# 1NC

## 1

**We advocate that the United States federal government imprison the entire population of the United States.**

**The 1ac is too clever by half. Don't let them fool you, they aren't revolutionary dreamers, they appeal to a very pragmatic imagination. Unfortunately, it doesn't work, against direct confrontation we should wholeheartedly embrace the worst option.**

Stevphen **Shukaitis** Lecturer in Work and Organization @ Essex Business School, **2010** (Stevphen, “Overidentification and/or bust?,” Variant, Issue 37, pg.online)

But let us consider the role and practice of overidentification in a broader scope. Overidentification as a practice of political intervention might indeed **function as the unifying nodal point of a Lacanian left** 20, if indeed such a thing actually existed.21 Since that period of Laibach’s rise to international attention in the late 1980s, this approach to cultural intervention has been adopted more broadly within political organising, and can be identified in the activities of groups such as the Yes Men, Christoph Schlingensief, Reverend Billy, the Billionaires for Bush, and many others. The argument for such strategies is that in the current functioning of capitalism, **the critical function of governance is to be more critical than the critics of governance itself**. Functionaries in a system of power, by presenting themselves as their worst critic, thus deprive critique of its ammunition and substance, thereby **turning the tables on it.** This is to go beyond both the arguments put forward by Boltanski and Chiapello; that critique has been subsumed within capitalism22 and that, within autonomist politics, reactive forms of social resistance and insurgency still remain a driving motor of capitalist development. This hints at the possibility that strategies for the neutralisation of the energies of social insurgency are anticipated even before they emerge. It is in this context that a strategy of **overidentification is argued to be of particular value, throwing a monkeywrench in the expected binaries of opposition and response.** The most worked-out conceptualisation of overidentification as a strategy of intervention has been articulated by BAVO, an independent research project focused on the political dimensions of art and architecture, primarily based on co-operation between Gideon Boie and Matthias Pauwels.23 Although their take on these matters is far ranging (as can be seen by the varied contributions they gathered together for their edited collection Cultural Activism Today), there are a few key points that illustrate well their take on overidentification. First, that we live in post-political times where it is possible for artists and political actors to say anything, but what is said does not matter. Today, it is argued, artists are expected, and even demanded, to play something of a critical function, as long as one does not go too far in that function. In other words, so far as to question the fundamental ideological co-ordinates underpinning social relations, as by doing so “one is immediately disqualified as a legitimate discussion partner, treated like an incompetent, ignorant imbecile who stepped out of line and should better stick to his own field of experience”.24 From this BAVO argue, following Karl Kraus, that when forced between two evils, **one should take the worst option.** That is, to abandon the role of pragmatic idealists and to work to force an arrangement of contradictions to their logical end. In their words: “Instead of fleeing from the suffocating closure of the system, one is now incited to fully immerse oneself in it, even contributing to the closure. To choose the worst option, in other words, means no longer trying to make the best of the current order, but precisely to make the worst of it, to turn it into the worst possible version of itself. It would thus entail a refusal of the current blackmail in which artists are offered all kinds of opportunities to make a difference, on the condition that they give up on their desire for radical change.”25 BAVO adopts such an approach as they argue that other possible strategies, such as working on the grounds of marginal positions or creating forms of exodus, have already been anticipated and accommodated by systems of capitalist governance, and are therefore no longer useful as disruptive strategies.26 It is within this context that the work of groups such as the Yes Men becomes more interesting, precisely because, rather than putting forth forms of critique that can easily be brushed aside, their tactics of fanatically identifying with the neoliberal agenda thus pushes them further along to obscene yet logical developments of such ideologies. This is the stance Laibach and the NSK employed, one based not on critical distance but erasure of such distance. And it is through this erasure of distance that the Yes Men’s opponents are thrown off guard, precisely because, as BAVO describe it, this form of intervention forces such opponents to betray their articles of faith and passionate attachment to a neoliberal agenda just as its obscene subtext is made clear, and thus “makes it [in this case, the WTO] – rather than its critics – appear weak”27. BAVO summarise the most salient features of a strategy of overidentification as being based on these elements: 1. Owes its effectiveness to sabotaging dialectics of alarm and reassurance, drawing out the extreme and obscene subtext of a social system, eliminating the subject’s reflex to make excuses for the current order to inventing new ways to manage it better. 2. Quickly shifts between different positions, overstating, mocking critique, and producing internal contradictions and points of tension that cannot hold together. 3. Sabotages easy interpretations of unproblematic identification either with or against the intervention, making it difficult to be recuperated in any direction. 4. Aimed precisely against the reflex to do the right thing. 