## 1NC

### 1

**The executive branch should cease introducing armed forces into armed hostiles against black people.**

**Executive war power primacy now—the plan flips that**

Eric Posner, 9/3/13, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President **Obama has reaffirmed the primacy of the executive** in matters of war and peace. The war powers of the presidency remain as mighty as ever.

It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. **That would have been** worthy of notice, **a reversal of the ascendance of executive power over Congress**. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”

Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.)

People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

Key to the entirety of international law

Abebe and Posner 11

DANIEL ABEBE & ERIC A. POSNER, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, Virginia Journal of International Law, 2011, "The Flaws of Foreign Affairs Legalism", Vol. 51, Issue 3, <http://www.vjil.org/assets/pdfs/vol51/issue3/Abebe___Posner.pdf>

2. The American Executive’s Contribution to International Law Let us now compare the judiciary’s record with that of the executive. To keep the discussion short, we will focus on post-World War II activity. The executive has been the leading promoter of international law. It has negotiated and ratified (sometimes with the Senate’s consent, sometimes with Congress’s consent, and sometimes without legislative consent) thousands of treaties over the last sixty years,153 including the fundamental building blocks of the modern international legal system, such as the UN Charter, the GATT/**WTO**, the International Covenant for Civil and Political Rights, and the Genocide Convention. Through the U.S. State Department, the executive issues annual reports criticizing foreign countries for human rights violations, and the U.S. government has frequently, although not with complete consistency, issued objections when foreign countries violate human rights.154 The executive has also negotiated and signed other important treaties to which the Senate has withheld consent — including the Vienna Convention on the Law of Treaties, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Law of the Sea, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, among others.155 The executive has also been instrumental in creating modern international institutions, including the UN Security Council, the GATT/WTO system, the World Bank, and the IMF.156 Much of what we said might seem too obvious to mention. One can hardly imagine the judiciary deciding on its own that the United States must create or join some new treaty regime. But these obvious points have been overlooked in the debate about the role of the judiciary in foreign affairs. Virtually everything the judiciary does in this area depends on prior executive action. Only the constitutional interpretation cases seem truly judge-initiated, for in these cases, the Court sometimes cites treaties that the United States has not ratified and sometimes cites the laws of foreign nations. The claim that the judiciary can, and even does, play a primary role in the adoption of international law is puzzling. In almost all cases, the judiciary must follow the executive’s lead. This also means that if the judiciary interprets treaties and other sources of international law in an aggressive way — in a way that the executive rejects — the executive may respond **by being more cautious about negotiating treaties and adopting international law in the first place.** This possible backlash effect has not been documented, but is plausible. As we discuss in the next section, fears of judicial enforcement of certain treaty obligations led to an effort by the Senate to ensure that those treaties would not have domestic legal effect.

**Human rights are protections, pure and simple – they require universality to be effective**

Michael **Ignatief 1**, Director of the Carr Center for Human Rights at the Kennedy School of Government at Harvard University, “The Attack on Human Rights”, Foreign Affairs, November/December

But at the same time. Western defenders or human rights have traded too much away. In the desire to find common ground with Islamic and Asian positions and to purge their own discourse of the imperial legacies uncovered by the postmodernist critique, Western defenders of human rights norms risk compromising the very universality they ought to be defending. They also risk rewriting their own history. Many traditions, not just Western ones, were represented au inc drafting of the Universal Declaration of Human Rights—for example, the Chinese, Middle Eastern Christian, Marxist, Hindu, Latin American, and Islamic. The members of the drafting committee saw their task not as a simple ratification of Western convictions but as an attempt to delimit a range of moral universals from within their very different religious, political, ethnic, and philosophical backgrounds. This fact helps to explain why the document makes no reference to God in its preamble. The communist delegations would have vetoed any such reference, and the competing religious traditions could not have agreed on words that would make human rights derive from human beings' common existence as Gods creatures. Hence the secular ground of the document is not a sign of European cultural domination so much as a pragmatic common denominator designed to make agreement possible across a range of divergent cultural and political viewpoints. It remains true, of course, that Western inspirations—and Western drafters—played the predominant role in the drafting of the document. Even so, the drafters' mood in 1947 was anything but triumphalist. They were aware, first of all, that the age of colonial emancipation was at hand: Indian independence was proclaimed while the language of the declaration was being finalized. Although the declaration does not specifically endorse self-determination, its drafters clearly foresaw the coming tide of struggles for national independence. Because it does proclaim the right of people to selfgovernment and freedom of speech and religion, it also concedes the right of colonial peoples to construe moral universals in a language rooted in their own traditions. Whatever failings the drafters of the declaration may be accused of, unexamined Western triumphalism is not one of them. Key drafters such as Rene Cassin of France and John Humphrey of Canada knew the knell had sounded on two centuries of Western colonialism. They also knew that the declaration was not so much a proclamation of the superiority of European civilization as an attempt to salvage the remains of its Enlightenment heritage from the barbarism of a world war just concluded. The declaration was written in full awareness of Auschwitz and dawning awareness of Kolyma. A consciousness of European savagery is built into the very language of the declarations preamble; "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ..." The declaration may still be a child of the Enlightenment, but it was written when faith in the Enlightenment faced its deepest crisis. In this sense, human rights norms are not so much a declaration of the superiority of European civilization as a warning by Europeans that the rest of the world should not reproduce their mistakes. The chief of these was the idolatry of the nation-state, causing individuals to forget the higher law commanding them to disobey unjust orders. The abandonment of this moral heritage of natural law and the surrender of individualism to collectivism, the drafters believed, led to the catastrophes of Nazi and Stalinist oppression. Unless the disastrous heritage of European collectivism is kept in mind as the framing experience in the drafting of the declaration, its individualism will appear to be nothing more than the ratification of Western bourgeois capitalist prejudice. In 'act, it was much more: a studied attempt to reinvent the European natural law tradition in order to safeguard individual agency against the totalitarian state. IT REMAINS TRUE, therefore, that the core of the declaration is the moral individualism for which it is so reproached by non-Western societies. It is this individualism for which Western activists have become most apologetic, believing that it should be tempered by greater emphasis on social duties and responsibilities to the community. Human rights, it is argued, can recover universal appeal only if they soften their individualistic bias and put greater emphasis on the communitarian parts of the declaration, especially Article 29, which says that "everyone has duties to the community in which alone the free and full development of his personality is possible." This desire to water down the individualism of rights discourse is driven by a desire both to make human rights more palatable to less individualistic cultures in the non-Western world and also to respond to disquiet among Western communitarians at the supposedly corrosive impact of individualistic values on Western social cohesion. But this tack mistakes what rights actually are and misunderstands why they have proven attractive to millions of people raised in non-Western traditions. Rights are meaningful only if they confer entitlements and immunities on individuals; they are worth having only if they can be enforced against institutions such as the family, the state, and the church. This remains true even when the rights in question are collective or group rights. Some of these group rightssuch as the right to speak your own language or practice your own religion-are essential preconditions for the exercise of individual rights. The right to speak a language of your choice will not mean very much if the language has died out. For this reason, group rights are needed to protect individual rights. But the ultimate purpose and justification of group rights is not the protection of the group as such but the protection of the individuals who compose it. Group rights to language, for example, must not be used to prevent an individual from learning a second language. Group rights to practice religion should not cancel the right of individuals to leave a religious community if they choose. Rights are inescapably political because they tacitly imply a conflict between a rights holder and a rights "withholder," some authority against which the rights holder can make justified claims. To confuse rights with aspirations, and rights conventions with syncretic syntheses of world values, is to wish away the conflicts that define the very content of rights. Individuals and groups will always be in conflict, and rights exist to protect individuals. Rights language cannot be parsed or translated into a non-individualistic, communitarian framework; it presumes moral individualism and is nonsensical outside that assumption. Moreover, it is precisely this individualism that renders human rights attractive to non-Western peoples and explains why the fight for those rights has become a global movement. The language of human rights is the only universally available moral vernacular that validates the claims of Rights doctrines women and children against the oppression they experience in patriarchal and tribal challenge powerful. societies; it is the only vernacular that enables religions tribes, and dependent persons to perceive themselves a and as moral agents and to act against practices- authoritaran states. arranged marriages, purdah, civic disenfranchisement, genital mutilation, domestic slavery, and so on-that are ratified by the weight and authority of their cultures. These agents seek out human rights protection precisely because it legitimizes their protests against oppression. If this is so, then it is necessary to rethink what it means when one says that rights are universal. Rights doctrines arouse powerfiul opposition because they challenge powerful religions, family structures, authoritarian states, and tribes. It would be a hopeless task to attempt to persuade these holders of power of the universal validity of rights doctrines, since if these doctrines prevailed, their exercise of authority would necessarily be abridged and constrained. Thus universality cannot imply universal assent, since in a world of unequal power, the only propositions that the powerful and powerless would agree on would be entirely toothless and anodyne. Rights are universal because they define the universal interests of the powerless-namely, that power be exercised over them in ways that respect their autonomy as agents. In this sense, human rights represent a revolutionary creed, since they make a radical demand of all human groups that they serve the interests of the individuals who compose them. This, then, implies that human groups should be, insofar as possible, consensual, or at least that they should respect an individual's right to exit when the constraints of the group become unbearable. The idea that groups should respect an individual's right of exit is not easy to reconcile with what groups actually are. Most human groups-the family, for example-are blood groups, based on inherited kinship or ethnic ties, People do not choose to be born into them and do not leave them easily, since these collectivities provide the frame of meaning within which individual life makes sense. This is as true in modern secular societies as it is in religious or traditional ones. Group rights doctrines exist to safeguard the collective rights-for example, to language-that make individual agency meaningful and valuable. But individual and group interests inevitably conflict. Human rights exist to adjudicate these conflicts, to define the irreducible minimum beyond which group and collective claims must not go in constraining the lives of individuals. CULTURE SHOCK ADOPTING THE VALUES of individual agency does not necessarily entail adopting Western ways of life. Believing in your right not to be tortured or abused need not mean adopting Western dress, speaking Western languages, or approving of the Western lifestyle. To seek human rights protection is not to change your civilization; it is merely to avail vourself of the protections of what the philosopher Isaiah Berlin called "negative liberty": to be free from oppression, bondage, and gross physical harm. Human rights do not, and should not, delegitimize traditional culture as a whole. The women in Kabul who come to human rights agencies seeking protection from the Taliban do not want to cease being Muslim wives and mothers; they want to combine their traditions with education and professional health care provided by a woman. And they hope the agencies will defend them against being beaten and persecuted for claiming such rights. The legitimacy of such claims is reinforced by the fact that the people who make them are not foreign human rights activists or employees of international organizations but the victims themselves. In Pakistan, for example, it is poor rural women who are criticizing the grotesque distortion of Islamic teaching that claims to justify "honor killings"-in which women are burned alive when they disobey their husbands. Human rights have gone global by going local, empowering the powerless, giving voice to the voiceless. It is simply not the case, as Islamic and Asian critics contend, that human rights force the Western way of life on their societies. For all its individualism, human rights rhetoric does not require adherents to jettison their other cultural attachments. As the philosopher Jack Donnelly argues, Human rights should human rights assume "that people probably are best suited, and in any case are entitled, not delegitimize to choose the good life for themselves."

### 2

War metaphors are coercive ploys that map social reality onto a realm of militarism

Nuri ’09 (Dalia, Political Studies Department, Bar-Ilan University and Hadassah College, Jerusalem, “Friendly fire: war-normalizing metaphors in the Israeli political discourse,” Journal of Peace Education Vol. 6, No. 2, September 2009, 153–169)

Combining principles of peace education and political discourse analysis, this study dwells on one powerful metaphorical mechanism engaged in by Israeli political leaders. The discursive phenomenon in question is what I call ‘war-normalizing meta- phors’. War-normalizing metaphors are metaphors that contain the potential to naturalize and legitimate the use of military power by creating a systematic analogy between war and objects that are far from the battlefield; for example, WAR IS A GAME, WAR IS SPORT, or WAR IS BUSINESS. The claim is that systematic use of war-normalizing metaphors frames war3 as a ‘normal’ phenomenon that is part of human nature and ordinary life and a situation that does not require any intervention or change. As such, war-normalizing metaphors are ‘discursive landmines’ that **inflict harm on a culture of peace and should be eliminated from any political discourse**.

This article reports the findings of a case study of the war-normalizing metaphors employed by Israeli political leaders during 1967–1973. The metaphors in this case study were taken from a corpus of 40 speeches, articles and interviews authored by prominent Israeli political leaders. This period was characterized by several types of hostilities (two total wars, a War of Attrition and hundreds of terrorist attacks) as well as various kinds of peace initiatives (that all failed). It is important to note that in this period, the Israeli government had a monopoly over radio transmissions and the single national television channel (which began broadcasting in 1969). It also had crucial influence on the press. Political leaders, therefore, had unlimited access to the arenas available for shaping public opinion with respect to peace and conflict.

While political discourse on peace and war, as defined here, usually evokes political support or political criticism, this article’s position is completely different. It aims to demonstrate the importance of educating political leaders in order to **improve their awareness**, sensitivity and rhetorical skills regarding war and peace discourse. Thus, **the contribution of this research to the field of peace education is dual.** First, it expands the audience targeted for peace education. Traditionally, peace education has favored students still located in the education system (McGlynn et al. 2004), with a focus on special school programs (see for example, Zeiger 2000; Arweck and Nesbitt 2008) or on higher education (see for example, Osborn 2000; Conley Tyler and Bretherton 2006). Teacher education for peace has also aroused scholarly research (see for example Koshmanova and Hapon 2007). In contrast, this study demonstrates the importance of peace education oriented directly toward political leaders. Second, while analysis of peace actions, peace movements and education programs for peace have captured a central place in the field of peace studies in general and in peace education in particular, research on the peace discourse and peace rhetoric has gained momentum only in the last 15 years (e.g., Schaffner and Wenden 1995; Bridgeman 2000; Morke and Pincus 2000; Salomon 2004; Cavin 2006; Friedrich 2007; Wenden 2007).4

Wenden (2003, 171) has succinctly summed up the crucial importance of ‘the linguistic factor’ in promoting a culture of peace:

Since ideologies are expressed in text and talk, albeit indirectly, and since discourses also contribute to the construction and confirmation of already-present ideologies, it is essen- tial that we learn to look critically at discourse as a means of identifying these ideologies that challenge the achievement of a culture of peace...the linguistic factor be taken into account by scholars and researchers, policy makers and government planners, educators and activists in their attempts to deal with the problems of social...violence that challenge contemporary societies.

