and lessens the promise of its own ontology. Performance’s being, like the ontology of subjectivity proposed here, becomes itself through disappearance.

The pressures brought to bear on performance to succumb to the laws of the reproductive economy are enormous. For only rarely in this culture is the “now” to which performance addresses its deepest questions valued. (This is why the now is supplemented and buttressed by the documenting camera, the video archive.) Performance occurs over a time which will not be repeated. It can be performed again, but this repetition itself marks it as “different.” The document of a performance then is only a spur to memory, an encouragement of memory to become present.

## 1NR

### Overview

#### Refusing the permanence of the ballot is the only way to maintain the singularity of the aff’s performance---voting aff commodifies their performance which can only result in its fetishization by external forces

Phelan 96—chair of New York University's Department of Performance Studies (Peggy, Unmarked: the politics of performance, ed published in the Taylor & Francis e-Library, 2005, 19)

I am speaking here of an active vanishing, a deliberate and conscious refusal to take the payoff of visibility. For the moment, active disappearance usually requires at least some recognition of what and who is not there to be effective. (In short, this has largely been apossibility for white middle- and upper-class women.)

A group of women artists and feminist theorists in New York callthemselves the Guerrilla Girls. They make posters and signs underliningthe everyday racist and sexist practices which constitute business asusual in the mainstream art market. They take the real facts of exhibitionspace, art market prices, and the sexist and racist policies which have influenced the collections of most galleries and museums, as the ground of their representational strategies. Much of this work is witty and wry.In their poster straightforwardly listing the ten advantages of being awoman artist, for example, one benefit is the relief of never having toworry about being labeled a genius. While their work has become increasingly lauded by both establishment and anti-establishment criticsand art world commentators, the Guerrilla Girls continue to remain anonymous. When they do make appearances, they wear gorilla masks and mini-skirts. By refusing to participate in the visibility-is-currency economy which determines value in “the art world,” the members of the group resist the fetishization of their argument that many are, at themoment, quite ready to undertake. By resisting visible identities, the Guerrilla Girls mark the failure of the gaze to possess, and arrest, their work. Their posters go up with glue on temporary construction sites, onthe sides of buildings, on the doors of closed galleries. They remain thereuntil other messages, often advertisements, overtake them. Underneaththe new representations, the racist and sexist “facts” of the Guerrilla Girls’ real continue to “exist,” while remaining obscured. Always failing to keep the real in view, representation papers it over and reproduces other representations.

#### And,

#### resistance/empowerment via the ballot can only instill an adaptive politics of being and effaces the institutional constraints that reproduce structural violence

Brown 95—prof at UC Berkely (Wendy, States of Injury, 21-3)

For some, fueled by opprobrium toward regulatory norms or other mo- dalities of domination, the language of "resistance" has taken up the ground vacated by a more expansive practice of freedom. For others, it is the discourse of “empowerment” that carries the ghost of freedom's valence ¶ 22¶. Yet as many have noted, insofar as resistance is an effect of the regime it opposes on the one hand, and insofar as its practitioners often seek to void it of normativity to differentiate it from the (regulatory) nature of what it opposes on the other, it is at best politically rebellious; at worst, politically amorphous. Resistance stands against, not for; it is re- action to domination, rarely willing to admit to a desire for it, and it is neutral with regard to possible political direction. Resistance is in no way constrained to a radical or emancipatory aim. a fact that emerges clearly as soon as one analogizes Foucault's notion of resistance to its companion terms in Freud or Nietzsche. Yet in some ways this point is less a critique of Foucault, who especially in his later years made clear that his political commitments were not identical with his theoretical ones (and un- apologetically revised the latter), than a sign of his misappropriation. For Foucault, resistance marks the presence of power and expands our under- standing of its mechanics, but it is in this regard an analytical strategy rather than an expressly political one. "Where there is power, there is resistance, and yet. or rather consequently, this resistance is never in a position of exteriority to power. . . . (T]he strictly relational character of power relationships . . . depends upon a multiplicity of points of resis- tance: these play the role of adversary, target, support, or handle in power relations.\*39 This appreciation of the extent to which resistance is by no means inherently subversive of power also reminds us that it is only by recourse to a very non-Foucaultian moral evaluation of power as bad or that which is to be overcome that it is possible to equate resistance with that which is good, progressive, or seeking an end to domination. ¶ If popular and academic notions of resistance attach, however weakly at times, to a tradition of protest, the other contemporary substitute for a discourse of freedom—“empowerment”—would seem to correspond more closely to a tradition of idealist reconciliation. The language of resistance implicitly acknowledges the extent to which protest always transpires inside the regime; “empowerment,” in contrast, registers the possibility of generating one’s capacities, one’s “self-esteem,” one’s life course, without capitulating to constraints by particular regimes of power. But in so doing, contemporary discourses of empowerment too often signal an oddly adaptive and harmonious relationship with domination insofar as they locate an individual’s sense of worth and capacity in the register of individual feelings, a register implicitly located on some- thing of an otherworldly plane vis-a-vis social and political power. In this regard, despite its apparent locution of resistance to subjection, contem- porary discourses of empowerment partake strongly of liberal solipsism—the radical decontextualization of the subject characteristic of¶ 23¶ liberal discourse that is key to the fictional sovereign individualism of liberalism. Moreover, in its almost exclusive focus on subjects’ emotionalbearing and self-regard, empowerment is a formulation that converges with a regime’s own legitimacy needs in masking the power of the regime.¶ This is not to suggest that talk of empowerment is always only illusion or delusion. It is to argue, rather, that while the notion of empowerment articulates that feature of freedom concerned with action, with being more than the consumer subject figured in discourses of rights and eco- nomic democracy, contemporary deployments of that notion also draw so heavily on an undeconstructed subjectivity that they risk establishing a wide chasm between the (experience of) empowerment and an actual capacity to shape the terms of political, social, or economic life. Indeed, the possibility that one can “feel empowered” without being so forms an important element of legitimacy for the antidemocratic dimensions of liberalism.