5. Creates a suffocating closure within a system of meaning or relations, preventing escapes from the immanent laws and relations of that system.28 A strategy of overidentification thus provides one possible antidote to what Peter Sloterdijk refers to as “cynical reason”29, or a condition where people know that there is something fundamentally wrong but continue to act as if this is not the case. It is this cynical distance that Jeffrey Goldfarb diagnosed as so prevalent in the US, creating a sort of “legitimation through disbelief,”30 although one could easily argue that this is much more widespread and just the condition that a strategy of overidentification aims to address and intervene within. One can certainly contest the desirability and effectiveness of such an approach, and such strategies have and continue to create a great deal of debate within political, artistic, and academic circles. Nevertheless, even if the conclusion is eventually reached that such is not an acceptable choice of interventionist strategy in most cases, it nonetheless seems valuable to learn from, especially in making a transition out of a time frame or frame of mind that is paralysed to find any method of intervention because all strategies are already caught in varying webs of power and therefore argued to be compromised. A strategy of overidentification operates precisely by turning this already-caughtness into an advantage by deploying and redirecting energies of capture and constituted power against themselves. Zizek, in an essay on Laibach and the NSK31, comments that the reactions of the left to them has first been to take their work as an ironic satire of totalitarian rituals, followed by an uneasy feeling based on not knowing whether they really mean it or not. This is usually followed by varying iterations along these lines, wondering if they really do mean it, or whether they overestimate the public’s ability to interpret their multiple layers of allusion and reference and thus end up reinforcing totalitarian currents. For Zizek these are the wrong questions to ask and angle to take. Instead, it is a question of how Laibach and the NSK, as well a strategy of overidentification, more broadly intervene in a social context marked by cynical distance. From this perspective Zizek asks: “What if this distance, far from posing any threat to the system, designates the supreme form of conformism, since the normal function of the system requires cynical distance? In this sense the strategy of Laibach appears in a new light: it ‘frustrates’ the system (the ruling ideology) precisely insofar as it is not its ironic imitation, but overidentification with it – by bringing to light the obscene superego underside of the system, overidentification suspends its efficiency.”32 But the question remains to what degree a strategy of overidentification is marked by the conditions that led to its emergence? If overidentification was effective in its ability to disrupt circuits of meaning and the social imaginary within a particular social and historical context, it does not necessarily follow that it will operate similarly in other, possibly significantly different situations. Might then a transition within the imaginary of a politics formed around aesthetic interventions premised upon overidentification be necessary? This is perhaps what one sees in the development of Laibach’s work, which moves from operating as a disruptive mechanism in and against the Yugoslavian national imaginary during the 1980s, but then changes direction following the disintegration of the country. For instance, during the 1990s the NSK launched its ’State in Time‘ project, where it claims to have created a global state and system of governance that is not based in physical space but only in time. This is at one and the same time a movement away from a strategy of disruption of one imaginary, towards a new form of imaginary disarticulation, and can in some ways be seen more to be based on a nostalgic identification with the state form that has been torn apart than an act of overidentification. In other words, it had become possible for Laibach and the NSK to mutate away from disarticulating the Yugoslav imaginary through overidentification and to begin a more positive assessment of the state dynamics it had fused itself too. This is perhaps not so surprising when one takes into account Sharon Zukin’s argument that it is only really possible to fully aestheticise a system or relations of production once it has passed its moment as the hegemonic form of production.33 The question of transition and intervention within the social imaginary is transformed if one engages an argument such as the one made by Guy Debord34, that rather than there existing a sharp and total distinction between Western capitalism and Communism in Eastern Europe, it was, instead, a question of the difference between the workings of a diffuse and a concentrated spectacle. In other words, not of totally different forms but rather of particular compositions of a similar underlying dynamic of power and exploitation. The question then becomes of how a strategy of overidentification either creates or restrains the possibility of intervening within the creation of collective imaginaries within the present. One can perhaps stumble towards the position that overidentification provides another tool in the conceptual toolbox for refounding and reformulating critique. It provides a possible answer to the dynamics analysed by Peter Starr in his exploration of the failed revolt in post-’68 political thought.35 Starr argues that modern revolutionary thought is premised upon radical breaks and departures from the past, one that suppresses previous notions of return and reappearance of social forms. And it is this dynamic of reappearance that gives way to fanatical obsessions with a dynamics of recuperation, as they run counter to the narrative structure of revolutionary politics. Starr argues that the ultimate direction laid out in post-’68 thought moves toward a notion of, impossible, total revolution, and thus, failing there, moves towards forms of cultural politics based on subtle subversion. A strategy of overidentification, as well as of the Retro-Avant-Garde, working through the remaining utopian energies and the traumas of the past rather than repressing them, opens up other avenues for reformulating critique and intervention. A strategy of overidentification enacts a transition away from considering the dynamics of recuperation as problems to be avoided, to considering them as possibilities to be exploited and worked through, in, and against; but only against by working in them rather than seeking escape by recourse to an unproblematic outside. It is at this juncture where the question of transition is transformed into one of composition and recomposition, working from within the disarticulation and re-articulation of collective imaginaries.