The current research fits this orientation.

The article opens with an overview of the conceptual framework and continues

with a discussion of the concept war-normalizing metaphors. Following the method- ological section, the article analyzes the war-normalizing metaphors used in the Israeli political discourse between 1967 and 1973. Next is a section containing a short comparison of the war-normalizing metaphors applied in the Israeli political discourse during the 2006 Second Lebanon War. In the concluding section I suggest exploring the introduction of a peace-normalizing mechanism having its own metaphors so as to encourage a peace-oriented rhetorical consciousness among political and military leaders.

The conceptual framework

War and peace discourses function as effective mechanisms for **sustaining relations of control** within a national entity. The identification of political biases in these discourses opens a window to latent processes by which powerful groups attempt to **influence public opinion** and promote their agendas, in this case an aggressive political agenda. Researchers, especially critical linguists, have revealed the manipulative power of a line of new and old terms, concepts and metaphors regarding war and warfare e.g., ‘war on terror’ (Mazid 2007), ‘preventive war’ (Ferrari 2007), ‘surgical strike’ (Gavriely-Nuri 2008), ‘targeted killing’ (Silber forthcoming), ‘smart bomb’ (Muchnik forthcoming) and many others. Manipulation is not only a linguistic device:

Socially, manipulation is defined as **illegitimate domination confirming social inequality.** Cognitively, manipulation as mind control involves the interference with processes of understanding, the formation of biased mental models and social representations. Discursively, manipulation generally involves the usual forms and formats of ideological discourse. (Van Dijk 2006)

The manipulative powers of political metaphors in general and war metaphors in particular will be discussed below.

Metaphors

Metaphors have traditionally been studied by scholars in the fields of literature, rhet- oric and linguistics. For many years, this area of study was considered inappropriate for the analysis of social and political events. Curticapean (2006, 17) succinctly described this attitude: ‘They were deemed incompatible with reason (because meta- phors get in the way of clear ideas and plain truth) or, at best, garments of rational thought (ornaments which decorate texts without affecting their meaning).’

Advances in cognitive linguistics altered the narrow perception of metaphors in the latter part of the twentieth century. In their seminal study Metaphors we live by, George Lakoff and Mark Johnson (1980) challenged the traditional approach to metaphors and offered a coherent, systematic framework that became known as the cognitive linguistic view of metaphor. This theory essentially altered the status of metaphor from art to instrument, to a crucial device for the formation of concepts and the conceptualization of reality. Metaphor thus came to be perceived as inherent to human reasoning, and more than a figure of speech, it came to be viewed as a mode of thought. Lakoff and Johnson noted that **metaphors can ‘create social reality and guide future action’**: that **they can behave like ‘self-fulfilling prophecies’** (1980, 156). What is most relevant for the current study is the understanding that ‘ideological struggles are often a matter of fighting for one set of metaphors to become common- sense and “naturalized” as literal’ (Goatly 2002, 265) or, as often claimed: ‘Military strategists stress the importance of controlling the high ground; political strategists stress the importance of controlling the metaphor’ (Thompson 1996, 190).

The internalization of militarism leads to pure war and extinction

Borg, Executive Director at Community Consulting Group, Graduate White Institiute Psychoanalystic Program, 2003, Journal for the Psychoanalysis of Culture and Society 8.1 (2003) 57-67

Paul Virilio and Sylvere Lotringer's concept of "**pure war"refers to the potential of a culture to destroy itself completely** (12). 2 We as psychoanalysts can—and increasingly must—explore the impact of this concept on our practice, and on the growing number of patients who live with the inability to repress or dissociate their experience and awareness of the pure war condition. The realization of a patient's worst fears in actual catastrophic events has always been a profound enough psychotherapeutic challenge. These days, however, **catastrophic events** not only threaten friends, family, and neighbors; they also **become the stuff of endless repetitions and dramatizations** on radio, television, and Internet. 3 **Such continual reminders of death and destruction affect us all**. What is the role of the analyst treating patients who live with an ever-threatening sense of the pure war lying just below the surface of our cultural veneer? At the end of the First World War, the first "total war," Walter Benjamin observed that "nothing [after the war] remained unchanged but the clouds, and beneath these clouds, in a field of force of destructive torrents and explosions, was the tiny, fragile human body"(84). Julia Kristeva makes a similar note about our contemporary situation, "The recourse to atomic weapons seems to prove that horror...can rage absolutely" (232). And, as if he too were acknowledging this same fragility and uncontainability, the French politician Georges Clemenceau commented in the context of World War I that "war is too serious to be confined to the military" (qtd. in Virilio and Lotringer 15). Virilio and Lotringer gave **the name "pure war"to the psychological condition that results when people know that they live in a world where the possibility for absolute destruction** (e.g., nuclear holocaust) **exists**. As Virilio and Lotringer see it, **it is not the technological capacity for destruction** (that is, for example, the existence of nuclear armaments) **that imposes the dread characteristic of** a **pure war** psychology **but the belief systems** that **this capacity sets up**. **Psychological survival requires** that **a way** be found (at least unconsciously) **to escape** inevitable **destruction**—it requires a way out—but **this enforces an irresolvable paradox, because the definition of pure war culture is that there is no escape**. Once people believe in the external possibility—at least those people whose defenses cannot handle the weight of the dread that pure war imposes—**pure war becomes an internal condition**, a **perpetual state of preparation for absolute destruction and for personal, social, and cultural death**. The Pure Warrior The philosophy (or practice) of "pure warriors," that is, of people who are preoccupied with the pure war condition of their society, is based on the perpetual failure within them of the dissociation and repression that allow others to function in a situation that is otherwise completely overwhelming. Joyce was one of those who lived on the border of life and death; she could not escape awareness of that dread dichotomy that most of us are at great pains to dissociate. She manifested the state of perpetual preparation that is the hallmark of pure war culture and of the insufficiently defended pure warrior, and also a constant awareness of the nearness of death in all its various forms. She understood quite well, for instance, that when people are institutionalized (as she had been on numerous occasions), "society is defining them as socially dead, [and that at that point] the essential task to be carried out is to help inmates to make their transition from social death to physical death" (Miller and Gwynne 74). Against this backdrop, Joyce sought psychoanalysis as a "new world," the place where she would break free from the deathly institutionalized aspects of her self, and begin her life anew. Her search for a "new world" included the possibility of a world that was not a pure war world—a prelapsarian Eden. Virilio and Lotringer state that "**war exists in its preparation**" (53). And Sun Tsu, who wrote over 2400 years ago and yet is often considered the originator of modern warfare, said in The Art of War, "Preparation everywhere means lack everywhere" (44). This means that **when** the **members of a culture must be on guard on all fronts**, the **resources** of that culture **are** necessarily **scattered and taxed**. The more defenses are induced and enacted, the more psychologically impoverished a culture (or a person) will be. In war-torn nations, resources like food, clothing, and materials for shelter may be scarce in the general population because they are shunted off to the military. Similarly, the hoarding of psychological resources and the constant alert status of the defense system are outcomes of existence in a pure war culture. We can see this scattering and scarcity of resources occurring already in the United States as billions of dollars are shunted from social services to war efforts and homeland security. **In pure war cultures**—that is, in cultures that enact a perpetual preparation for war—the notion of **peace is itself a defensive fantasy,** although to survive psychically we distract ourselves from such frightening stimuli as widespread terrorist activities and other events that demonstrate our pure war status. **Pure war obliterates the distinction between soldier and citizen**. We have all been drafted. According to Virilio and Lotringer, "**All of us are already civilian soldiers**, without knowing it...**War happens everywhere, but we no longer have the means of recognizing it**" (42).

### 3

Your decision should answer the resolutional question: Is the enactment of topical action better than the status quo or a competitive option?

1. “Resolved” before a colon reflects a legislative forum

Army Officer School ‘04

(5-12, “# 12, Punctuation – The Colon and Semicolon”, http://usawocc.army.mil/IMI/wg12.htm)

The colon introduces the following: a.  A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. b.  A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) c.  A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? d.  A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. e.  After the introduction of a business letter: Dear Sirs: (colon) Dear Madam: (colon) f.  The details following an announcement For sale: (colon) large lakeside cabin with dock g.  A *formal* resolution, after the word "resolved:"

Resolved: (colon) That this council petition the mayor.

2. “USFG should” means the debate is solely about a policy established by governmental means

Ericson ‘03

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

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

They’re passive call for a restriction undermines debate over actors and mechanisms

“Armed forces” are military personnel—the aff is distinct

Lorber, JD University of Pennsylvania, January 2013

(Eric, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?” 15 U. Pa. J. Const. L. 961, Lexis)

As discussed above, critical to the application of the War Powers Resolution - especially in the context of an offensive cyber operation - are the **definitions of key terms**, **particularly** **"armed forces,"** as the relevant provisions of the Act are only triggered if the President "introduces armed forces] into hostilities or into situations [of] imminent ... hostilities," n172 or if such forces are introduced "into the territory, airspace, or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces." n173 The requirements may also be triggered if the United States deploys armed forces "in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." n174 As is evident, the definition of "armed forces" is crucial to deciphering whether the WPR applies in a particular circumstance to provide congressional leverage over executive actions. The definition of "hostilities," which has garnered the majority of scholarly and political attention, n175 particularly in the recent Libyan conflict, n176 will be dealt with secondarily here because it only becomes important if "armed forces" exist in the situation. As is evident from a textual analysis, n177 an examination of the legislative history, n178 and the broad policy purposes behind the creation of the Act, n179 [\*990] **"armed forces" refers to U.S. soldiers and members of the armed forces**, **not weapon systems or capabilities** such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," **the clear implication is that only members of the armed forces count for** the purposes of **the definition** under the WPR. Though not dispositive, the term "member" connotes a human individual who is part of an organization. n181 Thus, it appears that the term "armed forces" means **human members of the** United States **armed forces**. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non-members constituting armed forces). n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative. An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [\*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, **suggesting that Congress considered the term to apply only to soldiers in the armed forces**. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that Congress conceptualized "armed forces" to mean U.S. combat troops.

That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, uneducational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.

Simualted national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

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

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

Debate over a controversial point of action creates argumentative stasis—that’s key to avoid a devolution of debate into competing truth claims, which destroys the decision-making benefits of the activity

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

Debate is a means of settling differences, so there must be a controversy, a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a feet or value or policy, there is no need or opportunity 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 of issues, there is no debate. Controversy invites decisive choice between competing positions. 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 live 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 are best understood when seated clearly such that all parties to the debate share an understanding about the objec­tive of the debate. This enables focus on substantive and objectively identifiable issues facilitating comparison of competing argumentation leading to effective decisions. Vague understanding results in unfocused deliberation and poor deci­sions, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For exam­ple, claims are presented and supported within speeches, editorials, and advertise­ments even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audi­ence or judge to make a forced choice among competing claims. Informal dis­course occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, by definition, debate requires "reasoned judgment on a proposition. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumenta­tion calling upon their audience or adjudicator to decide. The proposition pro­vides focus for the discourse and guides the decision process. Even when a decision will be made through a process of compromise, it is important to iden­tify the beginning positions of competing advocates to begin negotiation and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates (“Vote for me!”); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be explicitly expressed (“the defendant is guilty!”). In aca­demic debate, the proposition provides essential guidance for the preparation of the debaters prior to the debate, the case building and discourse presented during the debate, and the decision to be made by the debate judge after the debate. 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. This focus contributes to better and more informed decision making with the potential for better results. In aca­demic debate, it provides better depth of argumentation and enhanced opportu­nity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. 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 a topic, such as ‘"homeless­ness,” or “abortion,” Or “crime,” or “global warming,” we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet by itself fails to provide much basis for dear argumen­tation. If we take this statement to mean *Iliad* 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, perhaps promoting positive social change. (Note that “loose” propositions, such as the example above, may be defined by their advocates in such a way as to facilitate a clear contrast of competing sides; through definitions and debate they “become” clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote weII-organized argument. What sort of writing are we concerned with—poems, novels, government documents, web­site development, advertising, cyber-warfare, disinformation, or what? What does it mean to be “mightier" 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.

Decisionmaking is the most portable and flexible skill—key to all facets of life and advocacy

Steinberg and Freeley ‘13

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*Critical Thinking for Reasoned Decision Making*, Thirteen Edition

