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#### There’s uncheck expansion of war powers now

David Gray Adler 11, Director of the Andrus Center for Public Policy @ Boise State University, March 4, “Presidential Ascendancy in Foreign Affairs and the Subversion of the Constitution,” http://www.civiced.org/pdfs/GermanAmericanConf2011/Adler.pdf

Presidential domination of American foreign affairs has become a commonplace after a half - century of unchecked expansion of executive powers. The emergence of a “presidential monopoly” over the conduct of foreign relations, built atop an extraordinary concentration of power in the president, reflects the doctrine of executive supremacy launched by the Supreme Court in United States v. Curtiss - Wright . 11 Across the decades, advocates of expansive presiden tial power in the realm of foreign affairs and national security have sought legal sanction in Justice George Sutherland’s opinion for the Court in Curtiss - Wright . In one way or another, the White House has adduced Sutherland’s characterization of the president as the “sole organ” of American foreign policy, endowed with plenary, inherent and extra - constitutional powers to initiate war, authorize torture, seize and detain American citizens indefinitely, set aside laws, establish military tribunals and s uspe nd and terminate treaties, in addition to assertions of authority to order covert operations, extraordinary rendition and warrantless wiretapping.

#### Only the executive has the resources, power, and flexibility to respond to crises --- outside intervention causes failure

Eric Posner 7, the Kirkland and Ellis Professor of Law @ U-Chicago, and Adrian Vermeule, the John H. Watson, Jr. Professor of Law @ Harvard, Jan 4, “Terror in the Balance: Security, Liberty, and the Courts,” Book, p. 4

A different view, however, is that the history is largely one of political and constitutional success. The essential feature of the emergency is that national security is threatened; because the executive is the only organ of government with the resources, power, and flexibility to respond to threats to national security, it is natural, inevitable, and desirable for power to flow to this branch of government. Congress rationally acquiesces; courts rationally defer. Civil liberties are compromised because civil liberties interfere with effective response to the threat; but civil liberties are never eliminated because they remain important for the well-being of citizens and the effective operation of the government. People might panic, and the government must choose policies that enhance morale as well as respond to the threat, but there is nothing wrong with this. The executive implements bad policies as well as good ones, but error is inevitable, just as error is inevitable in humdrum policymaking during normal times. Policy during emergencies can never be mistake-free; it is enough if policymaking is not systematically biased in any direction, so that errors are essentially random and wash out over many decisions or over time. Both Congress and the judiciary realize that they do not have the expertise or resources to correct the executive during an emergency. Only when the emergency wanes do the institutions reassert themselves, but this just shows that the basic constitutional structure remains unaffected by the emergency. In the United States, unlike in many other countries, the constitutional system has never collapsed during an emergency.

#### Effective executive response is key to prevent global crises

Ghitis 13 (Frida, world affairs columnist for The Miami Herald and World Politics Review. A former CNN producer and correspondent, she is the author of *The End of Revolution: A Changing World in the Age of Live Television*. “World to Obama: You can't ignore us,” 1/22, http://www.cnn.com/2013/01/22/opinion/ghitis-obama-world)

And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.¶ Syria unraveling: The United Nations says more than 60,000 people have already died in [a civil war t](http://www.cnn.com/2013/01/02/world/meast/syria-civil-war/index.html)hat the West has, to its shame, done little to keep from spinning out of control. Washington[has warned](http://www.nytimes.com/2012/12/04/world/middleeast/nato-prepares-missile-defenses-for-turkey.html?_r=0) that the use of chemical or biological weapons might force its hand. But the regime [may have already used them](http://www.reuters.com/article/2013/01/19/us-syria-chemical-newspaper-idUSBRE90I0JV20130119). The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing [more powerful](http://www.al-monitor.com/pulse/originals/2013/01/fighter-syria-aleppo-turkey.html) within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.¶ Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly [anti-Semitic speech](http://www.nytimes.com/2013/01/15/world/middleeast/egypts-leader-morsi-made-anti-jewish-slurs.html) coming from the mouth of Mohammed Morsy barely two years before he became president.¶ Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading [United Nations inspectors](http://news.yahoo.com/un-credible-evidence-iran-working-nuke-weapons-153544271.html) to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.¶ North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, [Islamist extremists](http://edition.cnn.com/2013/01/18/opinion/ghitis-algeria-hostage-crisis/index.html?hpt=op_t1) took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.¶ Russia repression: As Russian President Vladimir Putin succeeds in [crushing opposition](http://www.france24.com/en/20121027-russian-opposition-leaders-detained-protest-navalny-udaltsov-vladimir-putin) to his [increasingly authoritarian](http://www.freedomhouse.org/report/freedom-world/2013/russia)rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.¶ Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.¶ And there are the so-called "black swans," events of low probability and high impact. [There is talk](http://www.economist.com/news/asia/21569757-armed-clashes-over-trivial-specks-east-china-sea-loom-closer-drums-war) that China and Japan could go to war over a cluster of disputed islands.¶ A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.¶ We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.¶ The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.¶ The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.¶ After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.¶ International disengagement is not an option. As others before Obama have discovered, history has a habit of toying with the best laid, most well-intentioned plans of

### CP

#### We affirm the elimination of war powers authority except the authority for the targeted killing mission.

### CP 2

#### The kritk of security logic should not extend to all objects of security – our alternative is an immanent kritik of security that explores the productive potential of the discourse of human security.

#### Human security key for confronting structural violence. We provide the best framework for addressing government repression, genocide, discrimination, environmental degradation and poverty.

Patrick HAYDENIR @ St. Andrews ‘4 “Constraining War: Human Security and the Human Right to Peace” *Human Rights Review* October-December p.38-40