**Their attempt to snatch a little power from the master is part and parcel of the very structure which maintains oppressive economies of power, and not the way to actualize structural change**

Žižek, Institute for Social Sciences at the University of Ljubljana, 1997 [Slavoj, The Plague of Fantasies, 32-34]

Fantasy, desire, drive Desire emerges when drive gets caught in the cobweb of Law/prohibition, in the vicious cycle in which jouissance must be refused, so that it can be, reached on the inverted ladder of the Law of desire' (Lacan's definition of castration) — and fantasy is the narrative of this primordial loss, since it stages the process of this renunciation, the emergence of the Law. In this precise sense, fantasy is the very screen that separates desire from drive: it tells the story which allows the subject to (mis)perceive the void around which drive circulates as the primordial loss constitutive of desire. In other words, fantasy provides a rationale for the inherent deadlock, of desire: it constructs the scene in which the jouissance we are deprived of is concentrated in the Other who stole it from us. In the anti-Semitic ideological fantasy, social antagonism is explained away via the reference to the Jew as the secret agent who is stealing social jouissance from us (amassing profits, seducing our women ...).32 In 'traversing the fantasy', we find jouissance in the vicious cycle of circulating around the void of the (missing) object, renouncing the myth that jouissance has to be- amassed somewhere else. Hysteria provides the exemplary case of desire as a defence against jouissance: in contrast to the pervert who works incessantly to provide enjoyment to the Other, the neurotic-hysteric wants to be the object of the Other's desire, not the object of his enjoyment — she is well aware that the only way to remain desired is to postpone the satisfaction, the gratification of desire which would bring enjoyment. The hysteric's fear is that, in so far as she is the object of the Other's enjoyment, she is reduced to an instrument of the Other, exploited, manipulated by him; on the other hand, there is nothing a true pervert enjoys more than being an instrument of the Other, of his jouissance." In a typical case of hysterical triangulation, while a wife can fully enjoy illicit sex only, her message to her lover is: if her husband learns of her affair and leaves her, she will also have to drop him .... What we encounter here is the basic neurotic strategy of snatching back from the other part of the jouissance he has taken from us: by cheating her husband, she steals back from him part of the jouissance he 'illegitimately' stole from her. That is to say: a neurotic has made the sacrifice of jouissance (which is why she is not a psychotic), which enables her to enter the symbolic order, but she is obsessed with the notion that the sacrificed jouissance, the jouissance `taken' from her, is stored somewhere in- the Other who is profiting from it 'illegitimately', enjoying in her place — so her strategy consists in getting at least part of- it back by transgressing the Other's norms (from masturbating and cheating, up to speeding without getting a ticket). In other words, the neurotic's basic notion is that the Other's authority is not 'legitimate': behind the facade of Authority, there is an obscene jouissance stolen from the neurotic (in the case of Dora, Freud's patient, her father is perceived by her as a dirty old man who, instead of loving her, 'castrated' her — turned her into an object of exchange and offered her to Mr K — in order to pursue his dirty affair with Mrs K). What the neurotic cannot stand is the idea that the Other is profiting from his sacrifice; he (typically the obsessional) is prepared to sacrifice everything on condition that the Other does not profit from it, that he does not amass the sacrificed jouissance, does not enjoy in his place. Through psychoanalytic treatment, the neurotic must be helped to stop blaming the Other (society, parents, church, spouse ...) for his 'castration', and, conse­quently, to stop seeking retribution from the Other. (There, in the strategy of culpabilizing the Other, also resides the limitation of postmodern' identity politics in which the deprived minority indulges in ressentiment by blaming, and seeking retribution from the Other.) In the dialectic of Master and servant, the servant (mis)perceives the Master as amassing jouissance, and gets back (steals from the Master) little crumbs of jouissance; these small pleasures (the awareness that he can also manipulate the Master), silently tolerated by the Master, not only fail to present any threat to the Master but, in fact, constitute the 'libidinal bribery' which maintains the servant's servitude. In short, the satisfaction that he is able to dupe the Master is precisely what guarantees the servant's servitude to him. Although both the neurotic and the pervert sacrifice enjoyment –although neither of the two is a psychotic directly immersed in jouissance – the economy of sacrifice is fundamentally different: neurotic is traumatized by the other's jouissance (an obsessional neurotic, for example, works like mad all the time to prevent the Other from enjoying – or, as they say in French, pour que rien ne bouge pas dans l'autre) – while a pervert posits himself as the object-instrument of the Other's jouissance; he sacrifices his jouissance to generate jouissance in the Other. In psychoanalytic treatment, the obsessional is active all the time, tells stories, presents' symptoms, and so on, so that things will remain the same, so that nothing will really change, so that the analyst will remain immobile and will not effectively intervene – what he is most afraid of is the moment of silence which will reveal the utter vacuousness of his incessant activity. In an intersubjective situation permeated with an undercurrent of tension, an obsessional who detects this undercurrent will talk continuously, to the distraction of those around him, in order to prevent the awkward silence in which the underlying conflict might emerge.34

**Our politics is a radical and complete over-identification with the system we are confronting, this ultra-orthodoxy allows us to expose the operation of the death drive and confront the desire to conquer the drive – strict adherence to our desires for war is this ultra-orthodoxy – engaging in a mechanism of international relations that has so much baggage disturbs our understanding of the fantasy.**

**Zizek**, Senior Researcher at the Institute for Social Studies, Ljubljana, Slovenia, **1997** (Slavoj, Repeating Lenin,

http://www.lacan.com/replenin.htm

This repression of the regime's own excess was strictly correlative to something homologous to the invention of the liberal psychological individual not take place in the Soviet Union in the late 20s and early 30s. The Russian avant-garde art of the early 20s (futurism, constructivism) not only zealously endorsed industrialization, it even endeavored to reinvent a new industrial man - no longer the old man of sentimental passions and roots in traditions, but the new man who gladly accepts his role as a bolt or screw in the gigantic coordinated industrial Machine. As such, it was subversive in its very "ultra-orthodoxy," i.e. in its over-identification with the core of the official ideology: the image of man that we get in Eisenstein, Meyerhold, constructivist paintings, etc., emphasizes the beauty of his/her mechanical movements, his/her thorough depsychologization. What was perceived in the West as the ultimate nightmare of liberal individualism, as the ideological counterpoint to the "Taylorization," to the Fordist ribbon-work, was in Russia hailed as the utopian prospect of liberation: recall how Meyerhold violently asserted the "behaviorist" approach to acting - no longer emphatic familiarization with the person the actor is playing, but the ruthless bodily training aimed at the cold bodily discipline, at the ability of the actor to perform the series of mechanized movements...[59](http://www.lacan.com/replenin.htm#59) THIS is what was unbearable to AND IN the official Stalinist ideology, so that the Stalinist "socialist realism" effectively WAS an attempt to reassert a "Socialism with a human face," i.e. to reinscribe the process of industrialization into the constraints of the traditional psychological individual: in the Socialist Realist texts, paintings and films, individuals are no longer rendered as parts of the global Machine, but as warm passionate persons.