In the spring of 2011, facing a legacy of problematic U.S, military involvement in Bosnia, Iraq, and Afghanistan, and criticism for what some saw as slow sup­port of the United States for the people of Egypt and Tunisia as citizens of those nations ousted their formerly American-backed dictators, the administration of President Barack Obama considered its options in providing support for rebels seeking to overthrow the government of Muammar el-Qaddafi in Libya. Public debate was robust as the administration sought to determine its most appropriate action. The president ultimately decided to engage in an international coalition, enforcing United Nations Security Council Resolution 1973 through a number of measures including establishment of a no-fly zone through air and missile strikes to support rebels in Libya, but stopping short of direct U.S. intervention with ground forces or any occupation of Libya. While the action seemed to achieve its immediate objectives, most notably the defeat of Qaddafi and his regime, the American president received both criticism and praise for his mea­sured yet assertive decision. In fact, the past decade has challenged American leaders to make many difficult decisions in response to potentially catastrophic problems. Public debate has raged in chaotic environment of political division and apparent animosity, The process of public decision making may have never been so consequential or difficult. Beginning in the fall of 2008, Presidents Bush and Obama faced a growing eco­nomic crisis and responded in part with '’bailouts'' of certain Wall Street financial entities, additional bailouts of Detroit automakers, and a major economic stimu­lus package. All these actions generated substantial public discourse regarding the necessity, wisdom, and consequences of acting (or not acting). In the summer of 2011, the president and the Congress participated in heated debates (and attempted negotiations) to raise the nation's debt ceiling such that the U.S. Federal Govern­ment could pay its debts and continue government operations. This discussion was linked to a debate about the size of the exponentially growing national debt, gov­ernment spending, and taxation. Further, in the spring of 2012, U.S. leaders sought to prevent Iran from developing nuclear weapon capability while gas prices in the United States rose, The United States considered its ongoing military involvement in Afghanistan in the face of nationwide protests and violence in that country1 sparked by the alleged burning of Korans by American soldiers, and Americans observed the actions of President Bashir Al-Assad and Syrian forces as they killed Syrian citizens in response to a rebel uprising in that nation and considered the role of the United States in that action. Meanwhile, public discourse, in part generated and intensified by the cam­paigns of the GOP candidates for president and consequent media coverage, addressed issues dividing Americans, including health care, women's rights to reproductive health services, the freedom of churches and church-run organiza­tions to remain true to their beliefs in providing (or electing not to provide) health care services which they oppose, the growing gap between the wealthiest 1 percent of Americans and the rest of the American population, and continued high levels of unemployment. More division among the American public would be hard to imagine. Yet through all the tension, conflict was almost entirely ver­bal in nature, aimed at discovering or advocating solutions to growing problems. Individuals also faced daunting decisions. A young couple, underwater with their mortgage and struggling to make their monthly payments, considered walking away from their loan; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job and a teenager decided between an iPhone and an iPad. Each of these situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consider­ation: others scorn to just happen. Couples, families, groups of friends, and co­workers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make deci­sions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all engage in discourse surrounding our necessary decisions every day. To refinance or sell one’s home, to buy a high-performance SUV or an eco­nomical hybrid car, what major to select, what to have for dinner, what candi­date to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? Should we watch The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue—all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, Time magazine named YOU its "Person of the Year.” Congratulations! Its selection was based on the participation not of “great men” in the creation of his­tory, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs, online networking, YouTube, Facebook, Twitter, Wikipedia, and many other “wikis," and social networking sites, knowledge and truth are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. Through a quick keyword search, we have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? Much of what suffices as information is not reliable, or even ethically motivated. The ability of every decision maker to make good, reasoned, and ethical deci­sions' relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength, And, critical thinking offers tools enabling the user to better understand the' nature and relative quality of the message under consider­ation. Critical thinkers are better users of information as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. The executive order establishing California's requirement states; Instruction in critical thinking is designed to achieve an understanding of the relationship of language to logic, which would lead to the ability to analyze, criticize and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambigu­ous statements of knowledge or belief. The minimal competence to be expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish fact from judgment, belief from knowledge, and skills in elementary inductive arid deductive processes, including an under­standing of die formal and informal fallacies of language and thought. Competency in critical thinking is a prerequisite to participating effectively in human affairs, pursuing higher education, and succeeding in the highly com­petitive world of business and the professions. Michael Scriven and Richard Paul for the National Council for Excellence in Critical Thinking Instruction argued that the effective critical thinker: raises vital questions and problems, formulating them clearly and precisely; gathers and assesses relevant information, using abstract ideas to interpret it effectively; comes to well-reasoned conclusions and solutions, testing them against relevant criteria and standards; thinks open-mindedly within alternative systems of thought, recognizing, and assessing, as need be, their assumptions, implications, and practical con­sequences; and communicates effectively with others in figuring our solutions to complex problems. They also observed that critical thinking entails effective communication and problem solving abilities and a commitment to overcome our native egocentrism and sociocentrism,"1 Debate as a classroom exercise and as a mode of thinking and behaving uniquely promotes development of each of these skill sets. Since classical times, debate has been one of the best methods of learning and applying the principles of critical thinking. Contemporary research confirms the value of debate. One study concluded: The impact of public communication training on the critical thinking ability of the participants is demonstrably positive. This summary of existing research reaffirms what many ex-debaters and others in forensics, public speaking, mock trial, or argumentation would support: participation improves die thinking of those involved,2 In particular, debate education improves the ability to think critically. In a com­prehensive review of the relevant research, Kent Colbert concluded, "'The debate-critical thinking literature provides presumptive proof ■favoring a positive debate-critical thinking relationship.11'1 Much of the most significant communication of our lives is conducted in the form of debates, formal or informal, These take place in intrapersonal commu­nications, with which we weigh the pros and cons of an important decision in our own minds, and in interpersonal communications, in which we listen to argu­ments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of’ others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job offer, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few Of the thousands of deci­sions we may have to make. Often, intelligent self-interest or a sense of respon­sibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for our product, or a vote for our favored political candidate. Some people make decision by flipping a coin. Others act on a whim or respond unconsciously to “hidden persuaders.” If the problem is trivial—such as whether to go to a concert or a film—the particular method used is unimportant. For more crucial matters, however, mature adults require a reasoned methods of decision making. Decisions should be justified by good reasons based on accurate evidence and valid reasoning.

Engaging the law through in-depth debate is critical to solve their impacts

Harris, professor of law – UC Berkeley, ‘94

(Angela P., 82 Calif. L. Rev. 741)

CRT has taken up this method of internal critique. Like the crits, race-crits have tried to go beyond espousing Doctrine X over Doctrine Y, claiming instead to show that both doctrines are biased against people of color from the outset. n33 For example, as Brooks and Newborn note, the CRT critique of equal protection law challenges not only the "intent" test of Washington v. Davis, n34 but the understanding of racism on which that test is based. n35 And, as Farber notes, the CRT critique of affirmative action challenges the very notion of "merit." n36 This commitment to conceptual as well as doctrinal critique is CRT's radicalism - its attempt to dig down to the very roots of legal doctrine, in contrast with the more reformist bent of traditional civil rights scholarship. Following the first wave's announcement that law is not separate from politics, the second wave of CLS moved to the study of law as "rhetoric" - [\*748] the ways in which legal reasoning accomplishes its ideological effects. n37 Second wave crits have attempted to examine how binary thinking in the law is produced and how it reflects larger historical processes of bureaucratization and commodification. In so doing, the second wave of CLS has found no "there" there beneath the rhetoric of law. Where first wave crits assumed that beneath law's indeterminacy was a "fundamental contradiction" in the human condition itself, n38 or relied on the existence of moments of unalienated, authentic "being" in the world, n39 second wave crits have begun to question whether the very assumption of a human condition separate from the language we use to talk about it makes sense. I call this mood of profound doubt and skepticism "postmodernist." There are as many different definitions of postmodernism as there are postmodernists. n40 As law professors have understood the term, n41 however, [Postmodernism] suggests that what has been presented in our social-political and our intellectual traditions as knowledge, truth, objectivity, and reason are actually merely the effects of a particular form of social power, the victory of a particular way of representing the world that then presents itself as beyond mere interpretation, as truth itself. n42 Postmodernism's strength is in its corrosiveness. First wave crits insisted that law functions as a mask for power; second wave crits question the first wave's faith in "unmasking" itself. The effort to expose law as ideology assumed that it was possible, through the force of critique, to suddenly see the way things "really" are in a flash of enlightenment. But the [\*749] second wave crits doubt this very reliance on a "real reality" underlying ideology. Instead, they suggest that ideology is all there is. n43 Postmodernist critique is congenial to race-crits, who had already drawn from history the lesson that "racism" is no superficial matter of ignorance, conscious error, or bigotry, but rather lies at the very heart of American - and western - culture. In one of the foundational articles of CRT, Kimberle Crenshaw notes that the civil rights movement achieved material and symbolic gains for blacks, yet left racist ideology and race-baiting politics intact. n44 In Crenshaw's view, the crits' critiques did not go far enough to expose the racism in legal reasoning and legal institutions. Derrick Bell argues that racism is a permanent feature of the American landscape, not something that we can throw off in a magic moment of emancipation. n45 And in a moment of deep pessimism, Richard Delgado's fictional friend "Rodrigo Crenshaw" has suggested that racism is an intrinsic feature of "The Enlightenment" itself. n46 **The deeper that race-crits dig, the more embedded racism seems to be**; the deeper the race-crit critique of western culture goes, the more useful postmodernist philosophy becomes in demonstrating that nothing should be immune from criticism. By calling everything taken for granted into question, postmodernist critique potentially clears the way for alternative accounts of social reality, n47 including accounts that place racism at the center of western culture. Thus, Gerald Torres has identified postmodernism as a useful position from which to criticize both theories of interest-group and "communitarian" politics. n48 Anthony Cook sees deconstruction, a postmodernist method of reading texts, as potentially "liberatory" for progressive scholars of color. n49 [\*750] And Robert Chang argues that post-structuralism is useful in order to understand the interaction between Asian American political action and the law. n50 Postmodernist thought refuses to accept any concept, linguistic usage, or value as pure, original, or incorruptible. Postmodernist narratives, as used by race-crits, contend that concepts like neutrality and objectivity, and institutions like law, have not escaped the taint of racism, but rather are often used to perpetuate it. Postmodernist narratives emphasize the ways in which "race" permeates our language, our perceptions, even our fondest "colorblind" utopias. n51 CRT tells postmodernist narratives when it digs down into seemingly neutral areas of law and finds concepts of "race" and racism always already there. B. CRT and Modernist Narratives Even while it exposes racism within seemingly neutral concepts and institutions, however, CRT has not abandoned the fundamental political goal of traditional civil rights scholarship: the liberation of people of color from racial subordination. Although, like crits, race-crits have questioned concepts of neutrality and objectivity, they have done so from a perspective that places racial oppression at the center of analysis and privileges the racial subject. This commitment to antiracism over critique as an end in itself has created rifts between CRT and CLS. For example, in a symposium published by the Harvard Civil Rights-Civil Liberties Law Review, race-crits broke with crits over the efficacy of "rights talk." n52 CLS writers had argued "that rights were malleable and manipulative, that in practice they served to isolate and marginalize rather than empower and connect people, and that progressive people should emphasize needs, informality, and connectedness rather than rights." n53 Patricia Williams, Richard Delgado, and Mari Matsuda, however, all rejected this yearning to go beyond rights to more [\*751] direct forms of human connection, arguing that, for communities of color, "rights talk" was an indispensable tool. n54 This argument between CRT and CLS was more a matter of strategy and tactics than of fundamental disagreement. Both sides agreed that progressive political action should be antiracist and that human connection was a good thing. But a comparison of CRT work with the second wave of CLS work also indicates a more serious tension. In its commitment to the liberation of people of color, CRT work demonstrates a deep commitment to concepts of reason and truth, transcendental subjects, and "really-out-there" objects. Thus, in its optimistic moments, CRT engages in "modernist" narratives. n55 Modernist narratives assume three things: a subject, free to choose, who can be emancipated or not; an objective world of things out there (a world "the way it really is" as opposed to the way things appear to be in a condition of false consciousness); and "reason," the bridge between the subject and the object that enables subjects to move from their own blindness to "enlightenment." Modernist narratives thus call on a particular intellectual machinery, a methodology Brian Fay describes as "critical social science." Critical social science requires the following: First, that there be a crisis in a social system; second, that this crisis be at least in part caused by the false consciousness of those experiencing it; third, that this false consciousness be amenable to the process of enlightenment ...; and fourth, that such enlightenment lead to emancipation in which a group, empowered by its new-found self-understanding, radically alters its social arrangements and thereby alleviates its suffering. n56 [\*752] In its optimistic moments, CRT is described very well by "critical social science." The crisis in our social system is our collective failure to adequately perceive or to address racism. This crisis, according to CRT, is at least in part caused by a false understanding of "racism" as an intentional, isolated, individual phenomenon, equivalent to prejudice. This false understanding, however, can be corrected by CRT, which redescribes racism as a structural flaw in our society. Through these explanations, readers will come to a new and deeper understanding of reality, an enlightenment which in turn will lead to legal and political struggle that ultimately results in racial liberation. Under CRT, as Fay remarks of critical social science in general, "the truth shall set you free." n57 This project fits well with the kind of scholarship most often found in law reviews. As several scholars have recently argued, one characteristic of conventional legal scholarship is its insistent "normativity": the little voice that constantly asks legal scholars, "So, what should we do?" n58 Normativity is both a stylistic and a substantive characteristic. At the stylistic level, normativity refers to how law review articles typically are structured: the writer identifies a problem within the existing legal framework; she then identifies a "norm," within or outside the legal system, to which we ought to adhere; and finally she applies the norm to resolve the problem in a way that can easily translate into a series of moves within the currently existing legal system. n59 At the substantive level, normativity describes the assumption within legal scholarship of a coherent and unitary "we" - a legal subject who speaks for and acts in the people's best interest - with the power to "do" something. Legal normativity also confidently assumes "our" ability to reason a way through problems with neutrality and objectivity: to "choose" a norm and then "apply" it to a legal problem. n60 Whereas second-wave CLS work sits very uneasily with this scholarly method, n61 both traditional civil rights scholarship and CRT adhere for the [\*753] most part to stylistic and substantive normativity. Although the "we" assumed in these articles and essays is often "people of color" and progressive whites rather than a generic "we," the same confidence is exhibited of "our" ability to choose one norm over another, to apply the new principle to a familiar problem, to achieve enlightenment, and to move from understanding to action. n62 Even when the recommended course of action goes beyond adopting Doctrine X over Doctrine Y, as CRT makes a point of doing, the exhortation to action often still assumes that liberation is just around the corner. CRT's commitment to the liberation of people of color - and the project of critical social science (generally) and normative legal scholarship (in particular) as a way to further that liberation - suggest a faith in certain concepts and institutions that postmodernists lack. When race-crits tell modernist stories, they assume that "people of color" describes a coherent category with at least some shared values and interests. They assume that the idea of "liberation" is meaningful - that racism is something that can one day somehow cease to exist, or cease to exert any power over us. Modernist narratives assume a "real" reality out there, and that reason can bring us face to face with it. And modernist narratives have faith that once enough people see the truth, right action will follow: that enlightenment leads to empowerment, and that empowerment leads to emancipation. Modernist narratives, then, are profoundly hopeful. They assume that people of color and whites live in the same perceptual and moral world, that reason speaks to us all in the same way despite our different experiences, and that reason, rather than habit or power, is what will motivate people. Modernist narratives also can be profoundly romantic. They imagine heroic action by a formerly oppressed people rising up as one, "empowered" to be who they "really" are or choose to be, breathing the thin and bracing air of freedom. This optimism and romanticism, though easy to caricature, cannot be easily dismissed. As Patricia Williams and Mari Matsuda have pointed out, faith in reason and truth and belief in the essential freedom of rational subjects have enabled people of color to survive and resist subordination. n63 Political modernism, more generally, has been a **powerful force** in the lives of subjugated peoples; as a practical matter, politically liberal societies are [\*754] vastly preferable to the alternatives. n64 A faith in reason has sustained efforts to educate people into critical thinking and to engage in debate rather than violence. n65 The passionate and constructive energy of modernist narratives of emancipation is also grounded in a moral faith: that human beings are created equal and endowed with certain inalienable rights; that oppression is wrong and resistance to oppression right; that opposing subjugation in the name of liberty, equality, and true community is the obligation of every rational person. In its modernist moments, CRT aims not to topple the Enlightenment, but to make its promises real. n66

### Case

**Trend lines prove the status quo form of political engagement works— this isn’t to say that everything is OK, but that falsifiable claims matter for assessing impacts AND that engagement can be effective**

Zach Beauchamp, Think Progress, 12/11/13, 5 Reasons Why 2013 Was The Best Year In Human History, thinkprogress.org/security/2013/12/11/3036671/2013-certainly-year-human-history/

Racism, sexism, anti-Semitism, homophobia, and other forms of discrimination remain, without a doubt, extraordinarily powerful forces. The statistical and experimental evidence is overwhelming — this irrefutable proof of widespread discrimination against African-Americans, for instance, should put the “racism is dead” fantasy to bed.