The more expansive formulation of human security represents a radically different approach to security from that offered by the traditional realist security paradigm. The fundamental difference in orientation between the two approaches is that for the traditional paradigm security means the protection and welfare of the state per se, whereas for the new formulation security means the protection and welfare of the individual human being. While the classical paradigm is clearly realist in that it is narrowly preoccupied with the state and national security interests, the human security paradigm is consistent with cosmopolitanism in that it adopts a more comprehensive approach concerned in the first instance with persons and threats to their existence and dignity.10 It should be noted that the human security paradigm does not suggest that national security becomes irrelevant; rather it becomes embedded within a wider framework of interests that takes the quality of life of the individual human being and the justice of fundamental social institutions as primary components of security viewed holistically. Along with the end of the cold war and its “great powers” rivalry, the past decade has seen increased recognition of a number of phenomena associated with globalization that challenge many of the norms enshrined in the Westphalian system. The entrenchment of global capitalism, the internationalization of telecommunications and media, the explosive growth of supranational organizations and transnational corporations, the intensified flows of people, fashions, drugs, weapons and culture across borders, and the rise of global terrorism, all have undermined the traditional claims that the state alone is able to guarantee the physical security, order, and integrity of a given territory, and of the people who reside within it. It seems that not only is the state not as “self-reliant” as it is portrayed to be by realists, but recent changes in the international system and how world politics is conducted—which include processes and agents of integration as well as fragmentation—demonstrate a plethora of challenges to the very existence of individuals and communities that are incapable of being addressed on the basis of the state-centric assumptions of the national security paradigm. Given the institutional and processual transformations occurring in conjunction with globalization, appealing to realist orthodoxy as a basis upon which to construct genuinely secure modes of human existence has become increasingly implausible. Former Canadian Foreign Minister Lloyd Axworthy, who became well known for his advancement of the human security concept during his diplomatic career, captured the cosmopolitan character of human security when he observed that threats to human security are those that “strike directly home to the individual” and “largely ignore state boundaries.” Such threats are often violent and systemic in nature, and require “action and cooperation at different levels— global, regional, and local—if they are to be tackled effectively.”11 Human security concerns transcend the traditional statist confines of national security, and tend to focus on elimination or prevention of the causes of threats to human security. The types of threats identified with the human security concept include armed conflict, ethnocultural violence, genocide, terrorism, violent crime, slavery, government repression, discrimination, environmental degradation, deprivation of basic needs, underdevelopment, and the spread of small arms, nuclear weapons, and other weapons of mass destruction. In sum, for the human security concept, the core threats are those that present a clear and consistent (and, sadly, preventable) danger to “human life and dignity.”12 Another way of putting these last points is that human security “recognises that an individual’s personal protection and preservation comes not just from the safeguarding of the state as a political unit, but also from access to individual welfare and the quality of life.”13 Consequently, the human security approach is concerned with both direct and indirect violence, or organized and “structural” violence, none of the forms of which can be understood in exclusively national or territorial terms and many of which are exacerbated by the statist biases of conventional international politics. In addition to the commonly recognized forms of direct violence (such as international and domestic war, genocide, and ethnic cleansing) other forms of direct violence (including slavery, physical abuse, crime, and terrorism) along with forms of structural violence (such as political repression, discrimination, and the lack of food, water, and basic health care) are all identified as critical threats to personal safety, well-being, and dignity. Because the new security paradigm places the individual’s well-being and dignity within the context of humanity rather than the sovereign state, the normative focus of realism gives way to that of cosmopolitanism. The security referent is no longer the citizen of a particular sovereign state, but all persons understood as “members of a transcendent human community with common global concerns.”14 Security is not the domain of a privileged few, but the entitlement of all human beings. Neither is the goal of security simply the preservation of the state (or the society of states); rather it is the preservation of human well-being. The normative focus also shifts from that of power struggles and unilateral militarism as the means by which to obtain national security, towards recognition that genuine security can only be ensured through multilateral efforts aimed at evading or curtailing war and other forms of direct and indirect violence, protecting human rights, and providing the social and environmental resources needed for a safe and dignified human life. In short, human security is inseparable from conditions of peace.

### 1NC TK Good DA

#### Targeted killing’s vital to counterterrorism—disrupts leadership and makes carrying out attacks impossible

Anderson 13—Kenneth, Professor of International Law at American University [May 24, 2013, “The Case for Drones,” Commentary Magazine, http://www.realclearpolitics.com/articles/2013/05/24/the\_case\_for\_drones\_118548.html]

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities—but much of the drone’s contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive—including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law—then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration—and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counterinsurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target—one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### TK is key to prevent existential terrorism

Beres 11—Louis René Beres, Professor of Political Science and International Law at Purdue, Ph.D. from Princeton [2011, “Roundtable Discussion: Is the President Bound by International Law in the War Against Terrorism? A Ten-Year Retrospective: After Osama bin Laden: Assassination, Terrorism, War, and International Law,” 44 Case W. Res. J. Int'l L. 93, Lexis]

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71

Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.

What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.

But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115]

What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Nuclear terrorism is feasible, a high risk, and turns the case

Dvorkin 12—Major General (retired) Vladimir Z. Dvorkin is doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences [September 21, 2012, “What Can Destroy Strategic Stability: Nuclear Terrorism Is a Real Threat,” http://belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html]

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.

At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.

Severe consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby. The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.

Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.

Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device. Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).

A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.

The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.

If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory.

To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability. BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order. All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Accepting limited restrictions triggers a slippery slope towards full disclosure—ultimately collapses the entire drone program

Omar S. Bashir 12, Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, 9/24/12, "Who Watches the Drones?" Foreign Affairs,www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones

First, imagine that the government opted for full transparency in its drone programs. That would certainly make the government more accountable, with no special oversight system needed. Officials would release all the necessary information for citizens to assess the ethics of the programs themselves. This would include answers to such questions as: What crimes have targeted individuals allegedly committed? What threats do they pose? Who else might be harmed in a drone attack? How feasible are non-lethal options such as capture? In practice, though, full transparency is neither morally nor strategically ideal. For one, the government has a duty to protect its civilian informants, so there is risk in revealing the government's sources of information. And potential targets could adjust their behaviors were capture proposals to be debated openly. That would make it all the more difficult for the government to use non-lethal options to round up suspects. ¶ So how much transparency is enough? How can citizens know that the state is not overselling the sensitivity of details that it chooses to withhold? This central dilemma has not been resolved. Well-intentioned legal efforts undertaken by the ACLU and others to force openness about the drone program have only led the government to dig in its heels. It refuses to formally declassify even widely known facets of its operations, let alone release new details. The refusal is absurd on the surface, but it fits into an understandable strategy. Washington does not believe that limited declassifications would appease drone skeptics. As Jack Goldsmith, the Harvard law professor, has explained, Washington fears a slippery slope toward full transparency in the courts that might render one of its most potent counterterrorism weapons unusable.

#### Extinction—equivalent to full-scale nuclear war

Toon 7—Owen B. Toon, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., [April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf]

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

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#### FIRST OFF IS TOPICALITY—

#### Our interpretation is that debate is a game which should revolve around the topic. Our interpretation is that the affirmative should defend some type of statutory or judicial restrictions on the war powers authority of the President of the U.S. in one or more of the topic areas

#### Insert rant about how they defend multiple plans—undermines dialogue

#### “USFG should” means the debate is about a policy established by governmental means

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

The Proposition of Policy: Urging Future Action

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

#### They don’t meet—they don’t do one of the 5.

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Judicial means the court

WEST’S LAW 08 [West's Encyclopedia of American Law, edition 2. http://legal-dictionary.thefreedictionary.com/judicial]

Relating to the courts or belonging to the office of a judge; a term pertaining to the administration of justice, the courts, or a judge, as in judicial power.

A judicial act involves an exercise of discretion or an unbiased decision by a court or judge, as opposed to a ministerial, clerical, or routine procedure. A judicial act affects the rights of the parties or property brought before the court. It is the interpretation and application of the law to a particular set of facts contested by litigants in a court of law, resulting from discretion and based upon an evaluation of the evidence presented at a hearing.

Judicial connotes the power to punish, sentence, and resolve conflicts.

#### Our interpretation is best because it’s key to preserve *productive* debate—

#### Modest predictability of the resolution is worth potential substantive tradeoff. Topicality creates space for relevant debate.