**Our imagination is comparatively better. Overidentification as a strategic political intervention subverts dominant systems without creating the cynical distance necessary to sustain them.**

Stevphen **Shukaitis** Lecturer in Work and Organization @ Essex Business School, **2010** (Stevphen, “Overidentification and/or bust?,” Variant, Issue 37, pg.online) This approach of adopting a set of ideas, images, or politics and attacking them, not by a direct, open or straightforward critique, but rather through a rabid and obscenely exaggerated adoption of them, can be referred to as overidentification. While the concept was developed within the theoretical armory of Structuralist (Lacanian) psychoanalysis (and later further developed by thinkers such as Slavoj Zizek and various cultural and political activists), it was the NSK Collective that, through their work, forged it into a tool of cultural subversion and sabotage to be deployed within the ideologically charged context of post-Tito Yugoslavia. In this article, we examine the formation of overidentification as a strategy of cultural-political intervention uniquely formed from this context. Is overidentification useful as a strategy of political intervention for an age marked by the presence of cynical distance within cultural and social spheres? Or have the various phases of political and economic transition that have occurred since Laibach’s founding in the context of the Slovenian/ex-Yugoslavian punk movement rendered such methods of subversion and deconstruction ineffective? Or is it perhaps possible to refound a critical politics and strategy of intervention drawn from the work of Laibach and the NSK, transforming their methods and ideas to the conditions of the present? “The explanation is the whip and you bleed” – ‘Apologia Laibach’ (1987) Since its inception, the NSK expanded to include other activities including philosophy, planning, architecture, and many other aspects that are part of its now proclaimed status as a “global state in time”. In addition to the collective development of shared themes, the various collectives composing NSK emphasise the collaborative nature of the project, not crediting individual members for aspects of the work and frequently changing the composition of the members involved in any given production. As a musical project, Laibach is mainly associated with forms of industrial music (as well as neoclassical and martial styles), evolving from a very harsh and abrasive sound during the early recordings through to one at times involving multiple layers of electronics, heavy metal, compositions arranged in the form of national anthems, and most recently interpreting a series of Bach’s fugues. But Laibach, and the NSK more generally, have achieved prominence, notoriety, and infamy perhaps less so for their particular aesthetic as much as the historical meanings and recontextualisations of the various properties of state ideology used in their performances and productions. ‘Laibach’ itself, for instance, is the German name still associated as the one used during the fascist occupation of Ljubljana. The work of Laibach and the NSK frequently draws upon the aesthetics of totalitarian and nationalist movements, forging a kind of totalitarian kitsch4 by fusing together elements from varying and completely incongruent political philosophies. For instance, the NSK logo is a combination of Laibach’s cross logo (borrowed from Russian supremacist artist Kasimir Malevich and used as its primary public reference point during the years when using the name Laibach was banned in Yugoslavia), John Heartfield’s anti-fascist axe swastika, an industrial cog, and a pair of antlers (with the base of the design featuring the names of the founding collectives). Even in this small example one can see an ambiguous and strange merging of elements; the way that the anti-fascist emblem becomes transformed within a composition where the relation of the elements to each other changes the meaning contained within each of them. Laibach/NSK’s usage of historical, political, and aesthetic readymades render audible their submerged and hidden codes and contexts that directed the modes of representation, or what Zizek refers to as the hidden underside of systems and regimes. This approach to the use of borrowed historical and political elements forms the basis of what Laibach/NSK refer to as retrogardism, or the formation of the monumental Retro-Avant-Garde.5 The basic idea of this being the non-repression of troubling or undesirable elements of historical and social regimes in their work. Rather than repressing them, they are highlighted, as they argue that the traumas affecting the present and the future can only be addressed by tracing them back to and through their sources, working through and processing them. As Alexei Monroe argues in his excellent analysis of their work, it is not an approach based on constructing a new future by negating the past (which in general is the usual relation to time found within avant-garde artistic practice), but rather “retrogardism attempts to free the present and change the future via the reworking of past utopianisms and historical wounds”.6 The impact and effect of Laibach/NSK’s work is based on the effects produced by the disjunctive synthesis of troubling historical elements and the radical ambivalence contained within this. As has been argued by Zizek and others, socialist democracy was sustained by a set of implicit (obscene) injunctions and prohibitions and a process of socialising people into taking certain explicitly expressed norms. Tactics of overidentification, as employed by Laibach and the NSK – as well as more broadly within the Slovenia punk subculture of the 1980s that gave birth to the genre of “state rock”, or punk music incorporating elements of the discourse of self-managed socialism as critique through overidentification – work precisely by taking the stated norms of a given system or arrangement of power more seriously than the system that proclaims them itself.7 This operation occurs not through addressing the law itself, per se, or by breaking prohibitions (a more straightforward form of transgression), but rather by teasing out the obscene subtext that underpins the operation of the law and supporting social norms. A strategy of overidentification in order to be effective needs to appear total, and through that it “transcends and reactivates the terror of the social field… the spectral menace of totality gives the phenomenon sufficient ‘credibility’ to sow doubt and disquiet”.8 And this is precisely how Laibach/NSK’s works function, through giving an impression of totality (by claiming the status of the nation, or the state, or of being a global state in itself) in a manner that lends a degree of credibility to the menacing and disconcerting nature of their aesthetic production. As Susan Buck-Morrs explores in her work on transitions within collective imaginaries, dreamworlds become dangerous when they are used instrumentally by structures of power, which is to say as legitimation devices and discourses. Buck-Morrs argues that socialism failed because it mimicked capitalism too faithfully. Laibach and the NSK operate by turning this process of mimicry against itself, disarticulating the potency of the dreamworld and utopian promise of Communism that had become embedded within a discourse of legitimation, mixed with the lingering presence of totalitarian and authoritarian elements. Indeed, it is often that the constituted forms of power existing with state structures are based upon the ability to draw from the energies and constituent power of social movements, of utopian dreamworlds, and render them into zombified forms of state.10 NSK/Laibach’s interventions were so powerful within the Yugoslav context precisely because of how they amplified and made visible this process of rendering dreamworlds into discourses of state legitimation. The interventions’ disconcerting effects provided ways of **working through both the continued presence of authoritarianism and utopian energies**, **revealing how they are enmeshed in the workings of existing social imaginaries and political discourses**. Laibach’s work incorporates a good deal of official Yugoslav discourse on self-management and social democracy, using at times sections of Tito’s speeches and audio recordings, as well as particularly resonant forms of Slovenian history (such as the images and phrases of the anti-fascist partisans, which were quite important for the role they played in state legitimation). It is this reworking of Slovenian and Yugoslav history that invested their early works with such potency, through the way these familiar ideas were made strange and even uncomfortable to audiences through their compounding and juxtaposition with other elements (for instance by fusing them together with ultra-völkisch imagery and Germanic phrasing, which was taken to be anathema to nationalist groups). Laibach’s response to this, particularly in relation to the continued controversy over its use of a name which was said to dishonor the ‘hero city’ of Ljubljana, was to continue to adopt a stance of complete identification with Slovenia and Slovene identity, and thus to frame controversy and rejection of Laibach as the rejection of Slovenia itself. This created a form of ambivalent identification in which Laibach both bastardised (in their critics’ views) Slovene identity while at the same time engaging in a quite militant assertion of that very Slovene identity (at points even declaring the German to be a subset of the Slovene). Through the politics and practices of overidentification, Laibach and the NSK hint towards the possibility of breaking the very process of identification,11 and this is why they were so disconcerting for many political actors in Slovenia in the 1980s. Laibach/NSK’s politics and practices of overidentification are displayed in unique and quite fascinating ways in their organisational practices, or at least the claims they have made about them. This shows through in their alleged structure offered by the NSK organigram from 1986, which takes the logic of alternative forms of institutionalisation to an almost absurd extreme. In the organigram, at least ten different departments in addition to a number of assemblies, councils, and organs, are all paired with or ruled over by the statement of “immanent consistent spirit” that covers and directs all the activity of NSK. This claiming of and overidentification with overly complex, arcane, and nearly incomprehensible state-like structures was observed by the ‘Rough Guide to Yugoslavia’ to bear a striking resemblance to the diagrams used within school textbooks to explains the country’s bafflingly complex political system and structures.12 It is through this that the spectral menace of totality is activated, for in the case of the NSK it clearly is spectral because the NSK is composed of many more organisational components than it has ever possessed as members. This becomes more so in the case of projects such as the ‘State in Time’, in which the claiming of a state structure existing purely in time is enacted through overidentification with the organisational form and structure of states. In all of Laibach and NSK’s work there is never a clear-cut statement on organisation but rather an exploration of its ambivalences and possibilities; this is an approach that “does not support a utopian or dystopian organisation, but the fantasies of audiences that need to imagine that such possibilities still exist”.13