Yet the need to combat discrimination denial shouldn’t blind us to the good news. Over the centuries, humanity has made extraordinary progress in taming its hate for and ill-treatment of other humans on the basis of difference alone. Indeed, it is very likely that we live in the least discriminatory era in the history of modern civilization. It’s not a huge prize given how bad the past had been, but there are still gains worth celebrating.

Go back 150 years in time and the point should be obvious. Take four prominent groups in 1860: African-Americans were in chains, European Jews were routinely massacred in the ghettos and shtetls they were confined to, women around the world were denied the opportunity to work outside the home and made almost entirely subordinate to their husbands, and LGBT people were invisible. The improvements in each of these group’s statuses today, both in the United States and internationally, are incontestable.

On closer look, **we have reason to believe the happy trends are likely to continue.** Take racial discrimination. In 2000, Harvard sociologist Lawrence Bobo penned a comprehensive assessment of the data on racial attitudes in the United States. He found a “national consensus” on the ideals of racial equality and integration. “A nation once comfortable as a deliberately segregationist and racially discriminatory society has not only abandoned that view,” Bobo writes, “but now overtly positively endorses the goals of racial integration and equal treatment. There is no sign whatsoever of retreat from this ideal, despite events that many thought would call it into question. **The magnitude, steadiness, and breadth of this change should be lost on no one.**”

The norm against overt racism has gone global. In her book on the international anti-apartheid movement in the 1980s, Syracuse’s Audie Klotz says flatly that “the illegitimacy of white minority rule led to South Africa’s persistent diplomatic, cultural, and economic isolation.” The belief that racial discrimination could not be tolerated had become so widespread, Klotz argues, that it united the globe — including governments that had strategic interests in supporting South Africa’s whites — in opposition to apartheid. In 2011, 91 percent of respondents in a sample of 21 diverse countries said that equal treatment of people of different races or ethnicities was important to them.

Racism obviously survived both American and South African apartheid, albeit in more subtle, insidious forms. “The death of Jim Crow racism has left us in an uncomfortable place,” Bobo writes, “a state of laissez-faire racism” where racial discrimination and disparities still exist, but support for the kind of aggressive government policies needed to address them is racially polarized. **But there’s reason to hope that’ll change as well**: two massive studies of the political views of younger Americans by my TP Ideas colleagues, John Halpin and Ruy Teixeira, found that millenials were significantly more racially tolerant and supportive of government action to address racial disparities than the generations that preceded them. Though I’m not aware of any similar research of on a global scale, it’s hard not to imagine they’d find similar results, suggesting that we should have hope that the power of racial prejudice may be waning.

The story about gender discrimination is very similar: after the feminist movement’s enormous victories in the 20th century, structural sexism still shapes the world in profound ways, but the cause of gender equality is making progress. In 2011, 86 percent of people in a diverse 21 country sample said that equal treatment on the basis of gender was an important value. The U.N.’s Human Development Report’s Gender Inequality Index — a comprehensive study of reproductive health, social empowerment, and labor market equity — saw a 20 percent decline in observable gender inequalities from 1995 to 2011. IMF data show consistent global declines in wage disparities between genders, labor force participation, and educational attainment around the world. While enormous inequality remains, 2013 is looking to be the worst year for sexism in history.

Finally, we’ve made astonishing progress on sexual orientation and gender identity discrimination — largely in the past 15 years. At the beginning of 2003, zero Americans lived in marriage equality states; by the end of 2013, 38 percent of Americans will. Article 13 of the European Community Treaty bans discrimination on the grounds of sexual orientation, and, in 2011, the UN Human Rights Council passed a resolution committing the council to documenting and exposing discrimination on orientation or identity grounds around the world. The public opinion trends are positive worldwide: all of the major shifts from 2007 to 2013 in Pew’s “acceptance of homosexuality” poll were towards greater tolerance, and young people everywhere are more open to equality for LGBT individuals than their older peers.

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Once again, these victories are partial and by no means inevitable. Racism, sexism, homophobia, and other forms of discrimination aren’t just “going away” on their own. They’re losing their hold on us because people are working to change other people’s minds and because governments are passing laws aimed at promoting equality. Positive trends don’t mean the problems are close to solved, and certainly aren’t excuses for sitting on our hands.

That’s true of everything on this list. The fact that fewer people are dying from war and disease doesn’t lessen the moral imperative to do something about those that are; the fact that people are getting richer and safer in their homes isn’t an excuse for doing more to address poverty and crime.

But too often, the worst parts about the world are treated as inevitable, the prospect of radical victory over pain and suffering dismissed as utopian fantasy. The overwhelming force of the evidence shows that to be false. As best we can tell, the reason humanity is getting better is because humans have decided to make the world a better place. We consciously chose to develop lifesaving medicine and build freer political systems; we’ve passed laws against workplace discrimination and poisoning children’s minds with lead.

So far, these choices have more than paid off. It’s up to us to make sure they continue to.

Progressivism is possible, and it depends on effective decision-making, so T turns the case

Clark, professor of law – Catholic University, ‘95

(Leroy D., 73 Denv. U.L. Rev. 23)

I must now address the thesis that there has been no evolutionary progress for blacks in America. Professor Bell concludes that blacks improperly read history if we believe, as Americans in general believe, that progress--racial, in the case of blacks--is "linear and evolutionary." n49 According to Professor Bell, the "American dogma of automatic progress" has never applied to blacks. n50 Blacks will never gain full equality, and "even those herculean efforts we hail as successful will produce no more than temporary 'peaks of progress,' short-lived victories that slide into irrelevance." n51

Progress toward reducing racial discrimination and subordination has never been "automatic," if that refers to some natural and inexorable process without struggle. Nor has progress ever been strictly "linear" in terms of unvarying year by year improvement, because the combatants on either side of the equality struggle have varied over time in their **energies, resources, capacities, and** the quality of their plans. Moreover, neither side could predict or control all of the variables which accompany progress or non-progress; some factors, like World War II, occurred in the international arena, and were not exclusively under American control.

With these qualifications, and a long view of history, blacks and their white allies achieved two profound and qualitatively different leaps forward toward the goal of equality: the end of slavery, and the Civil Rights Act of 1964. Moreover, despite open and, lately, covert resistance, black progress has never been shoved back, in a qualitative sense, to the powerlessness and abuse of periods preceding these leaps forward. n52

Structural antagonism as per Sexton destroys progressivism and re-entrenches racism—we can acknowledge every problem with the status quo, but adopt a pragmatic orientation towards solutions

Clark, professor of law – Catholic University, ‘95

(Leroy D., 73 Denv. U.L. Rev. 23)

A Final Word

Despite Professor Bell's prophecy of doom, I believe he would like to have his analysis proven wrong. However, he desperately leans on a tactic from the past--laying out the disabilities of the black condition and accusing whites of not having the moral strength to act fairly. That is the ultimate theme in both of his books and in much of his law review writing. That tactic not only lacks full force against today's complex society, it also becomes, for many whites, an exaggerated claim that racism is the sole cause of black misfortunes. n146 Many whites may feel about the black condition what many of us may have felt about the homeless: dismayed, but having no clear answer as to how the problem is to be solved, and feeling individually powerless if the resolution calls for massive resources that we, personally, lack. Professor Bell's two books may confirm this sense of powerlessness in whites with a limited background in this subject, because Professor **Bell does not offer a single programmatic approach** toward changing the circumstance of blacks. He presents only startling, unanalyzed prophecies of doom, which will easily garner attention from a controversy-hungry media. n147

It is much harder to exercise imagination to create viable strategies for change. n148 Professor Bell sensed the despair that the average--especially average black--reader would experience, so he put forth rhetoric urging an "unremitting struggle that leaves no room for giving up." n149 His contention is ultimately hollow, given the total sweep of his work.

At some point it becomes dysfunctional to refuse giving any credit to the very positive abatements of racism that occurred with white support, and on occasion, white leadership. Racism thrives in an atmosphere of insecurity, apprehension about the future, and inter-group resentments. Unrelenting, unqualified accusations only add to that negative atmosphere. Empathetic and more generous responses are possible in an atmosphere of support, security, and a sense that advancement is possible; the greatest progress of blacks occurred during the 1960s and early 1970s when the economy was expanding. Professor Bell's "analysis" is really only accusation and "harassing white folks," and is undermining and destructive. There is no love--except for his own group--and there is a constricted reach for an understanding of whites. There is only rage and perplexity. No bridges are built--only righteousness is being sold.

A people, black or white, are capable only to the extent they believe they are. Neither I, nor Professor Bell, have a crystal ball, but I do know that creativity and a drive for change are very much linked to a belief that they are needed, and to a belief that they can make a difference. The future will be shaped by past conditions and the actions of those over whom we have no control. Yet it is not fixed; it will also be shaped by the attitudes and energy with which we face the future. Writing about race is to engage in a power struggle. It is a non-neutral political act, and one must take responsibility for its consequences. Telling whites that they are irremediably racist is not mere "information"; it is a force that helps create the future it predicts. If whites believe the message, feelings of futility could overwhelm any further efforts to seek change. I am encouraged, however, that the motto of the most articulate black spokesperson alive today, Jesse Jackson, is, "Keep hope alive!" and that much of the strength of Martin Luther King, Jr. was his capacity to "dream" us toward a better place.

Anti-blackness is not an ontological antagonism---conflict is inevitable in politics, but does not have to be demarcated around whiteness and blackness---the alt’s ontological fatalism recreates colonial violence

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Thus the self-same/other distinction is necessary for the possibility of identity itself. There always has to exist an outside, which is also inside, to the extent it is designated as the impossibility from which the possibility of the existence of the subject derives its rule (Badiou 2009, 220). But although the excluded place which isn’t excluded insofar as it is necessary for the very possibility of inclusion and identity may be universal (may be considered “ontological”), its content (what fills it) – as well as the mode of this filling and its reproduction – are contingent. In other words, the meaning of the signifier of exclusion is not determined once and for all: the place of the place of exclusion, of death is itself over-determined, i.e. the very framework for deciding the other and the same, exclusion and inclusion, is nowhere engraved in ontological stone but is political and never terminally settled. Put differently, the “curvature of intersubjective space” (Critchley 2007, 61) and thus, the specific modes of the “othering” of “otherness” are nowhere decided in advance (as a certain ontological fatalism might have it) (see Wilderson 2008). The social does not have to be divided into white and black, and the meaning of these signifiers is never necessary – because they are signifiers. To be sure, colonialism institutes an ontological division, in that whites exist in a way barred to blacks – who are not. But this ontological relation is really on the side of the ontic – that is, of all contingently constructed identities, rather than the ontology of the social which refers to the ultimate unfixity, the indeterminacy or lack of the social. In this sense, then, the white man doesn’t exist, the black man doesn’t exist (Fanon 1968, 165); and neither does the colonial symbolic itself, including its most intimate structuring relations – division is constitutive of the social, not the colonial division. “Whiteness” may well be very deeply sediment in modernity itself, but respect for the “ontological difference” (see Heidegger 1962, 26; Watts 2011, 279) shows up its ontological status as ontic. It may be so deeply sedimented that it becomes difficult even to identify the very possibility of the separation of whiteness from the very possibility of order, but from this it does not follow that the “void” of “black being” functions as the ultimate substance, the transcendental signified on which all possible forms of sociality are said to rest. What gets lost here, then, is the specificity of colonialism, of its constitutive axis, its “ontological” differential. A crucial feature of the colonial symbolic is that the real is not screened off by the imaginary in the way it is under capitalism. At the place of the colonised, the symbolic and the imaginary give way because non-identity (the real of the social) is immediately inscribed in the “lived experience” (vécu) of the colonised subject. The colonised is “traversing the fantasy” (Zizek 2006a, 40–60) all the time; the void of the verb “to be” is the very content of his interpellation. The colonised is, in other words, the subject of anxiety for whom the symbolic and the imaginary never work, who is left stranded by his very interpellation.4 “Fixed” into “non-fixity,” he is eternally suspended between “element” and “moment”5 – he is where the colonial symbolic falters in the production of meaning and is thus the point of entry of the real into the texture itself of colonialism. Be this as it may, whiteness and blackness are (sustained by) determinate and contingent practices of signification; the “structuring relation” of colonialism thus itself comprises a knot of significations which, no matter how tight, can always be undone. Anti-colonial – i.e., anti-“white” – modes of struggle are not (just) “psychic” 6 but involve the “reactivation” (or “de-sedimentation”)7 of colonial objectivity itself. No matter how sedimented (or global), colonial objectivity is not ontologically immune to antagonism. Differentiality, as Zizek insists (see Zizek 2012, chapter 11, 771 n48), immanently entails antagonism in that differentiality both makes possible the existence of any identity whatsoever and at the same time – because it is the presence of one object in another – undermines any identity ever being (fully) itself. Each element in a differential relation is the condition of possibility and the condition of impossibility of each other. It is this dimension of antagonism that the Master Signifier covers over transforming its outside (Other) into an element of itself, reducing it to a condition of its possibility.8 All symbolisation produces an ineradicable excess over itself, something it can’t totalise or make sense of, where its production of meaning falters. This is its internal limit point, its real:9 an errant “object” that has no place of its own, isn’t recognised in the categories of the system but is produced by it – its “part of no part” or “object small a.”10 Correlative to this object “a” is the subject “stricto sensu” – i.e., as the empty subject of the signifier without an identity that pins it down.11 That is the subject of antagonism in confrontation with the real of the social, as distinct from “subject” position based on a determinate identity.