#### Don’t get a perm ----their appeal to “real suffering” abandons the flux of politics in favor their survival tactic

Wendy Brown 95, prof at UC Berkely, States of Injury, 37-8

When these precepts “without which we cannot survive” issue from the intellectual or political Right, they are easy enough to identify as both reactionary and fundamentalist.It is fairly clear what they oppose and seek to foreclose: inter alia, democratic conversation about our collective condition and future. But when they issue from feminists or others on the "Left,” they are more slippery, especially insofar as they are posed in the name of caring about political things, caring about “actual women\*’ or about women's ‘'actual condition in the world.” and are lodged against those who presumably do not or cannot care, given their postmodern or poststructurahst entanglements.¶The remainder of’ this essay turns this argument on its head. I will suggest that feminist wariness about postmodernism may ultimately be coterminous with a wariness about politics, when politics is grasped as a terrain of struggle without fixed or metaphysical referents and a terrain of power's irreducible and pervasive ce in human affairs. Contrary to its insistence that it speaks in name of the political, much feminist anti-postmodernism betrays a preference for extrapolitical terms and practices: for Truth (unchanging, incontestable) over politics (flux, contest. instability): for certainty and security (safety, immutability, privacy) over freedom (vulnerability, publicity); for discoveries (science) over decisions (judgments);for separable subjects armed with established rights and identities over unwieldy and shifting pluralities adjudicating for themselves and their future on the basis of nothing more than their own habits and arguments.This particular modernist reaction to postmoder- nism makes sense if we recall that the promise of the Enlightenment was a revision of the old Platonic promise to put an end to politics by supplanting it with Truth. In its modern variant, this promise was tendered through the multiple technologies of nature's rationality in human affairs (Adam Smith); science, including the science of administration (Hobbes); and universal reason (Kant. Hegel. Marx). Modernity could not make goud on this promise, of course, but modernists do not surrender thc dream it instilled of a world governed by reason divested of power.\*\*• Avowed ambivalence about Western reason and rationality notwith- standing. feminist modernists are no exception, but the nature of our ¶ 38¶ attachment to this ironically antipolitical vision is distinctively colored by feminist projects. To thc particulars of this attachment wc now turn.

## FW

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

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

Conclusion

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

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

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

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

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

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

#### A topical version of the aff would solve most of their offense—it’s capable of radical change

Orly **Lobel**, University of San Diego Assistant Professor of Law, 200**7**, The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics,” 120 HARV. L. REV. 937, http://www.harvardlawreview.org/media/pdf/lobel.pdf

V. RESTORING CRITICAL OPTIMISM IN THE LEGAL FIELD

“La critique est aisée; l’art difficile.”