## 2

**The 1AC fails to advance a topical discussion restricting presidential war powers authority---that undermines debate’s transformative and intellectual potential:**

**Resolved is used to introduce a policy resolution—limited to the question of the resolution**

**Robert 15** General Henry M. Robert, US Army, 1915, <http://www.bartleby.com/176/4.html>

A motion is a proposal that the assembly take certain action, or that it express itself as holding certain views. It is made by a member's obtaining the floor as already described and saying, "I move that" (which is equivalent to saying, "I propose that"), and then stating the action he proposes to have taken. Thus a member "moves" (proposes) that a resolution be adopted, or amended, or referred to a committee, or that a vote of thanks be extended, etc.; or "That it is the sense of this meeting (or assembly) that industrial training," etc. Every resolution should be in writing, and the presiding officer has a right to require any main motion, amendment, or instructions to a committee to be in writing. When a main motion is of such importance or length as to be in writing it is usually written in the form of a resolution; that is, **beginning with the words, "Resolved,** **That**," the word "Resolved " being underscored (printed in italics) and followed by a comma, and the word "That" beginning with a capital "T." If the word "Resolved" were replaced by the words "I move," the resolution would become a motion. A resolution is always a main motion. In some sections of the country the word "resolve" is frequently used instead of "resolution." In assemblies with paid employees, instructions given to employees are called "orders" instead of "resolutions," and the enacting word, "Ordered" is used instead of "Resolved." [continues] After a question has been stated by the chair, it is before the assembly for consideration and action. All resolutions, reports of committees, communications to the assembly, and all amendments proposed to them, and all other motions except the Undebatable Motions mentioned in 45, may be debated before final action is taken on them, unless by a two-thirds vote the assembly decides to dispose of them without debate. By a two-thirds vote is meant two-thirds of the votes cast, a quorum being present. In the debate each member has the right to speak twice on the same question on the same day (except on an appeal), but cannot make a second speech on the same question as long as any member who has not spoken on that question desires the floor. No one can speak longer than ten minutes at a time without permission of the assembly. **Debate must be limited to the merits of the immediately pending question** — that is, the last question stated by the chair that is still pending; except that in a few cases the main question is also open to debate [45]. Speakers must address their remarks to the presiding officer, be courteous in their language and deportment, and avoid all personalities, never alluding to the officers or other members by name, where possible to avoid it, nor to the motives of members.