## 2NC

### 2nc at: switch side bad

Switching sides activates critique

Stevenson, PhD, senior lecturer and independent consultant – Graduate School of the Environment @ Centre for Alternative Technology, ‘9

(Ruth, “Discourse, power, and energy conflicts: understanding Welsh renewable energy planning policy,” *Environment and Planning C: Government and Policy*, Volume 27, p. 512-526)

It could be argued that this result arose from the lack of expertise of the convenors of the TAN 8 in consensual decision making. Indeed, there is now more research and advice on popular participation in policy issues at a community level (eg Kaner et al, 1996; Ostrom, 1995; Paddison, 1999). However, for policy making the state remains the vehicle through which policy goals must be achieved (Rydin, 2003) and it is through the state that global issues such as climate change and sustainable development must be legislated for, and to some extent enacted. It is therefore through this structure that any consensual decision making must be tested. This research indicates that the policy process cannot actually overcome contradictions and conflict. Instead, **encompassing them may well be a more fruitful way forward than attempts at consensus.** Foucault reinforces the notion that the `field of power' can prove to be positive both for individuals and for the state by allowing both to act (Darier, 1996; Foucault, 1979). Rydin (2003) suggests that actors can be involved in policy making but through `deliberative' policy making rather than aiming for consensus: ``the key to success here is not consensus but building a position based on divergent positions'' (page 69). Deliberative policy making for Rydin involves: particular dialogic mechanisms such as speakers being explicit about their values, understandings, and activities: the need to move back and forth between memories (historical) and aspirations (future); moving between general and the particular; and the adoption of role taking (sometimes someone else's role). There is much to be trialed and tested in these deliberative models, however, a strong state is still required as part of the equation if we are to work in the interests of global equity, at least until the messages about climate change and sustainable development are strong enough to filter through to the local level. It is at the policy level that the usefulness of these various new techniques of deliberative policy making must be tested, and at the heart of this must be an understanding of the power rationalities at work in the process.

Switching sides is the opposite of nihilism

Day, Prof Speech – U Wisconsin Madison, ‘66

(Dennis G, The Central States Speech Journal, p. 13-14, February)

The analysis of the ethics of democratic debate presented in this paper supports the position that educational debate is consistent with the highest ethic of public debate and suggests that it is an effective pedagogical practice for preparing students to meet their decision-making responsibilities. Debating both sides teaches students to discover, analyze, and test all the arguments, opinions, and evidence relevant to decision on a resolution. In addition, it provides an opportunity for students to substantiate for themselves the assumption that "truthful" positions may be taken on both sides of controversial questions. The ethics of public debate require full expression, and this is what the practice of debating both sides provides. While educational debate which permits students to debate only one side of a resolution does not violate the ethics of public debate, neither does it teach the positive ethical obligation inherent in debate. Murphy and others have argued that students can gain an understanding of the "opposition" through "analyzing and briefing" both sides of a question without giving verbal expression to both sides. Murphy himself, however, in another, and perhaps more thoughtful, moment observed: Through the ages the debater has made his contribution to keeping the lanes of truth open by enforcing a doctrine of "both sides." We no longer think, however, that analyzing lines of argument in order to accept or reject them is a large enough goal, . . . A statement by Karl Mannheim gives us a doctrine more in keeping with modern thought: "See reality with the eyes of acting human beings; . . . understand even . . . opponents in the light of their actual motives and their position."35 To discover the truth which democratic debate can provide we must attend "equally and impartially to both sides . . . to see the reasons of both in the strongest light."3s One side debating does not meet this ethical obligation. Debating both sides, however, prepares students to contribute maximally to the democratic solution of conflict. Leonard Cottrell has observed: One of the deepest problems of modern society is to deal with the profound and dangerous cleavages that threaten the basic consensus on which the society rests. . . . A democratic solution of the problem requires that the citizens interacting in their roles as members of opposing groups become increasingly able to take the roles of their opponents. It is only through this ability that integrative solution of conflict rather than armed truces can be arrived at.37

### at: personal/consistent advocacy good

Our model of education doesn’t trade off with personal convictions, but it does make debaters stronger advocates

Hodson, professor of education – Ontario Institute for Studies @ University of Toronto, ‘9

(Derek, “Towards an Action-oriented Science Curriculum,” Journal for Activist Science & Technology Education, Vol. 1, No. 1)

\*\*note: SSI = socioscientific issues

Politicization of science education can be achieved by giving students the opportunity to confront **real world issues that have a scientific, technological or environmental dimension.** By grounding content in socially and personally relevant contexts, an issues-based approach can provide the motivation that is absent from current abstract, de-contextualized approaches and can form a base from which students can construct understanding that is personally relevant, meaningful and important. It can provide increased opportunities for active learning, inquiry-based learning, collaborative learning and direct experience of the situatedness and multidimensionality of scientific and technological practice. In the Western contemporary world,

technology is all pervasive; its social and environmental impact is clear; its disconcerting social implications and disturbing moral-ethical dilemmas are made apparent almost every day in popular newspapers, TV news bulletins and Internet postings. In many ways, it is much easier to recognize how technology is determined by the sociocultural context in which it is located than to see how science is driven by such factors. It is much easier to see the environmental impact of technology than to see the ways in which science impacts on society and environment. For these kinds of reasons, it makes good sense to use problems and issues in technology and engineering as the major vehicles for contextualizing the science curriculum. This is categorically not an argument against teaching science; rather, it is an argument for teaching the science that informs an understanding of everyday technological problems and may assist students in **reaching tentative** **solutions** about where they stand on key SSI.

### 2nc at: roleplaying bad

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

**Shulock 99**

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

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

### at: usfg unethical/t version

Legal reform strategies don’t coopt ethics and enable extra-legal strategies for change

Smith 12

Andrea, Associate Professor of Media and Cultural Studies at UC Riverside, and is the author Conquest: Sexual Violence and American Indian Genocide, and Native Americans and the Christian Right: The Gendered Politics of Unlikely Alliances, “The Moral Limits of the Law: Settler Colonialism and the Anti-Violence Movement,” Settler Colonial Studies 2:2, 69-88

CONCLUSION

In the debates prevalent within Native sovereignty and racial justice movements, we are often presented with two **seemingly** orthogonal positions – long-term revolutionary extra-legal movements or shortterm reformist legalist strategies. Short-term legal strategies are **accused** of investing activists within a white supremacist and settler colonial system that is incapable of significant change. Meanwhile, revolutionaries are accused of sacrificing the immediate needs of vulnerable populations for the sake of an endlessly deferred revolution. The reality of gender violence in Native communities highlights the untenability of these positions. Native women’s lives are at stake **now** – they **cannot wait for** the **revolution** to achieve some sort of safety. At the same time, the short-term strategies often adopted to address gender violence have often increased violence in Native women’s lives by buttressing the prison industrial complex and its violent logics. While this reformist versus revolutionary dichotomy **suggests** two radically different positions, in reality they share a common assumption: that the **only way** to pursue legal reform is to fight for laws that that reinforce the appropriate moral statement (for instance, that the only way to address violence against Native women is through the law and to make this violence a ‘crime’). Because the US legal system is inherently immoral and colonial, however, attempts to moralise the law **generally** fail. It is not surprising that the response to these failures is to **simply give** **up** on pursuing legal strategies. However, the works of Derrick Bell, Christopher Leslie, and Sarah Deer, while working in completely different areas of the law, point to a different approach**. We can challenge the assumption that the law will reflect our morals** **and instead seek to** use the law **for its** strategic effects**.** In doing so, we might advocate for laws that might in fact contradict **some** of our morals because we recognize that the law cannot **mirror** our morals anyway. We might then be free to engage in a relationship with the law which **would free us** **to change our strategies as we assess its strategic effects.** At the same time, by divesting from the morality of the law, we then will also **simultaneously** be free to invest in building our own forms of community accountability and justice outside the legal system. Our extra-legal strategies would go beyond ceremonial civil disobedience tactics designed to shame a system that is not capable of shame. Rather, we might focus on actually building the political power to create an alternative system to the heteropatriarchal, white supremacist, settler colonial state.

### 2nc prag kt racial prog

Engagement the law solves their impacts, even if bottom-up approaches are ultimately better

Andrews, associate professor of law – University of San Francisco, ‘3

(Rhonda V. Magee, 54 Ala. L. Rev. 483)

The following argument relies on a few important assumptions. The first is the assumption that legal rules have consequences that reach far beyond their intended application from the standpoint of legal analysis. Legal rules play an important part in shaping concrete and metaphysical aspects of the world that we know. Thus, the impact of equal protection doctrine on the meta-narrative of race in America is more than merely symbolic. The Supreme Court's pronouncements on race are presumptively to be followed by lower courts, and together these opinions and their consequences influence the representations of race in federal and state social policies, in the media, in literature, and in the arts. n18 As Justice Brennan noted from the bench, every decision of the court has "ripples" which impact society and social processes. n19 Perhaps in no other area is this basic sociological insight more demonstrably true than in the area of race law. In a very real sense, the history of American civil rights law is the history of America's socio-legal construction, deconstruction, and reconstruction of what it means to be a constitutionally protected human being. In the aftermath of the war required to preserve the Union itself, the architects of the First Reconstruction n20 took on [\*491] the task of reforming the Constitution to provide federal protection for newly "freed" Americans. The law they made not only created a new world in which the centuries-old institution of slavery was virtually **impossible**, n21 but perhaps more importantly, marked the beginning of the reshaping of American **thinking** about the very nature of humanity through the powerful symbolism and mechanisms of the law. n22 Thus, the continuing evolution of what it means to be a human being, and refinement of the state's obligations to human beings subject to its laws, are among the most significant of the unstated objectives of the reconstruction of post-slavery America, and the law itself will play a central role.

### condo

Their links are guilt by association

Daily **Kos 10**, daily weblog with political analysis on US current events from a liberal perspective, Kossack Lays the Smackdown on Tim Wise, Aug 21, <http://www.dailykos.com/story/2010/8/22/0916/52061>

So, in this story, you have a phenomenon which is clearly disadvantaging African Americans. The problem is that there is no evidence of racism. There are no racists to accuse. There is nobody practicing a supremacist ideology that posits black people are worth less, so they should be sold crappier loans. Whatever the individual attitudes of brokers, it's not likely to be the overwhelming case. It's not that "the effect/impact is racist," it's that the effect/impact is disproportionate by race, which means racial disadvantage. It's not "institutional action" that prompted sub-prime mortgage brokers to prowl for those in the most likely position to accept sub-prime lending conditions, or to have the least options in terms of available banking services. There were no rules involved, except how market actors usually behave. That's the problem with asserting a racist "effect/impact," i.e. outcome in an economic system in which the activity that may cause the greatest disparate impact may also be the most rational market response to current conditions. Often these can be self-fulfilling prophecies, as in the case of the "white flight" syndrome decades ago. It's just not accurate, though, to accuse mortgage brokers trying to snap up as many cheap, high-fee, high-commission sub-prime loans from predictable locations of racism. It's not the "institution" of lending, either -- unless you'd like to name the Federal Reserve for flooring interest rates, and the giant financial companies for selling Collateralized Debt Obligations in droves to foreign debt purchasers as white supremacists. It's systemic, but it isn't racist. It's disadvantaging, but not privileging. It's disparate, but not inherent. It's practical. It's how things work. It's the real world. It's the invisible hand that doesn't care for morality or justice, only seeking higher and higher return. So when well-meaning people try to get to an ideological point where these phenomena can be "proven racist," they'll never succeed. These things truly can't be. They can be proven to be significantly immoral, or unjust in certain situations, but not racist. These are two different qualifiers. That doesn't mean we can't effect changes, nor improve circumstances, or simply outlaw the kinds of natural market behaviors that create certain types of injustice, or remedy those injustices systemically until remedy is no longer necessary, but it does mean that we can't accuse the mortgage brokerage industry of racism in any meaningful way. We must be able to separate economic incentives from racial or cultural incentives --because we live in a system of mass, variegated economic incentives-- or we're no longer the reality-based community.

Wise’s reliance on black/white binaries is essentialist and his account of whiteness is wrong

[Renee **Martin**](http://www.womanist-musings.com/2010/11/www.womanist-musings.com) **10**, anti-racist, feminist blogger and freelancer, The Limitations of Tim Wise, November 29, <http://www.womanist-musings.com/2010/11/limitations-of-tim-wise.html>

As a Black woman, I am very aware that I am not Wise's target audience, in fact, he seeks to exploit my experience for his own financial gain, rather than to deeply educate those that read his books. My number one criticism of Wise, is his continual essentialism regarding a Black identity. Even though I understand his book was meant to be a 101 primer to those not aware of how Whiteness and indeed race operates in the U.S., his inability, or perhaps outright failure would be more accurate, to include an intersectional approach reduces what it means to be of color in a North American context. Black people belong in various categories: we are disabled, TLBG, poor, wealthy, educated, TAB, religious, non religious, male and female, gender queer etc,. To make a definitive description of how Black people experience race, without explaining that such marginalization quite often multiplies oppression is not only irresponsible, it erases members of the Black community to present a single mendacious narrative. One really glaring example is the complete erasure of trans women of colour that die each year. Race absolutely effects who lives and who dies, and yet Wise, to my knowledge has yet to raise this issue. Wise also has a tendency to reduce race relations to a Black/White binary. To be of colour in the U.S. is to be not White of non European descent. With the exception of a small passage on the fallacies in Disney's Pocahontas, Wise mainly framed racism as something Whites do to Blacks, rather than Whiteness as an institution that is harmful to every single person of colour. This is erasure and it ignores the hierarchies of power that support Whiteness, § Marked 17:58 § as well as ensures that people of colour are constantly fixated on each other, rather than united to bring an end to White supremacy. Social justice is hard work and it demands a full-time commitment and therefore, I completely understand when someone attempts to earn a living, even as they raise awareness to the multiple issues that plague our planet. It is highly problematic that a White man is earning a substantial living talking about the way that race effects people of colour. Wise of course covers this by discussing Whiteness, but the truth of the matter is, that you cannot talk about Whiteness without examining people of colour. He is essentially profiting from hundred of years of our history and taking on an expert status that is denied people of colour when we discuss our lived experiences. His very existence as White, educated male of class, TAB, cisgender, heterosexual privilege, means that he is affirming much of the very narrative that he seeks deconstruct. Wise makes White people feel safe. He gives them the appropriate liberal spin that never expects them to seek truth via the people most impacted by race. Each chapter of his book began with a James Baldwin quote, proving that people of colour exist for the purposes of appropriation, but never really to interact with, unless one is in a leadership role. One of the main problems with Wise's work is that it does not encourage those researching anti-racism to seek out the opinions of people of colour, thus once again turning Whiteness into the arbitrator. This normalizes oppression and further supports White supremacy. Wise does encourage readers to take on a subordinate role, but how believable is that when he continually fails to do so himself. Wise claims that it is his right to be forthright about race because he is fighting to end White supremacy,which he sees as harmful, not only to himself but to all people, but using the operating status of Whiteness to fight the battle cannot possibly disarm, much less eradicate this sickness. In the end, I think that Wise is very well aware that what he has to say has already been said and in fact argued infinitely better by people of colour. To really challenge privilege, one must first learn from the people that it impacts the most. Depending on Tim Wise to teach you about race means that you are not ready to move out of your comfort zone and really see racism for the pure evil that it is.