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

### 2NC- Roleplaying

#### Analysis of policy is particularly empowering, even if we’re not the USFG

**Shulock 99**

Nancy, PROFESSOR OF PUBLIC POLICY --- professor of Public Policy and Administration and director of the Institute for Higher Education Leadership & Policy (IHELP) at Sacramento State University, The Paradox of Policy Analysis: If It Is Not Used, Why Do We Produce So Much of It?, Journal of Policy Analysis and Management, Vol. 18, No. 2, 226–244 (1999)

In my view, none of these radical changes is necessary. **As interesting as our politics might be with the kinds of changes outlined by proponents of** participatory and **critical policy analysis,** **we do not need these changes to justify our investment in policy analysis.** **Policy analysis already involves discourse, introduces ideas** into politics, **and affects policy outcomes**. The problem is not that policymakers refuse to understand the value of traditional policy analysis or that policy analysts have not learned to be properly interactive with stakeholders and reflective of multiple and nontechnocratic perspectives. The problem, in my view, is only that policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. **Policy analysis has changed**, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizen preferences, and to provide the appearance of rationality in an increasingly complex political environment. Regardless of what the textbooks say, there does not need to be a client in order for ideas from policy analysis to resonate through the policy environment.10¶ Certainly there is room to make our politics more inclusive. But **those critics who see policy analysis as a tool of the power elite might be less concerned if they understood that analysts are only adding to the debate**—they are unlikely to be handing ready-made policy solutions to elite decisionmakers for implementation. Analysts themselves might be more contented if they started appreciating the appropriation of their ideas by the whole gamut of policy participants and stopped counting the number of times their clients acted upon their proposed solutions. And **the cynics disdainful of the purported objectivism of analysis might relax if analysts themselves would acknowledge that they are seeking not truth**, **but to elevate the level of debate with a compelling, evidence-based presentation of their perspectives. Whereas critics call**, **unrealistically** in my view, **for analysts to** present competing perspectives on an issue or to “**design a discourse among multiple perspectives,” I see no reason why an individual analyst must do this** when multiple perspectives are already in abundance, brought by multiple analysts. If we would acknowledge that policy analysis does not occur under a private, contractual process whereby hired hands advise only their clients, we would not worry that clients get only one perspective.¶ **Policy analysis is used, far more extensively than is commonly believed**. Its **use could be appreciated and expanded if policymakers, citizens, and analysts themselves began to present it more accuratel**y, not as a comprehensive, problem-solving, scientific enterprise, but **as a contributor to informed discourse**. For years Lindblom [1965, 1968, 1979, 1986, 1990] has argued that we should understand policy analysis for the limited tool that it is—just one of several routes to social problem solving, and an inferior route at that. Although I have learned much from Lindblom on this odyssey from traditional to interpretive policy analysis, my point is different. Lindblom sees analysis as having a very limited impact on policy change due to its ill-conceived reliance on science and its deluded attempts to impose comprehensive rationality on an incremental policy process. I, with the benefit of recent insights of Baumgartner, Jones, and others into the dynamics of policy change, see that **even with** these **limitations, policy analysis can have a major impact on policy. Ideas, aided by institutions and embraced by citizens, can reshape the policy landscape. Policy analysis can supply the ideas.**

#### Bounded knowledge is good – debate should be maintained as a disciplinary space- key to unlocking critically pedagogies potential for social justice

McArthur 10

(Department of Higher & Community Education, University of Edinburgh, Paterson’s Land,

Holyrood Road, Edinburgh EH8 8AQ, UK Studies in Higher Education Vol. 35, No. 3, May 2010 ebsco DA: 5-24-13//wyoccd)