**Restrict is to limit any kind of action**

Corpus Juris Secundum, 1931

(Volume 54, p. 735)

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

**The War Power Authority clause means they must speak out against those detained on ENEMY WAR POWERS not domestic prisons**

Hanes 11 (2011¶ Brigham Young University Law Review¶ 2011 B.Y.U.L. Rev. 2283¶ LENGTH: 16243 words COMMENT: Challenging the Executive: The Constitutionality of Congressional Regulation of the President's Wartime Detention Policies NAME: William M. Hains\* BIO: \* William M. Hains received his Juris Doctor from the J. Reuben Clark Law School, Brigham Young University, in April 2011. He currently serves as a law clerk for the Honorable J. Frederic Voros Jr. on the Utah Court of Appeals. He would like to thank Professor Howard Nielson and Carla Crandall for their suggestions on an earlier draft of this paper and the BYU Law Review staff for their editorial assistance. He would also like to thank Chrisy for her support and patience. The views expressed in this Comment are his own.)

The authority to detain enemies in a time of war has long been viewed as an important war power of the government. [n118](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n118) As a war power, presidential detention authority would derive from the Commander-in-Chief Clause if its source is constitutional. History suggests that Congress also has concurrent detention authority. During the 1798-1800 Quasi-War with France, for example, Congress passed several laws authorizing detention of French captives, setting conditions on detention, and authorizing the [\*2306] exchange or release of prisoners. [n119](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n119) The regulations passed in the Quasi-War demonstrate the understanding of Congress that it had authority to regulate detention, but this history does not clearly reveal the source of that authority. [n120](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n120) Possible sources of congressional detention authority include the Captures Clause, the power of the purse, and the Law of Nations Clause. [n121](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n121)¶ 1. Commander-in-Chief Clause Wartime detention authority is rooted in the law of war, a branch of the law of nations, or, as it is known today, customary international law. "From the very beginning of its history [the Supreme] Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals." [n122](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n122) In Ex parte Quirin, the Supreme Court identified detention authority as "an important incident to the conduct of war," founded in the law of war. [n123](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n123) In a plurality decision, [\*2307] the Court recently affirmed in the context of the war on terrorism that detention - for the duration of the conflict - and prosecution of enemy combatants is justified under the law of war to secure the battlefield and preserve the ability of the President to prosecute the war. [n124](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n124)¶ Yet the law of war defines rather than grants authority. There must be some constitutional or legislative provision that supplies the authority, such as the Commander-in-Chief Clause or a congressional authorization of war. [n125](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n125) In Ex parte Quirin, the Court suggested that the President and Congress may have concurrent authority. The Court recognized that the President was acting pursuant to an act of Congress in creating military commissions during World War II to try detainees for offenses against the law of nations. [n126](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n126) But the President was also acting under "such authority as the Constitution itself gives the Commander in Chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war." [n127](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n127) Similarly, the plurality in Hamdi v. Rumsfeld found congressional authorization for the executive detention of enemy combatants in the war on terrorism, and thus did not reach the President's claim of "plenary authority to detain pursuant to Article II of the Constitution." [n128](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n128) More specific to the power to prosecute detainees, the Court suggested in Hamdan v. Rumsfeld that the President's power derived solely from congressional authorization: "Congress cannot direct the conduct of campaigns, nor can the President, or any commander under him, without the sanction of Congress, institute tribunals for the trial and punishment of offences." [n129](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n129) The [\*2308] Court raised the possibility that the President may have independent power "in cases of a controlling necessity," but noted that the Court has never definitively resolved that issue and refused to do so in Hamdan as well. [n130](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n130)¶ Thus, the Court has suggested - but never squarely held - that when Congress authorizes the President's war powers, the Commander-in-Chief Clause grants the President powers incident to the conduct of war, including authority over wartime detainees.¶ 2. Captures Clause One common source cited for congressional detention authority is the Captures Clause. [n131](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n131) As discussed above, [n132](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n132) in setting forth a framework for analyzing limits on congressional power, the proper scope of each constitutional grant must be determined before deciding whether constitutional power over a particular matter is exclusive or concurrent. The Captures Clause appears on its face to grant Congress authority to regulate detention: Congress has power to "make Rules concerning Captures on Land and Water." [n133](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n133) Chief Justice John Marshall suggested as much in dicta in an 1814 case. [n134](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n134) Yet Professor Ingrid Wuerth has argued recently - and quite persuasively - that the original meaning of the Captures Clause was in fact intended only as a source of authority over enemy property. [n135](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n135) Wuerth argues that the Clause is best understood as granting power over "moveable property taken for adjudication as prize, but not persons," and "the power to authorize the making of captures and also to determine their legality."[n136](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n136) The natural implication of Professor Wuerth's analysis is that the Captures Clause cannot serve as a solid basis for congressional limitation on the President's [\*2309] detention authority. Congressional authority must be found in the power of the purse or the Law of Nations Clause.