## 1NR

### metaphors

Declaring war on a concept leads to binary simplification and otherization

Hartmann-Mahmud ’02 (Lori, Ph.d., Assistant Professor of International Studies at Centre College in Kentucky, “War as Metaphor,” Peace Review: A Journal of Social Justice, 14:4, 427-432)

Metaphors are more than just literary devices used to evoke an image or emotion. They constitute powerful forms of language that can influence how a concept is perceived and understood. For example, one is taught that the discoveries made by Enlightenment philosophers replaced the somber period of ignorance known as the dark ages. Here the use of lightness and darkness as metaphors go beyond mere description. They promote a specific worldview that establishes a **hierarchy of knowledge** and belief systems. Similarly, the metaphor of war goes beyond description to evoke a powerful image of solidarity and commitment in the face of an **evil enemy.** If the metaphor is used to describe an ideological conflict, then war-like language permeates the society. The Cold War provides such an example. “War” as such did not occur between the two main protagonists but the Cold War rhetoric set the tone for domestic and international politics for more than a generation as fear and hatred of the “other” produced an extraordinary military build-up on both sides, and competing world views provided justification for **quick accusations** of treason aimed at respective domestic populations.

More broadly, once declared, a “war” effort succeeds in **narrowly focusing** a government’s priorities for action at home and abroad. Declaring war on someone or something or some idea allows for a simplified policy agenda, a justification for reallocation of funds, and often a curbing of critical discourse on the issues, because to be anti-war is perceived to be unpatriotic, even treasonous. How could one not support a “war on poverty?” A “war on drugs?” A “war on over-population?” Recently, those who have questioned the “war on terrorism” in the United States have been accused of being unpatriotic citizens who undermine America’s cultural and political strength and leadership in the world (see William Bennett’s Why We Fight: Moral Clarity and the War on Terrorism). Dialogue and debate become silenced by the imminence and urgency of war.

In this essay I explore the implications of declaring war on a concept; in general, it **delays or precludes the pursuit** of effective solutions to glaring problems facing the international community, and the United States more specifically. In the last 40 years we have witnessed the declaration of “war” against various concepts such as drugs, poverty, overpopulation, and most recently, terrorism. The conceptual simplicity that the declaration of war accords the state, while rendering the problem **seemingly manageable**, has three major detrimental effects: it seeks to simplify the problem and thus **prolong the inevitable confrontation with its complexity;** it promotes an **apolitical approach** to the problem (that is, it cannot be debated in the public realm); and it discourages a search for root causes of the problem. Governments use the rhetoric of war to motivate a population to support action on social or political issues. While the intention of declaring war on a concept such as poverty or terrorism may be admirable in that it calls attention to the issue, it simultaneously diverts attention away from the very debates and discussions that are necessary for making inroads in resolving the problem.

One way the rhetoric of war misleads is by using the language and metaphors of war to describe and diagnose concepts that are **quite different from an enemy target**. We talk about launching an attack on poverty or drugs. There is talk of the weapons that will be deployed against this enemy. The discussion proceeds as if the **enemy is completely separate and distinct from our society.** The rhetoric includes calls for a deep commitment to the war, with the state’s resources made available for the effort. In war, there is an army, an enemy, and weapons. There is a distinct starting point and a clear ending point. War is declared; the army targets the enemy and launches the appropriate weapons. **The enemy is bombarded with a deluge of attacks. If the enemy is still not defeated, the problem is perceived as being not enough arms or not a big enough army.** This general approach may be appropriate for traditional warfare where the enemy is a country or army; however, a war against a concrete enemy target is very different from a war against a social problem or concept.

Even if they win their role of the ballot claim is normatively good – metaphors shape the way we conceive of that reality – they comes first

Oppermann and Spencer ’13 (Kai Oppermann, University of Cologne, and, Alexander Spencer Ludwig Maximilians University Munich, “Thinking Alike? Salience and Metaphor Analysis as Cognitive Approaches to Foreign Policy Analysis,” Foreign Policy Analysis (2013) 9, 39–56)

Nevertheless, analogies are similar to metaphors as they involve understanding something in terms of something else (Gentner, Bowdle, Wolff, and Boronat 2001; Juthe 2005). As Keith Shimko (1994:660) points out, in ‘‘a purely cognitive sense, there is very little difference between analogies and metaphors. Indeed, because the dynamics of analogical and metaphorical thought are alike, many cognitive psychologists usually fail to distinguish between the two (not because they cannot, but because doing so is often unnecessary).’’ And despite the differ- ences, most scholars, especially in political science and IR, generally adopt a very broad definition of metaphor to include other linguistic devices such as analo- gies. In this sense, metaphor has become an ‘‘all-purpose connector term’’ (Gozzi 1999:55) for linguistic tools that focus on understanding something with the help of something else.

We should, however, distinguish between two kinds of metaphors: the meta- phoric expression and the conceptual metaphor. The conceptual metaphor, for exam- ple TERRORISM IS WAR, involves the abstract connection between one conceptual domain and another by mapping a source domain (WAR) and a tar- get domain (TERRORISM) (Lakoff 1993:208–209). Mapping in this case is a cog- nitive process which links ‘‘a set of systematic correspondences between the source and the target in the sense that constituent conceptual elements of B cor- respond to constituent elements of A.’’ (Ko ̈vecses 2002:6) ‘‘Thus, the conceptual metaphor makes us apply what we know about one area of our experience (source domain) to another area of our experience (target domain).’’ (Drula ́k 2005:3) Conceptual metaphors do not have to be explicitly visible in discourse. However, metaphorical expressions are directly visible and represent the specific statements found in statements which the conceptual metaphor draws on. ‘‘The conceptual metaphor represents the conceptual basis, idea or image’’ that underlies a set of metaphorical expressions (Charteris-Black 2004:9). So for example, metaphorical expressions describing Afghanistan as a ‘‘front’’ and Iraq as a ‘‘battlefield’’ in the ‘‘war on terror’’ indicate a more abstract conceptual metaphor of TERRORISM IS WAR (Spencer 2010).

The metaphorical formula A IS B applied to the conceptual metaphor men- tioned above is, however, not totally accurate as it suggests that the whole target domain is understood in terms of the whole source domain. However, this can- not be the case as concept A cannot be the same as concept B. The cognitive mapping between the two domains is only ever partial as not all characteristics of concept A are transferred to concept B. In fact, it is commonly accepted in the realm of metaphor analysis that through the use of metaphors ‘‘people make selective distinctions that, by highlighting some aspect of the phenomenon, down- play and hide other features that could give a different stance.’’ (Milliken 1996:221; emphasis original) They frame the target domain in a particular way and draw attention to certain aspects of a phenomenon and invite the listener or reader to think of one thing in the light of another**. Metaphors ‘‘limit what we notice, highlight what we do see, and provide part of the inferential structure that we reason with.’’** (Lakoff 1992:481) As Chilton and Lakoff point out, metaphors ‘‘are concepts that can be and often are acted upon. As such, they define in significant part, what one takes as ‘‘reality’’, and thus form the basis and the justification for the formulation of policy and its potential execution.’’ (Chilton and George 1999:57) Metaphors frame the way people define a phenomenon and thereby influence how they react to it: they limit and bias our perceived pol- icy choices as they determine basic assumptions and attitudes on which foreign policy decision making depends (Chilton 1996; Mio 1997; Milliken 1999).

### pic

Advocating violence against all white people is immoral – even radical tactics must limit targets

Butler 2 Paul Butler, Professor of Law, George Washington University BA Yale JD Harvard By Any Means Necessary: Using Violence and Subversion to Change Unjust Law UCLA Law Review 50 2002-2003 761-762

Just war doctrine, applied to insurgents, would limit violence more than it would authorize it. Jus in bello requires that there be no injury to civilians. If the usual definitions of "terrorism" and "civilians" are invoked, this requirement seems to rule out virtually all terrorism, for terrorism is commonly thought of as politically motivated violence against civilians. Sometimes terrorists argue that, in their particular conflict, there are no "noncomba-tants." An example of this argument is the claim that even nonmilitary citizens of Israel arc permissible targets for Palestinian protestors because all Israelis benefit from and help maintain the subordination of Palestinians.101 The problem with this argument is the same as the problem with most terrorism: It is indiscriminate. It grants insufficient weight to the value of human life when it does not acknowledge that there are degrees of culpability. Surely, for example, children are not as responsible as adults, and surely a poor laborer is not as responsible as a high government official. On the other hand, it is possible to defend a construct of "combatants," that is, permissible targets of violence, that includes nonmilitary actors. The objective of just war is to change the regime, or the way that it operates. To attack the foot soldiers, but to ignore the authorities responsible for creating and implementing the oppressive policies, seems inefficient. The suggestion that insurgents should distinguish among civilians and limit their targets to "well-known officials, notorious collaborators, and bo on," seems reasonable,"" Thus, just war applied to insurgents would not eliminate the "combatant" restriction but would broaden the concept, in the manner described by Professor Walzer. "Combatant" could be defined as any person directly responsible for creating, administering, or defending the human rights violations, including genocide or race discrimination, that are the subject of the conflict. As discussed below, in the context of the "war" against race-based capital punishment, combatants would include those directly responsible for creating and implementing it. These people are culpable in a way that the ordinary civilian is not. **Even then,** violence against them is not necessarily moral: The other conditions of just war must also be satisfied. I want to emphasize the purpose of applying just war doctrine to insurgents, because I understand that any moral construct that tolerates political violence by nongovernmental entities is controversial. Just war doctrine accepts that violence—killing people—can be morally justified, if certain conditions are satisfied. One of the necessary conditions is that the targets must be military. This condition seems inconsistent with other common constructs of morality, including those found in criminal and international law, and in popular culture. The heroic status that many now accord those who led slave revolts is evidence of that view of morality. Yet definitions of combatants proffered by terrorists are overly broad when they include those who are not directly responsible for the oppression of others (even if they benefit from that oppression). This view of combarants discounts the sanity of human life that must underlie any construct of morality (even if that construct allows for the taking of life in certain cases). The proposed application of just war doctrine to "terrorists" assumes that they, like nation-states, are open to persuasion about their methods. Their embrace of violence does not mean they have abandoned their claim to morality. If just war doctrine is to remain relevant in the twenty-first century, it should be applied to every actor—not just governments—that uses violence to accomplish political objectives.

#### Supporting institutional rights a key necessary for struggles against oppression – we may not change the heart, but we can restrain the heartless

Cook 90

Anthony E. Cook, Florida University Associate law Professor, Beyond Critical legal Studies: The Reconstrutive Theology of Dr. Martin luther King, Jr., 1990, 103.5, JSTOR

Unlike some CLS scholars, King understood the importance of a system of individual rights. CLS proponents have urged that rights are incoherent and indeterminate reifications of concrete experiences; they obfuscate, through the manipulation of abstract categories, disempowering social relations. [FN158] King, on the other hand, understood that the oppressed could make rights determinate in practice; although "law tends to declare rights--it does not deliver them. A catalyst is needed to breathe life experience into a judicial decision."' [FN159] For King, the catalyst was persistent social struggle to transform the oppressiveness of one's existential condition into ever closer approximations of the ideal. The hierarchies of race, gender, and class define those conditions, and the struggle for substantive rights closes the gap between the latter and the ideal of the Beloved Community. Under the pressures of social struggle, the oppressed can alter rights to better reflect the exigencies of social reality--a reality itself more fully understood by those engaged in transformative struggle.

King's Beloved Community accepted and expanded the liberal tradition of rights. King realized that notwithstanding its limits, the liberal vision contained important insights into the human condition. For those deprived of basic freedoms and subjected to arbitrary acts of state authority, the enforcement of formal rights was revolutionary. African-Americans understood the importance of formal liberal rights and demanded the full enforcement of such rights in order to challenge and rectify historical practices that had objectified and subsumed their existence.

Although conservatives contended that the emphasis on rights disrupted the gradual moral evolution that would ultimately change white sentiment, King contended that "[j]udicial decrees may not change the heart, but they can restrain the heartless."' [FN160] On the other \*1036 hand, although radicals contended that such rights were mere tokens and created a false sense of security masking continued violence, King understood that the strict enforcement of the rule of law was essential to any struggle for social justice, whether that struggle was moderate or radical in its sentiment and goals. Freedom of dissent and protest; freedom from arbitrary searches, seizures, and detention; and freedom to organize and associate with those of common purpose were necessary rights that no movement for social reconstruction could take for granted.

Furthermore, King saw the initial emphasis on civil rights, [FN161] I believe, as a **necessary struggle** for the collective self-respect and dignity of a people whose subordination was, in part, maintained by laws reproducing and reinforcing feelings of inadequacy and inferiority. The civil rights struggle attempted to lift the veil of shame and degradation from the eyes of a people who could then glimpse the possibilities of their personhood and achieve that potential through varied forms of social struggle. King's richer conception of rights provided limitations on collective action while broadening the scope of personal duty to permit movement toward a more socially conscious community.