Giroux’s critical pedagogy rests upon a commitment to public spaces for learning, where diverse forms of knowledge can be exchanged and developed; where students and teachers engage critically with those knowledges, and with one another; and through which genuine democratic ideals can be pursued. Disciplines are regarded as antithetical to these aims, because they are considered closed, elitist and to perpetuate conservative forms of relationships and types of knowledge. Thus, critical pedagogy seeks, instead, to escape disciplinary boundaries and build interdisciplinary spaces in which such public and political realms can exist and prosper. Looking anew at disciplines I suggest that there is an alternative view of disciplines to that outlined above. In this view disciplines are complex, contested and permeable spaces. I further propose that, if critical pedagogues such as Giroux can, in Proust’s term, look with new eyes at disciplines, they will hopefully see dynamic and safe structures that could provide real and robust allies in the fight to protect higher education from narrow, largely economic, interpretations of its role, and instead promote higher education as a democratic space which supports greater social justice. In this section I seek to encourage this new look at disciplines by first outlining my conception of them as complex, contested and permeable structures, in contrast to Giroux’s perspective of disciplines as static, elitist and limiting. Secondly, I argue that interdisciplinarity and disciplinarity should be thought of as complementary spaces, rather than alternatives. Finally, I discuss how the act of looking anew at disciplines may help critical pedagogy strengthen its own theoretical and practical stances. If critical pedagogy is to challenge narrow commercial and commodified conceptualisations of higher education, it needs to refocus on its commitment to action, rather than pure theory, and looking anew at disciplines as potential allies may be a first step in doing this. Disciplines: complex, contested and permeable I am not arguing that disciplines have not at various times acted conservatively or have not valued stasis over change. Certainly, at different times, disciplinary structures have proven effective homes for forces resistant to change – both epistemologically and politically. Many of us can no doubt relate to the description of ‘the food-fights that go on within disciplines’, and ‘the most absurd yet intense and devastating attempts to expel from the center and marginalize people whose perspectives are different’ (Bérubé and Nelson 1995, 192). My argument, instead, is that these examples or snapshots of experience do not tell the whole story about the dynamic nature of disciplinarity. Those who take a long-term historical view of the development of disciplines, such as the authors of the essays within Anderson and Valente’s (2002) volume on Disciplinarity at the fin de siècle, reveal the degree of change, debate and contestation – of evolution, fracturing and succession – within such disciplinary structures. Thus, the editors state: ‘what has often been lacking in our current disciplinary debates is a longer perspective that would enable us to understand better their historical conditions and developments’ (1). Taking this long view is, I suggest, essential to looking anew at disciplines. It is also rather paradoxical that critical pedagogues accuse disciplines of privileging certain forms of knowledge; critical pedagogy does this too. Such privileging is indeed, surely part of the inherently political nature of pedagogy? What is crucial are the choices made between different forms of knowledge, the awareness of such choices, and the motivations for and outcomes of these choices. If Giroux’s critical pedagogy could take a sufficiently long-term view of the development of disciplines, this would afford a better understanding of their intrinsically dynamic nature. Without this long view, there is the danger of falling into the trap of what Plotnitsky (2002, 75) describes as ‘extreme epistemological conservatism’ in one’s analysis of disciplines. In his illuminating account of the development of quantum physics, Plotnitsky explores the link between disciplinarity and radicality. He argues that non-classical epistemology, ways of knowing that differ from that upon which the discipline has previously been based, form part of the ongoing development of a discipline such as physics. Indeed, ‘Radicality becomes the condition of disciplinarity rather than, as it may appear at first sight and as it is often argued by the proponents of classical theories, being in conflict with it’ (2002, 49). In contrast, Giroux appears to suggest that only in interdisciplinary fields such as cultural studies can non-classical or alternative forms of knowledge be brought together with more traditional epistemologies (Aronowitz and Giroux 1991; Giroux 1992). Giroux’s position is based upon his strong association of disciplines with canonical forms of knowledge and a rigid adherence to textual authority. The alternative is to see disciplines as Davidson (2004) does; as spaces with boundaries that are ‘flexible, culturally determined, interdependent and relative to time’ (302). Parker’s (2002) concept of ‘new disciplinarity’, encompassing a distinction between subjects and disciplines, helps illuminate the emancipatory potential of disciplinary spaces. She describes subjects as groupings which ‘can be reduced to common transferable and equivalent subject-specific skills’ (375), with an emphasis on ‘the end product, and skills and competencies’ that aggregate over set periods (375). It is true that subjects are inclusive, in the sense that nearly anyone can take part in studying them, but, as Parker argues, they are also passive – ‘they are taught, learned, delivered’ (374). In contrast, Parker views a discipline as something that is ‘practiced and engaged with’ (375). Disciplines are ongoing, evolving communities. Subjects permit only transmissive or bankable knowledge, while disciplines allow for transgressive and creative approaches. Disciplines offer spaces for students and teachers to interact critically. Disciplines can encompass diverse and shifting knowledge communities. Giroux’s fear that disciplines impose particular forms of knowledge, discourse and learning on students is not without foundation. However, I argue it is based on examples of poor practice, rather than anything inherent to the nature of academic disciplines. Disciplines are, and should be, sites of contestation and challenge; of competing and conflicting ‘takes’ on knowledge. What disciplines have internally in common is a shared discourse in which to undertake such conflict, and to do so with rigour. In her discussion of attitudes to disciplinarity among French academics, Donahue (2004) observes that: ‘They accounted for its contestatory nature, describing their own research groups as negotiated, arguing back-and-forth, and suggesting that this contested nature is part of what students must learn to navigate’ (68).