Toni M. MASSARO, Professor of Law, University of Florida, 89 [August, 1989, “Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?” *Michigan Law Review*, 87 Mich. L. Rev. 2099, Lexis]

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice.52 Some even question the whole notion of justifying a legal decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and expe-rience.53 I do not intend to enter this important jurisprudential de-bate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable.54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended**. "Relevance,"** "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" - to name only a few legal concepts - hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are **guidelines** that **establish** spheres of **relevant** **conversation**, **not** **mathematical** **formulas**.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles.55

As a practical matter, therefore, our rules often are ambiguous and fluid standards that offersubstantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers,56 all of which may go un-stated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant.57 The solution to this "empathy gap" was legislative action to make the law more specific - more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations.58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers - in this example, women - and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity - "law for law's sake" - because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other party to follow them.59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually **may encourage human relationships**.60

#### A limited topic of discussion that provides for equitable ground is key to productive inculcation of decision-making and advocacy skills in every and all facets of life—even if their position is contestable that’s distinct from it being valuably debatable. Our interpretation provides room for flexibility, creativity, and innovation, but targets the discussion to avoid mere statements of fact

Steinberg and Freeley 8—\*David L. Steinberg, a lecturer in Communication Studies at the University of Miami, holds a Master's Degree in Communication from The University of Tennessee and has completed significant post-graduate work in Communication Studies, Education, and Human Resource Development from The Pennsylvania State University and from Florida International University. \*\*Austin J. Freeley is a Boston based attorney who focuses on criminal, personal injury and civil rights law [February 13, 2008, *Argumentation and Debate: Critical Thinking for Reasoned Decision Making*, Twelfth Edition, Wadsworth Publishing, pg. 43-45]

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a fact 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? Does 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? How 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 card, 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 a 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.

I. DEFINING THE CONTROVERSY

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 Laurania 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 treaty 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.

#### We should endorse procedures that ensure exposure of our positions to the best range of evidence and reasoning.

Cheryl **MISAK** Philosophy @ Toronto **‘8** “A Culture of Justification: The Pragmatist's Epistemic Argument for Democracy” *Episteme* 5 (1) p. 95-97

I have argued in Truth, Politics, Morality (2000) that when C. S. Peirce, the founder of pragmatism, unpacks the idea of the scientific method, the epistemic notions of truth and justification are strenuously linked to the political ideal of democracy and the values associated with it – the values of freedom of association, freedom of speech, listening to the views of others, expanding public spaces in which open debate can flourish, etc. The epistemic argument for democracy which is implicit in Peirce’s thought is, in a nutshell, as follows. One of Peirce’s many lasting contributions to philosophy was the pragmatist account of truth, on which a true belief is one that would **stand up to inquiry**. A true belief is one that is indefeasible – it would not be improved upon; it would forever meet the challenges of reasons, arguments, and evidence. Peirce argues that the best method for achieving our aspirations to truth is what he calls the method of science. He has a minimalist conception of this method – it is just the method that pays attention to experience. Then here is the connection between truth and the method of science. A true belief is one that best fits with experience and argument, so one is committed, as an inquirer or truth-seeker, to taking experience seriously. Hence, one is committed to the method of science and to trying to ensure that the experiences of all are taken into consideration. If a domain of inquiry is to aspire to truth, it must be open – it must encourage the free exchange of results, experiences, arguments, and ideas. Scientific inquiry can thus be seen as a democratic kind of inquiry. The contemporary pragmatist Hilary Putnam puts it this way: “Democracy is a requirement for experimental inquiry. . . . To reject democracy is to reject the idea of being experimental” (Putnam 1994, 64; see also his 1992, 180). Here is another way of putting the argument. We should put our beliefs through the tests of inquiry in order to make them the best they can be. We should expose our beliefs to **reasons**, **arguments**, and **evidence**. If we want to arrive at beliefs that will withstand criticism and accommodate all the evidence, then it is best to throw criticism and evidence at our beliefs so we know whether they might withstand it. Information, arguments, and evidence must be freely exchanged, so that we can ensure that our beliefs are responsive to them. Freedom of association, freedom of speech, etc. are necessary aspects of a deliberation that is suited to getting us the right answers to our questions. On the Peircean view of truth, truth is a product of human inquiry. This holds for all domains of inquiry, but it is especially clear in political inquiry. Inquirers take human interests and contexts seriously in the messy business of political deliberation (how could they not?). They are fallible and they need to seek out potentially conflicting experience if their beliefs are going to be properly aimed at truth. They never know that they have the truth in hand, but only that they are following a method that is conducive to finding the truth. 3 . DEWEY, INQUIRY, AND DEMOCRACY Dewey was the most explicit of the classical pragmatists about linking democracy and inquiry. But just as Peirce’s view needs elucidation, so does Dewey’s. Putnam is one contemporary pragmatist who offers him a hand. His Dewey argues that there are two kinds of justification of something. You can aim your justification at the skeptic or you can aim it at those who are already a part of a community in that they presuppose certain things together. This is a thought at the very heart of pragmatism: Peirce, for instance, argued that the doubts of the skeptic are “tin” or “paper” doubts, not effective against living belief. Throughout the process of inquiry or deliberation, we are aiming at revising our beliefs when prompted by real doubt. Presaging Neurath’s metaphor about building our boat of knowledge while still at sea, Peirce says that inquiry is not standing upon the bedrock of fact. It is walking upon a bog, and can only say, this ground seems to hold for the present. Here I will stay till it begins to give way. (CP 5.589, 18982) Peirce, James, and Dewey speak with one voice when they suggest that we are always immersed in a context of inquiry, where the decision to be made is a decision about what to believe from here, not what to believe were we able to start from scratch – from certain infallible foundations. Putnam (1992, 188) argues that Dewey starts with this basic pragmatist idea that we have to begin with our capacities and current practices and turns his interest to our capacities to intelligently initiate action, to talk, and to experiment. Democracy, he suggests, is a precondition of these practices. The method that we use to solve problems, from physics to politics, is to experiment, reflect, and discuss. The scientific method requires the unimpeded flow of information and the freedom to offer and to criticize hypotheses. Elizabeth Anderson (2006) describes Dewey’s account of inquiry this way. We propose solutions to the problems which press upon us, try to predict the consequences of the solutions’ implementations, and ask whether our reactions to those consequences would be positive or negative. We then test the solution that has withstood the challenge of testing in thought experiment or experiment in the imagination. That is, we see what the results actually are. Dewey thought, with Peirce, that if a belief were to always withstand challenges, if it were to always stand up to experience and argument, there is nothing higher or better we could ask of it. He too, that is, sees the pragmatist account of truth as a central feature of the pragmatist’s epistemic argument for democracy. In order to flesh out that argument, we need to address some concerns about mixing truth and politics.

#### Our argument is a *deliberative* strategy to reach consensus about the best way to debate. Our argument is not that “the aff has violated a rule and are not allowed to debate this way”—instead we say “we think the model of debate you are proposing is not productive and a model that privileges predictable advocacies would create superior debate.” We then engage in a process of debate in order to decide whether the affirmative’s or negative’s version of debate would be better.