#### The existence of institutional struggles in debate and the macro-political are reasons our strategy is viable and consistent with the Sexton advantage

Robert A **Williams** Jr **90**, “Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World”, Duke Law Journal, Vol. 1990, No. 4, Frontiers of Legal Thought III, (Sep., 1990), pp. 660-704

Not too long ago, it was fashionable for some legal academics in this country to assert that rights discourse—that is, talk and thought about rights—was actually harmful to the social movements of peoples of color and other oppressed groups.1 And as recent times have shown, legal academics of color can attract a great deal of attention and the sympathies of anonymous white colleagues by telling us that the sufferings and stories of peoples of color in this country possess no unique capacity to transform the law.2 These legal academic denials of the efficacy of rights discourse and storytelling for the social movements of peoples of color now seem disharmonious with the larger transformations occurring in the world. Why any legal academics would discount the usefulness of such proven, liberating forms of discourse in the particular society they serve from their positions of privilege is a curious and contentious question. The disaggregated narratives of human rights struggles on the nightly news apparently have not been sufficient for some legal academics. They want documented accounts demonstrating the efficacy of rights discourse and storytelling in the social movements of outsider groups. Empirical evidence of the traditions, histories, and lives of oppressed peoples actually transforming legal thought and doctrine about rights could then be used to cure skeptics of the critical race scholarly enterprise.3 "See here," the still unconverted in the faculty lounge can be told, "this stuff works, if applied and systematized correctly." Despite the attacks from society's dominant groups in the legal academic spectrum—both the left and right—the voices of legal scholars of color have sought to keep faith with the struggles and aspirations of oppressed peoples around the world. These emerging voices recognize that now is the time to intensify the struggle for human rights on all fronts— to heighten demands, engage in intense political rhetoric, and sharpen critical thinking about all aspects of legal thought and doctrine. The rapid emergence of indigenous peoples\* human rights as a subject of major concern and action in contemporary international law provides a unique opportunity to witness the application of rights discourse and storytelling in institutionalized, law-bound settings around the world.4 By telling their own stories in recognized and authoritative intcrnational human rights standard-setting bodies during the past decade, indigenous peoples have sought to redefine the terms of their right to survival under international law.5 Under present, Western-dominated conceptions of international law, indigenous peoples are regarded as subjects of the exclusive domestic jurisdiction of the settler state regimes that invaded their territories and established hegemony during prior colonial eras.6 At present, international law does not contest unilateral assertions of state sovereignty that limit, or completely deny the collective cultural rights of indigenous peoples.7 Contemporary international law also does not concern itself with protecting indigenous peoples' traditionally-occupied territories from uncompensated state appropriation, even when indigenous territories are secured through treaties with a state. According to contemporary international discourse, such treaties should be treated as legal nullities.8 Finally, modern international law refuses to recognize indigenous peoples as "peoples," entitled to rights of self-determination as specified in United Nations and other major international human rights legal instruments.9 Since the 1970s, in international human rights forums around the world, indigenous peoples have contested the international legal system's continued acquiescence to the assertions of exclusive state sovereignty and jurisdiction over the terms of their survival. Pushed to the brink of extinction by state-sanctioned policies of genocide and ethnocide, indigenous peoples have demanded heightened international concern and legal protection for their continued survival.10 The emergence of indigenous rights in contemporary international legal discourse is a direct response to the consciousness-raising efforts of indigenous peoples in international human rights forums. Specialized international and regional bodies, non-governmental organizations (NGOs), and advocacy groups are now devoting greater attention to indigenous human rights concerns." By far the most important of these specialized initiatives to emerge out of the indigenous human rights movement is the United Nations Working Group on Indigenous Populations (Working Group). The Working Group is composed of five international legal experts drawn from the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Working Group was created by the Sub-Commission's parent body, the United Nations Economic and Social Council (ECOSOC) in 1982 and given a specific mandate to develop international legal standards for the protection of indigenous peoples' human rights.12

#### Relative universality is an ideal that avoids their offense on T

Donnelly 7

Jack Donnelly, Andrew Mellon Professor at the Graduate School of International Studies,

University of Denver, 2007,The Relative Universality of Human Rights, www.sph.umich.edu/symposium/2010/pdf/donnelly1.pdf

Although some versions of such arguments are dismissively critical,40 many are well modulated. “[T]he seduction of human rights discourse has been so great that it has, in fact, delayed the development of a critique of rights.”41 They claim that a lack of critical self-reflection has made human rights advocates “more part of a problem in today’s world than part of the solution.”42 There are “dark sides of virtue.”43 The uncomfortable reality, whatever the intentions of Western practitioners, too often is “imperial humanitarianism.”44 In these accounts, universality per se—and more particularly the tendency for universal claims to intellectually obscure and politically repress difference—is targeted more than universal human rights in particular. Conversely, even many fairly radical post-structuralist and post-colonial authors reject normative cultural relativism in favor of a more dialogical approach to cross-cultural consensus that is not in the end dissimilar to overlapping consensus arguments discussed above.45 This, I believe, is a reflection of a growing sophistication in the discussion of relativity and universality -on both sides of the old divide. 12. Justifying Parti cularity: Universal Rights, Not Identical Practices Over the past decade, most discussions have tried to move beyond a dichotomous presentation of the issue of universality. Most sophisticated defenders of both universality and relativity today recognize the dangers of an extreme commitment and acknowledge at least some attractions and insights in the positions of their critics and opponents. At the relatively universalistic end of this spectrum, I have defended “relative universality.”46 Towards the relativist end, Richard Wilson argues that ideas of and struggles for human rights “are embedded in local normative orders and yet are caught within webs of power and meaning which extend beyond the local.”47 Near the center, Andrew Nathan uses the language of “tempered universalism.”48 This more flexible account of universality (and relativity) makes a threetiered scheme for thinking about universality that I have long advocated particularly useful for thinking about what ought to be universal, and what relative, in the domain of “universal human rights.”49 Human rights are (relatively) universal at the level of the concept, broad formulations such as the claims in Articles 3 and 22 of the Universal Declaration that “everyone has the right to life, liberty and security of person” and “the right to social security.”50 Particular rights concepts, however, have multiple defensible conceptions. Any particular conception, in turn, will have many defensible implementations. At this level—for example, the design of electoral systems to implement the right “to take part in the government of his country, directly or through freely chosen representatives”—relativity is not merely defensible but desirable.51 Functional and overlapping consensus universality lie primarily at the level of concepts. Most of the Universal Declaration lies at this level as well. Although international human rights treaties often embody particular conceptions, and sometimes even particular forms of implementation,52 they too permit a wide range of particular practices. Substantial second order variation, by country, region, culture, or other grouping, is completely consistent with international legal and overlapping consensus universality. Concepts set a range of plausible variations among conceptions, which in turn restrict the range of practices that can plausibly be considered implementations of a particular concept and conception. But even some deviations from authoritative international human rights norms may be, all things considered, (not il)legitimate. Four criteria can help us to grapple seriously yet sympathetically with claims in support of such deviations. For reasons of space, I simply stipulate these criteria, although I doubt that they are deeply controversial once we have accepted some notion of relative universality.53 1) Important differences in threats are likely to justify variations even at the level of concepts. Although perhaps the strongest theoretical justification for even fairly substantial deviations from international human rights norms, such arguments rarely are empirically persuasive in the contemporary world. (Indigenous peoples may be the exception that proves the rule.)54 2) Participants in the overlapping consensus deserve a sympathetic hearing when they present serious reasoned arguments justifying limited deviations from international norms. Disagreements over “details” should be approached differently from systematic deviations or comprehensive attacks. If the resulting set of human rights remains generally consistent with the structure and overarching values of the Universal Declaration, we should be relatively tolerant of particular deviations. 3) Arguments claiming that a particular conception or implementation is, for cultural or historical reasons, deeply imbedded within or of unusually great significance to some significant group in society deserve, on their face, sympathetic consideration. Even if we do not positively value diversity, the autonomous choices of free people should never be lightly dismissed, especially when they reflect well-established practices based on deeply held beliefs. 4) Tolerance for deviations should decrease as the level of coercion increases. 13. Two Illustrati ons Article 18 of the Universal Declaration reads, in its entirety, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”55 Most schools of Islamic law and scholarship deny Muslims the right to change their religion. Is prohibition of apostasy by Muslims compatible with the relative universality of Article 18? Reasonable people may reasonably disagree, but I am inclined to answer “Probably.” The variation is at the level of conceptions—the limits of the range of application of the principle of freedom of religion—in a context where the overarching concept is strongly endorsed. Most Islamic countries and communities respect the right of adherents of other religions to practice their beliefs (within the ordinary constraints of public order). Prohibition of apostasy also has a deeply rooted doctrinal basis, supported by a long tradition of practice. I think, therefore, that we are compelled to approach it with a certain prima facie tolerance, particularly if it is a relatively isolated deviation from international norm.56 Persuasion certainly lies within a state’s margin of appreciation. Freedom of religion does not require religious neutrality—separation of church and state, as Americans typically put it—but only that people be free to choose and practice their religion. Furthermore, there is no guarantee that the choice be without cost. A state thus might be justified in denying certain benefits to apostates, as long as those benefits are not guaranteed by human rights. (Protection against discrimination on the basis of religion is one of the foundational principles of international human rights norms.) It may even be (not im)permissible to impose modest disabilities on apostates, again as long as they do not violate the human rights of apostates, who remain human beings entitled to all of their human rights. And the state is under no obligation to protect apostates against social sanctions imposed by their families and communities that do not infringe human rights. Executing apostates, however, certainly exceeds the bounds of permissible variation. Violently imposing a specific conception of freedom of religion inappropriately denies basic personal autonomy. Whatever the internal justification, this so excessively infringes the existing international legal and overlapping consensus that it is not entitled to international toleration—although we should stress that the same constraints on the use of force apply to external actors, even before we take into account the additional constraints imposed by considerations of sovereignty and international order. Consider now Article 4(a) of the Racial Discrimination Convention, which requires parties to prohibit racial violence and incitement to such violence and to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred.”57 Article 20(2) of the International Covenant on Civil and Political Rights similarly requires that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”58 Such requirements have been rejected in the United States, where free speech includes even “hate speech” that does not incite violence. Here the issue is balancing two competing human rights, rather than a conflict between human rights and another value. Any resolution will require restricting the range of at least one of these rights. Therefore, any approach that plausibly protects the conceptual integrity of both rights must be described as controversial but defensible. American practice with respect to hate speech clearly falls into this category. Because incitement to violence is legally prohibited, US practice involves only a narrow deviation from international norms, with respect to one part of a second order conception, in a context of general support for the overarching concepts and conceptions. Furthermore, the deviation is on behalf of a strong implementation of another vitally important human rights. And it is deeply rooted in legal history and constitutional theory. I can imagine few stronger cases for justifiable deviations from international norms. Targets of hate speech may indeed be harmed by that speech. They remain, however, protected against violence. Conversely, prohibiting speech because of its content harms those whose speech is restricted. It also effectively involves state imposition of a particular viewpoint, which is prima facie undesirable. Reasonable people may reasonably disagree about which harm is greatest. Toleration of the American refusal to prohibit hate speech thus seems demanded, even from those who sincerely and no less reasonably believe that prohibiting hate speech is the better course of action. Americans, however, need to be respectful of the mainstream practice and be willing to engage principled arguments to conform with international norms. These brief arguments are hardly conclusive, perhaps not even correct. (I am inclined to think that my argument on apostasy accepts too great a relativism.) I think, though, that they show that the (relative) universality of internationally recognized human rights does not require, or even encourage, global homogenization or the sacrifice of (many) valued local practices. Certainly nothing in my account of relative universality implies, let alone justifies, cultural imperialism. Quite the contrary, (relatively) universal human rights protect people from imposed conceptions of the good life, whether those visions are imposed by local or foreign actors. Human rights seek to allow human beings, individually and in groups that give meaning and value to their lives, to pursue their own visions of the good life. Such choices—so long as they are consistent with comparable rights for others and reflect a plausible vision of human flourishing to which we can imagine a free people freely assenting—deserve our respect. In fact, understanding human rights as a political conception of justice supported by an overlapping consensus requires us to allow human beings, individually and collectively, considerable space to shape (relatively) universal rights to their particular purposes—so long as they operate largely within the constraints at the level of concepts established by functional, international legal, and overlapping consensus universality. 14. Universalism Without Imperialism My account has emphasized the “good” sides of universalism, understood in limited, relative terms. The political dangers of arguments of anthropological universality are modest, at least if one accepts functional and international legal universality. In arguing against ontological universality, however, I ignored the dangers of imperialist intolerance when such claims move into politics. This final section considers a few of the political dangers posed by excessive or “false” universalism, especially when a powerful actor (mis)takes its own interests for universal values. The legacy of colonialism demands that Westerners show special caution and sensitivity when advancing arguments of universalism in the face of clashing cultural values. Westerners must also remember the political, economic, and cultural power that lies behind even their best intentioned activities. Anything that even hints of imposing Western values is likely to be met with understandable suspicion, even resistance. How arguments of universalism and arguments of relativism are advanced may sometimes be as important as the substance of those arguments.59 Care and caution, however, must not be confused with inattention or inaction. Our values, and international human rights norms, may demand that we act on them even in the absence of agreement by others—at least when that action does not involve force. Even strongly sanctioned traditions may not deserve our toleration if they are unusually objectionable. Consider, for example, the deeply rooted tradition of anti-Semitism in the West or “untouchables” and bonded labor in India. Even if such traditional practices were not rejected by the governments in question, they would not deserve the tolerance, let alone the respect, of outsiders. When rights-abusive practices raise issues of great moral significance, tradition and culture are slight defense. Consider violence against homosexuals. International human rights law does not prohibit discrimination on the basis of sexual orientation. Sexual orientation is not mentioned in the Universal Declaration or the Covenants, and arguments that it falls within the category of “other status” in Article 2 of each of these documents are widely accepted, at least at the level of law, only in Europe and a few other countries. Nonetheless, everyone is entitled to security of the person. If the state refuses to protect some people against private violence, on the grounds that they are immoral, the state violates their basic human rights—which are held no less by the immoral than the moral.60 And the idea that the state should be permitted to imprison or even execute people solely on the basis of private voluntary acts between consenting adults, however much that behavior or “lifestyle” offends community conceptions of morality, is inconsistent with any plausible conception of personal autonomy and individual human rights. I do not mean to minimize the dangers of cultural and political arrogance, especially when backed by great power. US foreign policy often confuses American interests with universal values. Many Americans do seem to believe that what’s good for the US is good for the world—and if not, then “that’s their problem.” The dangers of such arrogant and abusive “universalism” are especially striking in international relations, where normative disputes that cannot be resolved by rational persuasion or appeal to agreed upon international norms tend to be settled by (political, economic, and cultural) power—of which United States today has more than anyone else. Faced with such undoubtedly perverse “unilateral universalism,” even some well meaning critics have been seduced by misguided arguments for the essential relativity of human rights. This, however, in effect accepts the American confusion of human rights with US foreign policy. **The proper remedy for “false” universalism is defensible, relative universalism.** Functional, overlapping consensus, and international legal universality, in addition to their analytical and substantive virtues, can be valuable resources for resisting many of the excesses of American foreign policy, and perhaps even for redirecting it into more humane channels. Indirect support for such an argument is provided by the preference of the Bush administration for the language of democracy and freedom rather than human rights.61 For example, the introductions to the 2002 and 2006 national security statements use “freedom” twenty-five times, “democracy” six times, and “human rights” just once (and not at all in 2006).62 Part of the reason would seem to be that human rights does have a relatively precise and well-settled meaning in contemporary international relations. “Democracy” is both narrower and more imprecisely defined, especially internationally.63 And “freedom” is a remarkably malleable idea—“rich” or “empty,” depending on your perspective—as a review of the roster of the “free world” in the 1970s indicates. International legal and overlapping consensus universality can provide important protection against the arrogant “universalism” of the powerful. Without authoritative international standards, to what can the United States (or any other great power) be held accountable? If international legal universality has no force, why shouldn’t the United States act on its own (often peculiar) understandings of human rights? Even the Bush Administration’s preference for “coalitions of the willing” provides indirect testimony to the attractions of the idea of overlapping consensus. The contemporary virtues of (relative) universality are especially great because the ideological hegemony of human rights in the post-Cold War world is largely independent of American power. As Abu Ghraib indicates, international human rights norms may even provoke changes in policy in the midst of what is typically presented as a war. The international and national focus on Guantanamo—which on its face is odd, given the tiny percentage of the victims of the War on Terror who have suffered in this bit of American-occupied Cuba—underscores the power of widely endorsed international norms to change the terms of debate and transform the meaning of actions. International legal universality is one of the great achievements of the international human rights movement, both intrinsically and because it has facilitated a deepening overlapping consensus. Even the United States participates, fitfully and incompletely, in these consensuses. Not just the Clinton administration but both Bush administrations as well have regularly raised human rights concerns in numerous bilateral relationships, usually with a central element of genuine concern. (The real problem with American foreign policy is less where it does raise human rights concerns than where it doesn’t, or where it allows them to be subordinated to other concerns.) And all of this matters, directly to tens or hundreds of thousands of people, and indirectly to many hundreds of millions, whose lives have been made better by internationally recognized human rights. Human rights are not a panacea for the world’s problems. They do, however, fully deserve the prominence they have received in recent years. For the foreseeable future, human rights will remain a vital element in national, international, and transnational struggles for social justice and human dignity. And the relative universality of those rights is a powerful resource that can be used to help to build more just and humane national and international societies.