#### The ‘technology’ of switch-sides that Hicks and Greene indict is actually the most effective antidote against imperialism and the fascism of dogma—embracing debate as a space for intellectual experimentation and testing of our OWN ideas is the only way to avoid dogma, which is the real imperialist threat

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[Gordon, Professor of Communication at Pitt, June, Communication and Critical/Cultural Studies, “Debate as a Weapon of Mass Destruction”, p. asp//wyo-tjc]

Second, while the pedagogical benefits of switch-side debating for participants are compelling,10 some worry that the technique may perversely and unwittingly serve the ends of an aggressively militaristic foreign policy. In the context of the 1954 controversy, Ronald Walter Greene and Darrin Hicks suggest that the articulation of the debate community as a zone of dissent against McCarthyist tendencies developed into a larger and somewhat uncritical affirmation of switch-side debate as a ‘‘technology’’ of liberal participatory democracy. This technology is part and parcel of the post-McCarthy ethical citizen, prepared to discuss issues from multiple viewpoints. The problem for Greene and Hicks is that this notion of citizenship becomes tied to a normative conception of American democracy that justifies imperialism. They write, ‘‘The production and management of this field of governance allows liberalism to trade in cultural technologies in the global cosmopolitan marketplace at the same time as it creates a field of intervention to transform and change the world one subject (regime) at a time.’’11 Here, Greene and Hicks argue that this new conception of liberal governance, which epitomizes the ethical citizen as an individual trained in the switch-side technique, serves as a normative tool for judging other polities and justifying forcible regime change. One need look only to the Bush administration’s framing of war as an instrument of democracy promotion to grasp how the switch-side technique can be appropriated as a justification for violence. It is our position, however, that rather than acting as a cultural technology expanding American exceptionalism, switch-side debating originates from a civic attitude that serves as a bulwark against fundamentalism of all stripes. Several prominent voices reshaping the national dialogue on homeland security have come from the academic debate community and draw on its animating spirit of critical inquiry. For example, Georgetown University law professor Neal Katyal served as lead plaintiff ’s counsel in Hamdan, which challenged post-9/11 enemy combat definitions. 12 The foundation for Katyal’s winning argument in Hamdan was laid some four years before, when he collaborated with former intercollegiate debate champion Laurence Tribe on an influential Yale Law Journal addressing a similar topic.13 Tribe won the National Debate Tournament in 1961 while competing as an undergraduate debater for Harvard University. Thirty years later, Katyal represented Dartmouth College at the same tournament and finished third. The imprint of this debate training is evident in Tribe and Katyal’s contemporary public interventions, which are characterized by meticulous research, sound argumentation, and a staunch commitment to democratic principles. Katyal’s reflection on his early days of debating at Loyola High School in Chicago’s North Shore provides a vivid illustration. ‘‘I came in as a shy freshman with dreams of going to medical school. Then Loyola’s debate team opened my eyes to a different world: one of argumentation and policy.’’ As Katyal recounts, ‘‘the most important preparation for my career came from my experiences as a member of Loyola’s debate team.’’14 The success of former debaters like Katyal, Tribe, and others in challenging the dominant dialogue on homeland security points to the efficacy of academic debate as a training ground for future advocates of progressive change. Moreover, a robust understanding of the switch-side technique and the classical liberalism which underpins it would help prevent misappropriation of the technique to bolster suspect homeland security policies. For buried within an inner-city debater’s files is a secret threat to absolutism: the refusal to be classified as ‘‘with us or against us,’’ the embracing of intellectual experimentation in an age of orthodoxy, and reflexivity in the face of fundamentalism. But by now, the irony of our story should be apparent\*the more effectively academic debating practice can be focused toward these ends, the greater the proclivity of McCarthy’s ideological heirs to brand the activity as a ‘‘weapon of mass destruction.’’