### AT: Debate Excludes

#### Debate inevitably involves exclusions—making sure that those exclusions occur along reciprocal lines is necessary to foster democratic habits. This process outweighs the content of the aff

Amanda ANDERSON, Andrew W. Mellon Professor for the Humanities at Brown University, 6 [*The Way We Argue Now*, Princeton University Press, p. 25-28]

Whether such a procedural approach actually helps to yield any substantive normative guidance is an issue of debate. Habermas has sought to justify communicative ethics through appeal to the principles of respect and reciprocity that he claims are inherent in linguistic practices geared toward reaching understanding. Attempting to redress the overwhelmingly negative forms of critique characteristic of both the Frankfurt School and poststructuralist traditions, he argues that the logocentrism of Western thought and the powerful instrumentality of reason are not absolute but rather constitute “a systematic foreshortening and distortion of a potential always already operative in the communicative practice of everyday life.” The potential he refers to is the potential for mutual understanding “inscribed into communication in ordinary language.” 7 Habermas acknowledges the dominance and reach of instrumental reason—his project is largely devoted to a systematic analysis of the historical conditions and social effects of that dominance—yet at the same time he wishes to retrieve an emancipatory model of communicative [END PAGE 25] reason derived from a linguistic understanding of intersubjective relations. As Benhabib argues, this form of communicative action, embodied in the highly controversial and pervasively misunderstood concept of the “ideal speech situation,” entails strong ethical assumptions, namely the principles of universal moral respect and egalitarian reciprocity (SS, 29).

Habermas has famously argued that he does not believe any metaphysical grounding of such norms is possible; he insists instead that we view the normative constraints of the ideal speech community as “universal pragmatic presuppositions” of competent moral actors who have reached the postconventional stage of moral reasoning. Habermas’s theory combines a “weak transcendental argument” concerning the four types of validity claims operative in speech acts with an empirical reconstruction of psychosocial development derived from Lawrence Kohlberg. Benhabib, though she, too, appeals to socialization processes, distinguishes her position from Habermas’s “weak transcendental argument” by promoting a “historically self-conscious universalism” that locates the ethical principles of respect and reciprocity as “constituents of the moral point of view from within the normative hermeneutic horizon of modernity” (SS, 30). Benhabib’s work thus constitutes, like Habermas’s, a strong defense of specific potentialities of modernity. She differs from him in two key respects, besides the emphasis already outlined. First, she believes that Habermas’s emphasis on consensus seriously distorts his account of communicative ethics. Like others who have argued against the conflation of understanding and consensus, Benhabib champions instead a discourse model of ethics that is geared toward keeping the conversation going:

When we shift the burden of the moral test in communicative ethics from consensus to the idea of an ongoing moral conversation, we begin to ask not what all would or could agree to as a result of practical discourses to be morally permissible or impermissible, but what would be allowed and perhaps even necessary from the standpoint of continuing and sustaining the practice of the moral conversation among us. The emphasis now is less on rational agreement, but more on sustaining those normative practices and moral relationships within which reasoned agreement as a way of life can flourish and continue. (SS, 38)8 [END PAGE 26]

The second significant difference between Habermas and Benhabib is that Benhabib rejects Habermas’s rigid opposition between justice and the good life, an opposition that effectively relegates identity-based politics to a lower plane of moral practice, and that for Benhabib undercuts our ability to apprehend the radical particularity of the other. While she believes in the importance of self-reflexive interrogations of conventional identities and roles, she strongly opposes any ethics or politics that privileges the unencumbered or detached self over the concrete, embodied, situated self. She argues in particular against those liberal models that imagine that conversations of moral justification should take place between individuals who have bracketed their strongest cultural or social identifications and attachments. Instead she promotes what she calls an “interactive universalism”:

Interactive universalism acknowledges the plurality of modes of being human, and differences among humans, without endorsing all these pluralities and differences as morally and politically valid. While agreeing that normative disputes can be settled rationally, and that fairness, reciprocity and some procedure of universalizability are constituents, that is, necessary conditions of the moral standpoint, interactive universalism regards difference as a starting point for reflection and action. In this sense, “universality” is a regulative ideal that does not deny our embodied and embedded identity, but aims at developing moral attitudes and encouraging political transformations that can yield a point of view acceptable to all. Universality is not the ideal consensus of fictitiously defined selves, but the concrete process in politics and morals of the struggle of concrete, embodied selves, striving for autonomy. (SS, 153)

This passage encapsulates the core of Benhabib’s position, which attempts to mediate between universalism and particularism as traditionally understood. On the one hand, universalism’s informing principles of rational argumentation, fairness, and reciprocity adjudicate between different positions in the ethicopolitical realm, enabling crucial distinctions between those notions of the good life that promote interactive universalism and those that threaten its key principles. It insists, in other words, that there is a specifiable moral standpoint from which—to take a few prominent examples—Serbian aggression, neo-Nazism, and gay bashing can be definitively condemned. On the other hand, universalism “regards difference as a starting point.” It understands identity as “embodied and embedded” and promotes encounters with otherness so as to nurture the development of a moral attitude that will “yield a point of view acceptable to all.”

Of course it must simultaneously be recognized that the “all” here cannot coherently include those who have, according to universalism’s own principles, forfeited their place as equal participants in the ethicopolitical [END PAGE 27] community. Ironically, then, Benhabib’s redefinition of universalism insists on inevitable exclusion, but not in the sense that many poststructuralist and postmodernist cultural critics do, as the hardwired effect of universalism’s false claims to inclusiveness, and as victimizing those disempowered by race, class, gender, or sexuality. Against naive conceptions of inclusiveness and plurality, which ultimately prove self-undermining in their toleration of communities, individuals, and practices that exclude others arbitrarily, interactive universalism claims that certain exclusions are not only justified, but indeed required by the principles of recognition and respect that underpin democratic institutions and practices.

### Util

#### Maximizing all lives is the only way to affirm equality

Cummiskey 90—David, Professor of Philosophy, Bates [Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, JSTOR]

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equality which dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

#### Ethical policymaking requires calculation of consequences

Gvosdev 5—Nikolas, Rhodes Scholar, PhD from St. Antony’s College, executive editor of The National Interest [“The Value(s) of Realism,” SAIS Review 25.1, Project Muse]

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

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### Case

#### Tailoring identity claims to common topics for deliberation is possible and desirable. The 1ac’s failure to do so impedes the culture of democratic deliberation that’s key to an effective, pluralist society. This turns the case—preserving the ability for debate is a precondition for effective critique

Amanda ANDERSON, Andrew W. Mellon Professor for the Humanities at Brown University, 6 [“Reply to My Critic(s),” *Criticism*, Spring 2006, Vol. 48, No. 2, p. 281–290, Accessed through Emory Libraries]

MY RECENT BOOK, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for the importance of debate and argument to any vital democratic or pluralistic intellectual culture. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain unquestioned legitimacy, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called “false universalism” are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that argument is a form of respect, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, rely fundamentally upon procedures of argumentation and debate in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be protected from debate, that argument is somehow injurious to persons if it does not honor their desire to have their basic beliefs and claims and solidarities accepted without challenge, is strenuously opposed. As is the notion that any attempt to ask people to agree upon processes of reason-giving argument is somehow necessarily to impose a coercive norm, one that will disable the free expression and performance of identities, feelings, or solidarities. Disagreement is, by the terms of my book, a form of respect, not a form of disrespect. And by disagreement, I don’t mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced—if misconceived—criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement—the internal dynamic in argument that imagines argument might be the beginning of a process of persuasion and exchange that could end in agreement (or partial agreement). For those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is a complacent—and in some versions, even celebratory—attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to justify their positions in dialogue with one another, especially if they hope to live together in a post-traditional pluralist society.