### case

Wilderson agrees

Wilderson 10

Frank b. Wilderson III, Prof at UC Irvine, speaking on a panel on literary activism at the National Black Writers Conference, March 26, 2010, "Panel on Literary Activism", transcribed from the video available at http://www.c-spanvideo.org/program/id/222448, begins at roughly 49:10

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

We should reconfigure the state via micro-political advocacy like debate – it’s possible and desirable and state structures are here to stay because people are so invested in them so there’s no alt

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Rogers Brubaker, Department of Sociology, UCLA, 2004, In the Name of the Nation: Reflectionson Nationalism and Patriotism, Citizenship Studies, Vol. 8, No. 2, [www.sailorstraining.eu/admin/download/b28.pdf](http://www.sailorstraining.eu/admin/download/b28.pdf)

This, then, is the basic work done by the category ‘nation’ in the context of nationalist movements—movements to create a polity for a putative nation. In other contexts, the category ‘nation’ is used in a very different way. It is used not to challenge the existing territorial and political order, but to create a sense of national unity for a given polity. This is the sort of work that is often called nation-building, of which we have heard much of late. It is this sort of work that was evoked by the Italian statesman Massimo D’Azeglio, when he famously said, ‘we have made Italy, now we have to make Italians’. It is this sort of work that was (and still is) undertaken—with varying but on the whole not particularly impressive degrees of success—by leaders of post-colonial states, who had won independence, but whose populations were and remain deeply divided along regional, ethnic, linguistic, and religious lines. It is this sort of work that the category ‘nation’ could, in principle, be mobilized to do in contemporary Iraq—to cultivate solidarity and appeal to loyalty in a way that cuts across divisions between Shi’ites and Sunnis, Kurds and Arabs, North and South.2

In contexts like this, the category ‘nation’ can also be used in another way, not to appeal to a ‘national’ identity transcending ethnolinguistic, ethnoreligious, or ethnoregional distinctions, but rather to assert ‘ownership’ of the polity on behalf of a ‘core’ ethnocultural ‘nation’ distinct from the citizenry of the state as a whole, and thereby to define or redefine the state as the state of and for that core ‘nation’ (Brubaker, 1996, p. 83ff). This is the way ‘nation’ is used, for example, by Hindu nationalists in India, who seek to redefine India as a state founded on Hindutva or Hinduness, a state of and for the Hindu ethnoreligious ‘nation’ (Van der Veer, 1994). Needless to say, this use of ‘nation’ excludes Muslims from membership of the nation, just as similar claims to ‘ownership’ of the state in the name of an ethnocultural core nation exclude other ethnoreligious, ethnolinguistic, or ethnoracial groups in other settings.

In the United States and other relatively settled, longstanding nation-states, ‘nation’ can work in this exclusionary way, as in nativist movements in America or in the rhetoric of the contemporary European far right (‘la France oux Franc¸ais’, ‘Deutschland den Deutshchen’). Yet it can also work in a very different and fundamentally inclusive way.3 It can work to mobilize mutual solidarity among members of ‘the nation’, inclusively defined to include all citizens—and perhaps all long-term residents—of the state. To invoke nationhood, in this sense, is to attempt to transcend or at least relativize internal differences and distinctions. It is an attempt to get people to think of themselves— to formulate their identities and their interests—as members of that nation, rather than as members of some other collectivity. To appeal to the nation can be a powerful rhetorical resource, though it is not automatically so. Academics in the social sciences and humanities in the United States are generally skeptical of or even hostile to such invocations of nationhood. They are often seen as de´passe´, parochial, naive, regressive, or even dangerous. For many scholars in the social sciences and humanities, ‘nation’ is a suspect category.

Few American scholars wave flags, and many of us are suspicious of those who do. And often with good reason, since flag-waving has been associated with intolerance, xenophobia, and militarism, with exaggerated national pride and aggressive foreign policy. Unspeakable horrors—and a wide range of lesser evils—have been perpetrated in the name of the nation, and not just in the name of ‘ethnic’ nations, but in the name of putatively ‘civic’ nations as well (Mann, 2004). But this is not sufficient to account for the prevailingly negative stance towards the nation. Unspeakable horrors, and an equally wide range of lesser evils, have been committed in the name of many other sorts of imagined communities as well—in the name of the state, the race, the ethnic group, the class, the party, the faith.

In addition to the sense that nationalism is dangerous, and closely connected to some of the great evils of our time—the sense that, as John Dunn (1979, p. 55) put it, nationalism is ‘the starkest political shame of the 20th-century’— there is a much broader suspicion of invocations of nationhood. This derives from the widespread diagnosis that we live in a post-national age. It comes from the sense that, however well fitted the category ‘nation’ was to economic, political, and cultural realities in the nineteenth century, it is increasingly ill-fitted to those realities today. On this account, nation is fundamentally an anachronistic category, and invocations of nationhood, even if not dangerous, are out of sync with the basic principles that structure social life today.4

The post-nationalist stance combines an empirical claim, a methodological critique, and a normative argument. I will say a few words about each in turn. The empirical claim asserts the declining capacity and diminishing relevance of the nation-state. Buffeted by the unprecedented circulation of people, goods, messages, images, ideas, and cultural products, the nation-state is said to have progressively lost its ability to ‘cage’ (Mann, 1993, p. 61), frame, and govern social, economic, cultural, and political life. It is said to have lost its ability to control its borders, regulate its economy, shape its culture, address a variety of border-spanning problems, and engage the hearts and minds of its citizens. I believe this thesis is greatly overstated, and not just because the September 11 attacks have prompted an aggressively resurgent statism.5 Even the European Union, central to a good deal of writing on post-nationalism, does not represent a linear or unambiguous move ‘beyond the nation-state’. As Milward (1992) has argued, the initially limited moves toward supranational authority in Europe worked—and were intended—to restore and strengthen the authority of the nation-state. And the massive reconfiguration of political space along national lines in Central and Eastern Europe at the end of the Cold War suggests that far from moving beyond the nation-state, large parts of Europe were moving back to the nation-state.6 The ‘short twentieth century’ concluded much as it had begun, with Central and Eastern Europe entering not a post-national but a post-multinational era through the large-scale nationalization of previously multinational political space. Certainly nationhood remains the universal formula for legitimating statehood.

Can one speak of an ‘unprecedented porosity’ of borders, as one recent book has put it (Sheffer, 2003, p. 22)? In some respects, perhaps; but in other respects—especially with regard to the movement of people—social technologies of border control have continued to develop. One cannot speak of a generalized loss of control by states over their borders; in fact, during the last century, the opposite trend has prevailed, as states have deployed increasingly sophisticated technologies of identification, surveillance, and control, from passports and visas through integrated databases and biometric devices. The world’s poor who seek to better their estate through international migration face a tighter mesh of state regulation than they did a century ago (Hirst and Thompson, 1999, pp. 30–1, 267). Is migration today unprecedented in volume and velocity, as is often asserted? Actually, it is not: on a per capita basis, the overseas flows of a century ago to the United States were considerably larger than those of recent decades, while global migration flows are today ‘on balance slightly less intensive’ than those of the later nineteenth and early twentieth century (Held et al., 1999, p. 326). Do migrants today sustain ties with their countries of origin? Of course they do; but they managed to do so without e-mail and inexpensive telephone connections a century ago, and it is not clear—contrary to what theorists of post-nationalism suggest—that the manner in which they do so today represents a basic transcendence of the nation-state.7 Has a globalizing capitalism reduced the capacity of the state to regulate the economy? Undoubtedly. Yet in other domains—such as the regulation of what had previously been considered private behavior—the regulatory grip of the state has become tighter rather than looser (Mann, 1997, pp. 491–2).

The methodological critique is that the social sciences have long suffered from ‘methodological nationalism’ (Centre for the Study of Global Governance, 2002; Wimmer and Glick-Schiller, 2002)—the tendency to take the ‘nation-state’ as equivalent to ‘society’, and to focus on internal structures and processes at the expense of global or otherwise border-transcending processes and structures. There is obviously a good deal of truth in this critique, even if it tends to be overstated, and neglects the work that some historians and social scientists have long been doing on border-spanning flows and networks.

But what follows from this critique? If it serves to encourage the study of social processes organized on multiple levels in addition to the level of the nation-state, so much the better. But if the methodological critique is coupled— as it often is—with the empirical claim about the diminishing relevance of the nation-state, and if it serves therefore to channel attention away from state-level processes and structures, there is a risk that academic fashion will lead us to neglect what remains, for better or worse, a fundamental level of organization and fundamental locus of power.

The normative critique of the nation-state comes from two directions. From above, the cosmopolitan argument is that humanity as a whole, not the nation- state, should define the primary horizon of our moral imagination and political engagement (Nussbaum, 1996). From below, muticulturalism and identity politics celebrate group identities and privilege them over wider, more encompassing affiliations.

One can distinguish stronger and weaker versions of the cosmopolitan argument. The strong cosmopolitan argument is that there is no good reason to privilege the nation-state as a focus of solidarity, a domain of mutual responsibility, and a locus of citizenship.8 The nation-state is a morally arbitrary community, since membership in it is determined, for the most part, by the lottery of birth, by morally arbitrary facts of birthplace or parentage. The weaker version of the cosmopolitan argument is that the boundaries of the nation-state should not set limits to our moral responsibility and political commitments. It is hard to disagree with this point. No matter how open and ‘joinable’ a nation is—a point to which I will return below—it is always imagined, as Benedict Anderson (1991) observed, as a limited community. It is intrinsically parochial and irredeemably particular. Even the most adamant critics of universalism will surely agree that those beyond the boundaries of the nation-state have some claim, as fellow human beings, on our moral imagination, our political energy, even perhaps our economic resources.9

The second strand of the normative critique of the nation-state—the multiculturalist critique—itself takes various forms. Some criticize the nation-state for a homogenizing logic that inexorably suppresses cultural differences. Others claim that most putative nation-states (including the United States) are not in fact nation-states at all, but multinational states whose citizens may share a common loyalty to the state, but not a common national identity (Kymlicka, 1995, p. 11). But the main challenge to the nation-state from multiculturalism and identity politics comes less from specific arguments than from a general disposition to cultivate and celebrate group identities and loyalties at the expense of state-wide identities and loyalties.

In the face of this twofold cosmopolitan and multiculturalist critique, I would like to sketch a qualified defense of nationalism and patriotism in the contemporary American context.10 Observers have long noted the Janus-faced character of nationalism and patriotism, and I am well aware of their dark side. As someone who has studied nationalism in Eastern Europe, I am perhaps especially aware of that dark side, and I am aware that nationalism and patriotism have a dark side not only there but here. Yet the prevailing anti-national, post-national, and trans-national stances in the social sciences and humanities risk obscuring the good reasons—at least in the American context—for cultivating solidarity, mutual responsibility, and citizenship at the level of the nation-state. Some of those who defend patriotism do so by distinguishing it from nationalism.11 I do not want to take this tack, for I think that attempts to distinguish good patriotism from bad nationalism neglect the intrinsic ambivalence and polymorphism of both. Patriotism and nationalism are not things with fixed natures; they are highly flexible political languages, ways of framing political arguments by appealing to the patria, the fatherland, the country, the nation. These terms have somewhat different connotations and resonances, and the political languages of patriotism and nationalism are therefore not fully overlapping. But they do overlap a great deal, and an enormous variety of work can be done with both languages. I therefore want to consider them together here.

I want to suggest that patriotism and nationalism can be valuable in four respects. They can help develop more robust forms of citizenship, provide support for redistributive social policies, foster the integration of immigrants, and even serve as a check on the development of an aggressively unilateralist foreign policy.

First, nationalism and patriotism can motivate and sustain civic engagement. It is sometimes argued that liberal democratic states need committed and active citizens, and therefore need patriotism to generate and motivate such citizens. This argument shares the general weakness of functionalist arguments about what states or societies allegedly ‘need’; in fact, liberal democratic states seem to be able to muddle through with largely passive and uncommitted citizenries. But the argument need not be cast in functionalist form. A committed and engaged citizenry may not be necessary, but that does not make it any less desirable. And patriotism can help nourish civic engagement. It can help generate feelings of solidarity and mutual responsibility across the boundaries of identity groups. As Benedict Anderson (1991, p. 7) put it, the nation is conceived as a ‘deep horizontal comradeship’. Identification with fellow members of this imagined community can nourish the sense that their problems are on some level my problems, for which I have a special responsibility.12

Patriotic identification with one’s country—the feeling that this is my country, and my government—can help ground a sense of responsibility for, rather than disengagement from, actions taken by the national government. A feeling of responsibility for such actions does not, of course, imply agreement with them; it may even generate powerful emotions such as shame, outrage, and anger that underlie and motivate opposition to government policies. Patriotic commitments are likely to intensify rather than attenuate such emotions. As Richard Rorty (1994) observed, ‘you can feel shame over your country’s behavior only to the extent to which you feel it is your country’.13 Patriotic commitments can furnish the energies and passions that motivate and sustain civic engagement.