**Deconstruction is quite the opposite – it allows infinite interpretations and openness**

**Internet Encyclopedia of Philosophy, No Date** [http://www.iep.utm.edu/deconst/, BJM]

Although deconstruction has roots in Martin Heidegger’s concept of Destruktion, to deconstruct is not to destroy. Deconstruction is always a double movement of simultaneous affirmation and undoing. It started out as a way of reading the history of metaphysics in Heidegger and Jacques Derrida, but was soon applied to the interpretation of literary, religious, and legal texts as well as philosophical ones, and was adopted by several French feminist theorists as a way of making clearer the deep male bias embedded in the European intellectual tradition. To deconstruct is to take a text apart along the structural “fault lines” created by the ambiguities inherent in one or more of its key concepts or themes in order to reveal the equivocations or contradictions that make the text possible. For example, in “Plato’s Pharmacy,” Derrida deconstructs Socrates’ criticism of the written word, arguing that it not only suffers from internal inconsistencies because of the analogy Socrates himself makes between memory and writing, but also stands in stark contrast to the fact that his ideas come to us only through the written word he disparaged (D 61-171). The double movement here is one of tracing this tension in Plato’s text, and in the traditional reading of that text, while at the same time acknowledging the fundamental ways in which our understanding of the world is dependent on Socrates’ attitude toward the written word. Derrida points out similar contradictions in philosophical discussions of a preface (by G. W. F. Hegel, D 1-69) and a picture frame (by Immanuel Kant, TP 17-147), which are simultaneously inside and outside the respective works under consideration. Since the distinction between what is inside the text (or painting) and what is outside can itself be deconstructed according to the same principles, deconstruction is, like Destruktion, an historicizing movement that opens texts to the conditions of their production, their context in a very broad sense, including not only the historical circumstances and tradition from which they arose, but also the conventions and nuances of the language in which they were written and the details of their authors’ lives. This generates an effectively infinite complexity in texts that makes any deconstructive reading necessarily partial and preliminary.

**“Indefinite detention” means detained without charges—not criminal law**

**Cheyette**, JD, MPH, **and Allen**, MD, Co-Director of the Center for Prisoner Health and Human Rights at Brown University, **2011**

(Cara and Scott, “Punishment Before Justice: Indefinite Detention in the US,” <http://www.judiciary.senate.gov/resources/transcripts/upload/022912RecordSubmission-Franken.pdf>)

**Individuals who are indefinitely detained are**, **by definition**, **individuals against whom no charges have been brought and therefore against whom no conviction has been obtained**. Unlike individuals convicted of crimes, whose sentences are a form of lawful punishment so long as it is not cruel or unusual, detainees may not, consistent with due process, be punished at all. The US government’s obligation to ensure that detainees do not suffer severe mental and physical harm is accordingly greater than the government’s obligation to protect prison inmates from such harms. This report demonstrates, however, that the harms endured by individuals held indefinitely are unconstitutionally punitive, thus violating detainees’ rights to due process. Moreover, the serious harm that already traumatized populations face constitutes cruel, inhuman, or degrading treatment, in violation of domestic and international law.

**Independently, criminal incarceration is not war powers—proves their deconstruction method doesn’t solve their black criminality advantage**

**Tobias**, professor of law at Richmond, September **2007**

(Carl, “THE PROCESS DUE INDEFINITELY DETAINED CITIZENS\*,” 85 N.C.L. Rev. 1687, Lexis)

Having determined that constitutional text and relevant Supreme Court opinions did not allow the Executive to detain American citizens, the panel surveyed whether lawmakers had approved the incarceration. The majority consulted the Non-Detention Act's terminology: "no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." n116 The judges read these words as a proscription on all citizen detentions, a "conclusion first reached by the Supreme Court." n117 Further, the panel deemed the legislative history "fully consistent with" its view because the enactment's sponsor and the major opponent "repeatedly confirmed" that the law governed presidential attempts to detain in [\*1708] wartime and evinced Congress' intent that it "must specifically authorize detentions." n118 The appellate court said that the legislation precluded civilian and military detentions, n119 finding: (1) **this idea left executive war powers** "**unabridged**" because the "President, acting alone" lacks inherent authority to detain; n120 and (2) a statute's "placement" should not "trump text, especially" when clear and "fully supported by legislative history." n121 The panel concluded that a "precise, specific" law "is required to override" the enactment's ban on all citizen detentions n122 and, thus, searched for this approval. n123 The appeals court detected none in the AUMF's phrasing n124 and construed the words vis-a-vis the tenets which the Supreme Court articulated in Ex parte Endo: judges must interpret wartime measures "to allow for the greatest possible accommodation between" war exigencies and civil liberties and find that "lawmakers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." n125 Nothing in the plain terms granted the Executive power to detain American citizens on U.S. "soil, much less the express authorization required by section 4001(a) and the "clear,' "unmistakable' language" which Endo demanded. n126 Because the AUMF was "meant to constitute specific statutory authorization within" the War Powers Resolution, n127 the [\*1709] panel thought it "inconceivable" that Congress would mandate such a resolution to employ force overseas yet "leave unstated and to inference something so significant and unprecedented as authorization to detain American citizens under the Non-Detention Act." n128 Moreover, 10 U.S.C. § 956(5), which "authorizes nothing beyond the expenditure of money," failed to satisfy the Non-Detention Act, the requirements that Endo had propounded as well as Fourth and Fifth Amendment guarantees. n129 [RELEVANT FOOTNOTE—] n121. Id. at 721. The United States said placing § 4001(a) in **a section on prisons did not limit executive war power**, and next to § 4001(b)'s exclusion of military prisons, showed Congress intended to exclude military detentions. Id.