One example of the trumping of argument by ethos is the form that was taken by the late stage of the Foucault/Habermas debate, where an appeal to ethos—specifically, an appeal to Foucault’s style of ironic or negative critique, often seen as most in evidence in the interviews, where he would playfully refuse labels or evade direct answers—was used to exemplify an alternative to the forms of argument employed by Habermas and like-minded critics. (I should pause to say that I provide this example, and the framing summary of the book that surrounds it, not to take up airtime through expansive self-reference, but because neither of my respondents provided any contextualizing summary of the book’s central arguments, though one certainly gets an incremental sense of the book’s claims from Bruce Robbins. Because I don’t assume that readers of this forum have necessarily read the book, and because I believe that it is the obligation of forum participants to provide sufficient context for their remarks, I will perform this task as economically as I can, with the recognition that it might have carried more weight if provided by a respondent rather than the author.)

The Foucauldian counter-critique importantly emphasizes a relation between style and position, but it obscures (1) the importance or value of the Habermasian critique and (2) the possibility that the other side of the debate might have its own ethos to advocate, one that has precisely to do with an ethos of argument, an ideal of reciprocal debate that involves taking distance on one’s pre-given forms of identity or the norms of one’s community, both so as to talk across differences and to articulate one’s claims in relation to shared and even universal ideals. And this leads to the second thesis of the book, the insistence that an emphasis on ethos and character is interestingly present if not widely recognized in contemporary theory, and one of the ways its vitality and existential pertinence makes itself felt (even despite the occurrence of the kinds of unfair trumping moves I have mentioned). We often fail to notice this, because identity has so uniformly come to mean sociological, ascribed, or group identity—race, gender, class, nationality, ethnicity, sexuality, and so forth. Instances of the move toward character and ethos include the later Foucault (for whom ethos is a central concept), cosmopolitanism (whose aspiration it is to turn universalism into an ethos), and, more controversially, proceduralist ethics and politics (with its emphasis on sincerity and civility). Another version of this attentiveness to ethos and character appears in contemporary pragmatism, with its insistence on casualness of attitude, or insouciance in the face of contingency—recommendations that get elevated into full-fledged exemplary personae in Richard Rorty’s notion of the “ironist” or Barbara Herrnstein Smith’s portrait of the “postmodern skeptic.” These examples—and the larger claim they support—are meant to defend theory as still living, despite the many reports of its demise, and in fact still interestingly and incessantly re-elaborating its relation to practice. This second aspect of the project is at once descriptive, motivated by the notion that characterology within theory is intrinsically interesting, and critical, in its attempt to identify how characterology can itself be used to cover or evade the claims of rational argument, as in appeals to charismatic authority or in what I identify as narrow personifications of theory (pragmatism, in its insistence on insouciance in the face of contingency, is a prime example of this second form). And as a complement to the critical agenda, there is a reconstructive agenda as well, an attempt to recuperate liberalism and proceduralism, in part by advocating the possibility, as I have suggested, of an ethos of argument.

Robbins, in his extraordinarily rich and challenging response, zeroes in immediately on a crucial issue: who is to say exactly when argument is occurring or not, and what do we do when there is disagreement over the fundamentals (the primary one being over what counts as proper reasoning)? Interestingly, Robbins approaches this issue after first observing a certain tension in the book: on the one hand, The Way We Argue Now calls for dialogue, debate, argument; on the other, its project is “potentially something a bit stricter, or pushier: getting us all to agree on what should and should not count as true argument.” What this point of entry into the larger issue reveals is a kind of blur that the book, I am now aware, invites. On the one hand, the book anatomizes academic debates, and in doing so is quite “debaterly.” This can give the impression that what I mean by argument is a very specific form unique to disciplinary methodologies in higher education. But the book is not generally advocating a narrow practice of formal and philosophical argumentation in the culture at large, however much its author may relish adherence to the principle of non-contradiction in scholarly argument. I take pains to elaborate an ethos of argument that is linked to democratic debate and the forms of dissent that constitutional patriotism allows and even promotes. In this sense, while argument here is necessarily contextualized sociohistorically, the concept is not merely academic. It is a practice seen as integral to specific political forms and institutions in modern democracies, and to the more general activity of critique within modern societies—to the tradition of the public sphere, to speak in broad terms. Additionally, insofar as argument impels one to take distance on embedded customs, norms, and senses of given identity, it is a practice that at once acknowledges identity, the need to understand the perspectives of others, and the shared commitment to commonality and generality, to finding a way to live together under conditions of difference.

More than this: the book also discusses at great length and from several different angles the issue that Robbins inexplicably claims I entirely ignore: the question of disagreement about what counts as argument. In the opening essay, “Debatable Performances,” I fault the proponents of communicative ethics for not having a broader understanding of public expression, one that would include the disruptions of spectacle and performance. I return to and underscore this point in my final chapter, where I espouse a democratic politics that can embrace and accommodate a wide variety of expressions and modes. This is certainly a discussion of what counts as dialogue and hence argument in the broad sense in which I mean it, and in fact I fully acknowledge that taking distance from cultural norms and given identities can be advanced not only through critical reflection, but through ironic critique and defamiliarizing performance as well. But I do insist—and this is where I take a position on the fundamental disagreements that have arisen with respect to communicative ethics—that when they have an effect, these other dimensions of experience do not remain unreflective, and insofar as they do become reflective, they are contributing to the very form of reasoned analysis that their champions sometimes imagine they must refuse in order to liberate other modes of being (the affective, the narrative, the performative, the nonrational). If a narrative of human rights violation is persuasive in court, or in the broader cultural public sphere, it is because it draws attention to a violation of humanity that is condemned on principle; if a performance jolts people out of their normative understandings of sexuality and gender, it prompts forms of understanding that can be affirmed and communicated and also can be used to justify political positions and legislative agendas.

### 2NC Turns Case—Politics of Identity

#### Performance by itself is not an effective political strategy. Normative guidelines for discussion that enable inter-subjective dialogue is necessary to ensure performance can be effectively actuated—none of this requires discarding commitment to certain cultural communities/identities

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Benhabib’s approach entirely forecloses the radical understandings of S/M outlined above, and a number of other possible conceptions of it besides. A list of such conceptions might include: S/M as an insistence on or recognition of the inescapability of power in any relations of pleasure; S/M as the expression or highlighting of the potentially liberatory fluidity of sexual and gendered roles (here it would be akin to Butler’s performative subversion); S/M as a form of respect for the complex psychic needs and desires of another; S/M as a form of solidarity—a mutual understanding of how power is practiced, and of how it informs our [END PAGE 42] personal history and our most intimate relations. Moreover, Benhabib implies that these practices should remain private and dyadic, thereby skirting the issue of whether representations of S/M can themselves participate in any valuable cultural or political work. But public representations of S/M that play on performative conceptions of selfhood or radically denaturalize stable conceptions of gendered roles can themselves accomplish vital political work. Admittedly, such political effects depend upon concretely situated interpretive moments and are not achieved automatically. Moreover, there is certainly no guarantee, as Butler herself admits in Bodies That Matter, that denaturalizing representations will serve the cause of subversion or radical transformation. Denaturalizing representations, whether framed within S/M scenarios or not, are not immune to ethicopolitical critique; S/M is not inherently immoral, pathological, or oppressive, just as vanilla sex is not inherently egalitarian and expressive of the principles of recognition and respect. Rather than seek to condemn or defend S/M in absolute terms, we should seek to foster rigorous public debate on the meanings and effects of various public representations of gender and sexuality. Here is where critical theory’s conception of the deliberative processes of the public sphere must augment and modify any claim for the practical political importance of performativity.

The value of communicative ethics, in contrast to the deficiencies of Butler’s position, is that it clarifies the conditions of possibility for the cultivation of specific ethicopolitical practices and stances: self-reflexive questioning of cultural norms, openness toward difference, reciprocal recognition, and respect. It demands constant interrogation of any attempts to restrict access to the rights of full citizenship in the human community and persistently argues for the most capacious and flexible forms of respect. Benhabib’s failure to accord the practitioners of S/M a genuine respect does not, as one might assume, reveal the incommensurable relativity of the very idea of respect, and thereby disable communicative ethics at the core. Rather, by its own terms, communicative ethics must judge Benhabib’s understanding of S/M as narrow, and highly suspicious in its attempt to relegate S/M to the realm of the private.22

In its elaboration of a moral ideal and its reliance on the attainment of enabling intersubjective practices, communicative ethics is not fatally compromised by identity logic and hegemonic normalization. I would suggest [END PAGE 43] that the best use we can make of the Butler-Benhabib dispute is to begin the difficult work of thinking beyond this impasse, especially since Butler herself is implicitly endorsing some version of individual and social ethics. Normative political philosophy justifies itself through appeal to communicative practices: it defines the subject in relational, intersubjective, and communicative terms. Promoting communicative action and rational argumentation in its broadest sense need not, and indeed does not, translate into procedures that restrict the political imagination or the subject’s relations to the multiple cultural communities in which he or she might be embedded. The subject’s relation to a specific cultural identity may extend from strongly expressed attachment, to radical redefinition, to outright rejection and negation. Communicative ethics should promote practices that can remain flexible and open-ended in the face of multiple and shifting attachments and detachments.

## \*\*\* 1NR

### Queerness

#### Manning

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Dichotomous thinking infuses numerous research methodologies, limiting what is allowed to exist. These ways of thinking and being negate queer existences because those who identify as queer live beyond the binaries of sex, gender and sexuality. Thus, queer methodologies are vital for exposing hegemonic linear ways of being and thinking that analyze, categorize and psychiatrize those outside of such polarized identities. My goal is not to delimit what a queer methodology is, but rather to add to the discussion regarding ontology and epistemology and how this may shift our gaze in a queer research inquiry. I argue queer methodologies provide space for the multiplicity of strangeness to exist as their disruption of normalcy and Otherness (Kumashiro 1999) is explicitly political. Queer methodologies deconstruct truth claims, question dualistic ontology and queer straight lines.

Though my approach is from a queer theory and poststructural perspective, I note Namaste (2003) critiques these theories for their lack of contextuality and demands researchers to be reflexive. But if I discuss my own identity within this paper, will I be reproducing my own oppression in taking up reverse discourses, which reconstitute dominant discourses about the Other from a subjugated position? If I declare myself genderless and sexless, and thus immune to these categorizations, I ignore how sexism, transphobia, heterosexism and misogyny have forever changed my life and my body. If I locate myself solely within theoretical frameworks of poststructural feminism and queer and gender theory, will this simply reflect only my thinking and not my physical being? As methods are to methodology, so is my body connected to my subjectivity.

Would it suffice to say I am genderqueer? Likely not. What is not read in this declaration is my race, class, age, ability (or are they read as dominant in each of these categories?), nor is my sex or sexuality intact. I have experienced life as a female bodied, white, middle class, queer femme from English-speaking Canada. These identities written upon me shape how I experience and understand the world: “we embody the discourses that exist in our culture, our very being is constituted by them, they are a part of us, and thus we cannot simply throw them off” (Sullivan 2003: 41). What is not so clear is how I transgress heterosexual gender norms and that I have also experienced the physical consequences of patriarchy, heterosexism and homonormativity through incest, surviving a late diagnosis of cervical dysplasia and domestic violence. There are few spaces I exist in where I can definitively mark which category I fit. Binary systems within sex, gender and sexuality are problematic for me not only personally, but also politically and ideologically. Although I have been an activist for more of my life than not, critical race, queer and gender theories have given me language and ideas to examine the ways in which I am in the world in my inconsistent, ever shifting and multiple ways.

Queering

In this paper, I use the term “queer” in a multitude of ways. As a noun, I use it to reference people who identify as queer – typically people who challenge and/or exist beyond dualistic and constructed categories such as transgender, bisexual, two-spirit, transsexual, transvestite, intersex and questioning people (Manning, forthcoming). To use queer as an identity can run counter to the work queer does to circumvent and undermine identity politics. Here, however, I use it to highlight how it has been taken up as a liminal identity in ways that problematize orientation. By this I mean that sex, gender and sexuality are relational and queer positions itself against normative spaces made visible by dominant discourses.

Additionally, I use queer as a verb. To queer something is to question normalcy by problematize its apparent neutrality and objectivity. Britzman (1998: 82) locates what queer theory can do as a practice: “Queer theory is not an affirmation, but an implication. Its bothersome and unapologetic imperatives are explicitly transgressive, perverse, and political”. Queer resists definition, uniformity and cohesion. It examines how normal is made specifically with regards to sexuality.

Heteronormativity took root in queer theory as it made explicit how heterosexuality positions itself as neutral, normative and dominant. Similarly, the “new homonormativity” is a set of “politics that does not contest dominant heteronormative assumptions and institutions but upholds and sustains them” (Duggan 2003: 50). Duggan explains how these neo-liberal views get taken up by gay men and lesbians as a way to normalize their existences. I argue drawing these lines of normalcy is done at the expense of queer, trans and intersex people and reconstitutes us as invisible and deviant. In response, I take up queer in multiple ways to expand on its relationality, disruptions to normativity and intrinsic deviance.

Although the violation of compulsory sex/gender relations is one of the topics most

frequently addressed within queer theory, this body of knowledge rarely considers the

implications of an enforced sex/gender system for people who have defied it, who live

outside it, or who have been killed because of it. (Namaste 2003: 9)

Transgenderists, feminists, and some queer theorists (Fausto-Sterling 1997; Stryker 2006;

Wilchins 2004), push queer theory beyond simply examining the discursive production of sexuality. Where queer theory primarily disrupts the seemingly stable categories of homosexual and heterosexual, gender and transgender theories take this disruption further by problematizing how sex and gender are socially constructed and required. Gender and transgender theories also tease out neo-liberal agendas embedded in the hegemonic lesbian, gay, bisexual and transgender (LGBT) movement. These theories offer ways to not only make visible and centre intersex, transsexual, transgender, two-spirit, pansexual and queer people within discourses where we have often been objects, but critique the “natural” construction of sex much touted by science.

Disturbing Ontology Modernist ontology permeates multiple research methodologies. “An ontology is a theory about what the world is like – what the world consists of, and why” (italics added, Strega 2005: 201). Modernist ontology inscribes binary constructs in a way that maintains sexual and gender dominance. When researchers fail to question the dualistic nature inherent in certain methodologies, these social, physical and political hierarchies are perpetuated. Methodologies located in positivist paradigms are marked by dichotomous ways of being and thinking, yet some interpretative and emancipatory methodologies are also influenced by this ontology. Conversely, 3 ontologies that embrace complexity, multiplicity and inconsistency are more likely to be useful in producing queer methodologies. Queer methodologies need a “continuous questioning and deconstruction of all knowledge,” particularly knowledges claiming objectivity and truth (Hammers & Brown 2004: 88).

During the ‘Age of Reason,’ modernist practice produced and classified knowledge (Hall & Gieben 1992: 8). “Deeply embedded in these [modernist] constructs are systems of classification and representation, which lend themselves easily to binary oppositions, dualisms, and hierarchical orderings of the world” (Tuhiwai Smith 1999: 55). **These binary constructs are not limited to sex and sexuality, but also significantly frame constructions of race, ability, etc**. Somerville (2000) describes how race and sexuality were classified and enmeshed to construct deviant, knowable and subordinate objects. Wittig (1980: 210) points out, “this necessity of the different/other is an ontological one for the whole conglomerate of sciences and disciplines” she calls the “straight mind”.

Positivist scientists view these classifications as objective, neutral and true suggesting they are removed from all social, cultural and political influences. Numerous theorists (Fausto-Sterling 1997 & 2000; Foucault 1990; Hammers & Brown 2004; Tuhiwai Smith 1999) critique science for its claims of objectivity, which produce “patriarchal knowledge and work against knowledge of the realities of gender relations” (Ramazanoglu & Holland 2002: 49). Adrienne Rich (1987, cited in Hammers & Brown 2004: 85) argues, “objectivity is a term given to men’s subjectivity”. To work against objectivity and to position subjectivity in research is necessary in queer methodologies. Although I do not want to position subjectivity as the opposing binary mate to objectivity (as this would be contradictory to my claims of rejecting binaries), I propose to problematize subjectivity by exposing the complexity and contradictions within one’s own subjectivity.

In interpretative and emancipatory research paradigms, a researcher can reproduce dominant modernist representations **by restricting their own complexity to a binary identification as an insider or outsider**. Several feminist theorists complicate the insider/outsider quandary by blurring or queering the line between these dichotomies. Fine (1998: 135) ‘works the hyphen’ between Self and Other and suggests “researchers probe how we are in relation with the contexts we study and with our informants, understanding that we are all multiple in those relations”. Tang (2006: 14) explores occupying insider and outsider roles by “oscillating” between each role, “signifying both being hesitant or embracing of the roles participants might have allocated for me…[having] the agency to switch in between roles if necessary or to remain straddling in ambiguity”. Lal (1996: 196) questions the politics of self in proposing, “with each threshold of an insider boundary that one crosses, there would seem to be another border zone available for one’s definition as outsider”. In these ways, subjectivity can and should become murky, unstable and contradictory by resisting a clear and contained identification within the insider/outsider polarity.

Hammers & Brown (2004: 87) point out, “ ‘situating’ of oneself…would not only re-organize the researcher(subject) - researched(object) relationship to be one that is non-hierarchical, equitable, and respectful, but make as central direct, material experience and reality”. Although identifying one’s subjectivity does not entirely level the power dynamics within research, I agree it is necessary to resist claims of objectivity while helping to identify power relations at work within a research project. Subjectivity also allows for multiplicity and complexity to be within the research – something that objectivity would clearly reject. Subjectivity and reflexivity within research is well grounded in feminist and emancipatory research approaches. What I hope to promote is a kind of subjectivity that complicates, questions and deconstructs power relations, discourses and working assumptions within queer methodologies.

**I see value in claiming space for queer subjectivities so those objectified by science can tell our own stories and lay claim to knowledges previously made deviant and invisible**. However, my specific interest is to expose the techniques/technologies of making normal. I am particularly interested in queer methodologies that examine how those who study non-normative sexes, genders and sexualities discursively produce us. My unapologetic and purposeful mission is to poke holes in, deconstruct and destabilize the hegemonic understandings that have classified, ignored, persecuted and killed us. For me, my politics of resistance is deeply rooted in my subjectivity. My subjectivity positions my ontological perspective to incorporate queer, two-spirit, trans, intersex and non-normative sexed, gendered and sexual people within the world.

Because of its multiplicity, complications and contradictions, a queer ontology challenges modernist ideas of binary, stable categories. As ontology shapes what existences are made possible and visible, a queer methodology reveals and makes possible queer and trans lives, experiences and encounters. A queer methodology therefore has a distinct ontology and epistemology. Although queer remains elusive, contextual and unstable and should continue to resist solidification, a queer methodology is most incongruent with research paradigms rooted in a dichotomous way of thinking and being, epitomized in classical sciences such as biology, psychiatry and medicine.

#### Appeals to personal experience replace analysis of group oppression with personal testimony. As a result, politics becomes a policing operation—those not in an identity group are denied intellectual access and those within the group who don’t conform to the aff’s terms are excluded. Over time, this strategy LIMITS politics to ONLY the personal and shuts down public dialogue. This devastates structural change, and turns the case

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The logic of individualism has structured the approach to multiculturalism in many ways. The call for tolerance of difference is framed in terms of respect for individual characteristics and attitudes; group differences are conceived categorically and not relationally, as distinct entities rather than interconnected structures or systems created through repeated processes of the enunciation of difference. Administrators have hired psychological consulting firms to hold diversity workshops which teach that conflict resolution is a negotation between dissatisfied individuals. Disciplinary codes that punish "hate-speech" justify prohibitions in terms of the protection of individuals from abuse by other individuals, not in terms of the protection of members of historically mistreated groups from discrimination, nor in terms of the ways language is used to construct and reproduce asymmetries of power. The language of protection, moreover, is conceptualized in terms of victimization; the way to make a claim or to justify one's protest against perceived mistreatment these days is to take on the mantle of the victim. (The so-called Men's Movement is the latest comer to this scene.) Everyone-whether an insulted minority or the perpetrator of the insult who feels he is being unjustly accused-now claims to be an equal victim before the law. Here we have not only an extreme form of individualizing, but a conception of individuals without agency. There is nothing wrong, on the face of it, with teaching individuals about how to behave decently in relation to others and about how to empathize with each other's pain. The problem is that difficult analyses of how history and social standing, privilege, and subordination are involved in personal behavior entirely drop out. Chandra Mohanty puts it this way: There has been an erosion of the politics of collectivity through the reformulation of race and difference in individualistic terms. The 1960s and '70s slogan "the personal is political" has been recrafted in the 1980s as "the political is personal." In other words, all politics is collapsed into the personal, and questions of individual behaviors, attitudes, and life-styles stand in for political analysis of the social. Individual political struggles are seen as the only relevant and legitimate form of political struggle.5 Paradoxically, individuals then generalize their perceptions and claim to speak for a whole group, but the groups are also conceived as unitary and autonomous. This individualizing, personalizing conception has also been be- hind some of the recent identity politics of minorities; indeed it gave rise to the intolerant, doctrinaire behavior that was dubbed, initially by its internal critics, "political correctness." It is particularly in the notion of "experience" that one sees this operating. In much current usage of "experience," references to structure and history are implied but not made explicit; instead, personal testimony of oppression re- places analysis, and this testimony comes to stand for the experience of the whole group. The fact of belonging to an identity group is taken as authority enough for one's speech; the direct experience of a group or culture-that is, membership in it-becomes the only test of true knowledge. The exclusionary implications of this are twofold: all those not of the group are denied even intellectual access to it, and those within the group whose experiences or interpretations do not conform to the established terms of identity must either suppress their views or drop out. An appeal to "experience" of this kind forecloses discussion and criticism and turns politics into a policing operation: the borders of identity are patrolled for signs of nonconformity; the test of membership in a group becomes less one's willingness to endorse certain principles and engage in specific political actions, less one's positioning in specific relationships of power, than one's ability to use the prescribed languages that are taken as signs that one is inherently “of” the group. That all of this isn't recognized as a highly political process that produces identities is troubling indeed, especially because it so closely mimics the politics of the powerful, naturalizing and deeming as discernably objective facts the prerequisites for inclusion in any group. Indeed, I would argue more generally that separatism, with its strong insistence on an exclusive relationship between group identity and access to specialized knowledge (the argument that only women can teach women's literature or only African-Americans can teach African-American history, for example), is a simultaneous refusal and imitation of the powerful in the present ideological context. At least in universities, the relationship between identity- group membership and access to specialized knowledge has been framed as an objection to the control by the disciplines of the terms that establish what counts as (important, mainstream, useful, collective) knowledge and what does not. This has had an enormously important critical impact, exposing the exclusions that have structured claims to universal or comprehensive knowledge. When one asks not only where the women or African-Americans are in the history curriculum (for example), but why they have been left out and what are the effects of their exclusion, one exposes the process by which difference is enunciated. But one of the complicated and contradictory effects of the implementation of programs in women's studies, African-American studies, Chicano studies, and now gay and lesbian studies is to totalize the identity that is the object of study, reiterating its binary opposition as minority (or subaltern) in relation to whatever is taken as majority or dominant.

### 2NC Impact

#### Turns the case. Human security is key to displace the dominance of national security in the war on terror.

Patrick HAYDENIR @ St. Andrews ‘4 “Constraining War: Human Security and the Human Right to Peace” *Human Rights Review* October-December p. 52-53

The explicit articulation of a cosmopolitan conception of human security and a corresponding right to peace is a positive development in global politics, inasmuch as it decenters the state in our understanding of the human community and delegitimizes organized violence as the generally accepted means for the “continuation” of realist politics. I have argued that just war theory, when defined in suitably narrow fashion, helps to contribute to our thinking on issues of human security in several ways. First, it provides a stringent normative framework for a reasonable humanitarian justification of the resort to force. Second, it enables us to conceptualize significant moral and legal constraints on war and thus on the powers of states to wage war, thereby displacing the use of force from the statist paradigm of security. Third, it contributes to the delegitimation of unjust wars, that is, military actions undertaken for any purposes other than human security. Fourth, insofar as it provides a justificatory basis for the increasing demilitarization of society, it may influence the progressive and just pacification of global politics.

### AT: Biopolitics Impact

#### Biopolitical governance at the level of the population is necessary to improve the quality of life. Disadvantaged populations have the most to gain from the use of progressive governmenality.

Ken BOOTH IR @ Aberystwyth ‘7  *Theory of World Security* p. 132-133

Daryl Glaser. a scholar from South Africa, and therefore somebody directly familiar with life in a state that was once committed to institutionalised racism, has offered an important counter to the Bauman thesis and the simplistic interhnkinil by postmodern writers of the Holocaust and modernimJ°" In a book written a decade after Mandela's release, Glaser argued that it was not the surveillance, statistics, and regulation that were the aspects of Nazi behaviour demanding attention. Nor was it the 'lawfulness, planning, bureaucratic regulation or the professionalisation of knowledge' that fed into Nazi racial policies. That is, Glaser claimed that the features of modernity showcased by the Bauman thesis were not what demanded attention; rather, it was the 'institutionalisation of a racial hierarchy of wealth, status and power, enforced by repressive, often arbitrary state authority, assisted by bad laws'. What was wrong in Nazi Germany (and in apartheid South Africa) was not 'modernity', but laws and politics that served ideas of racial superiority—a prejudice that was directly contrary to 'modern ideals like social justice'. Modernity for Glaser delivered ideas of social justice to South Africa, while its modalities in the form of statistics and regulation, and so on constituted the very means by which illiteracy could be overcome, and the health of the disadvantaged improved.Rejecting the logic and political implications of the Bauman thesis, Glaser advocated 'more and better law, effectively enforced, and more "scientific" information about the condition of the people, not less of these "modern" goods'. His view was that the people(s) of post- apartheid South Africa were in a better position than in the recent past albeit still a perilous one, because the oppressed had identified with modernity's ideas of tolerance and equality, and had found solidarity in the global human rights supporters. Social development (improved literacy and better health), he stressed, requires planning, profession- alised knowledge, and other modalities of modernity—not their rejection. What Glaser called the 'organisational machinery of "modernity" to give effect to "modern" ideas like social justice' 107 does not guarantee the security and hence prospects for emancipation for South Africa's peoples, but it does give them hope.105

The idea of progress is not what it was, but is more useful as a result. It should never be considered as part of nature's plan for history, or pursued with hubris, but always with reflexivity The ideals of emancipation that inform progressive politics are guides for judgement and action; without them societies will replicate structural and other oppressions, and humanity will never be what it might become.