**Violation: The affirmative seeks to open up space for the deconstruction of indefinite detention and abolition of the justice system and black criminality without discussing the restriction of presidential war power authority. They claim to win the debate for reasons other than the desirability of topical action. That undermines preparation and clash. Changing the question now leaves one side unprepared, resulting in shallow, un-educational debate. Requiring debate on a communal topic forces argument development and develops persuasive skills critical to any political outcome.**

**Deconstructions proves extra topicality that explodes all predictable limits makes debates impossible**

**Academic, institutions-based debate regarding detention can reverse excessive presidential authority---college students key**

Kelly Michael **Young 13**, Associate Professor of Communication and Director of Forensics at Wayne State University, "Why Should We Debate About Restriction of Presidential War Powers", 9/4, public.cedadebate.org/node/13

Beyond its obviously timeliness, we believed debating about presidential war powers was important because of the stakes involved in the controversy. Since the Korean War, scholars and pundits have grown increasingly alarmed by the growing scope and techniques of presidential war making. In 1973, in the wake of Vietnam, Congress passed the joint War Powers Resolution (WPR) to increase Congress’s role in foreign policy and war making by requiring executive consultation with Congress prior to the use of military force, reporting within 48 hours after the start of hostiles, and requiring the close of military operations after 60 days unless Congress has authorized the use of force. Although the WPR was a significant legislative feat, 30 years since its passage, presidents have frequently ignores the WPR requirements and the changing nature of conflict does not fit neatly into these regulations. After the terrorist attacks on 9-11, many experts worry that executive war powers have expanded far beyond healthy limits. Consequently, there is a fear that continued expansion of these powers will undermine the constitutional system of checks and balances that maintain the democratic foundation of this country and risk constant and unlimited military actions, particularly in what Stephen Griffin refers to as a “long war” period like the War on Terror (http://www.hup.harvard.edu/catalog.php?isbn=9780674058286). In comparison, pro-presidential powers advocates contend that new restrictions undermine flexibility and timely decision-making necessary to effectively counter contemporary national security risks. Thus, a debate about presidential wars powers is important to investigate a number of issues that have serious consequences on the status of democratic checks and national security of the United States.¶ Lastly, debating presidential war powers is important because we the people have an important role in affecting the use of presidential war powers. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers is the presence of a well-informed and educated public. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…may lie in an enlightened citizenry – in an informed and critical public opinion which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as these students’ opinions will stand as an important potential check on the presidency.

**The affirmative foreclosed any grounds for discussion on Presidential war powers. This isn't a normal framework argument—it’s a rhetorical criticism of their utter disconnect from the topic. Debating a time sensitive controversy like war powers is necessary to challenge conventional wisdom on the subject which is good for education**

**Kurr 2013** – Ph.D. student in the Communication Arts & Sciences program at Pennsylvania State University and a coach for the Penn State Debate Society (9/5, UVA Miller Center & CEDA Public Debate Series, “Bridging Competitive Debate and Public Deliberation on Presidential War Powers”, http://public.cedadebate.org/node/14)

Taken together, the connection between tournament competition and a public collaboration reorients the pedagogical function of debate. Gordon Mitchell and his colleagues comment on this possibility, “The debate tournament site’s potential to work as a translational pipeline for scholarly research presents unique opportunities for colleges and universities seeking to bolster their institutional infrastructure for undergraduate research” (Mitchell et al, 2010, p. 15). Indeed, the debate series affords competitors the opportunity to become part of the discussion and inform policymakers about potential positions, as opposed to the traditional reactionary format of hosting public debates at the season’s end. Empirically, these events had the effect of “giv[ing] voice to previously buried arguments” that “subject matter experts felt reticent to elucidate because of their institutional affiliations” (Mitchell, 2010, p. 107). Given the timeliness of the topic, these debates provide a new voice into the ongoing deliberation over war powers and help make the fruits of competitive research have a public purpose. The second major function concerns the specific nature of deliberation over war powers. Given the connectedness between presidential war powers and the preservation of national security, deliberation is often difficult. Mark Neocleous describes that when political issues become securitized; it “helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms.” (2008, p. 71). Collegiate debaters, through research and competitive debate, serve as a bulwark against this “short-circuiting” and help preserve democratic deliberation. This is especially true when considering national security issues. Eric English contends, “The success … in challenging the dominant dialogue on homeland security politics points to efficacy of academic debate as a training ground.” Part of this training requires a “robust understanding of the switch-side technique” which “helps prevent misappropriation of the technique to bolster suspect homeland security policies” (English et. al, 2007, p. 224). Hence, competitive debate training provides foundation for interrogating these policies in public. Alarmism on the issues of war powers is easily demonstrated by Obama’s repeated attempts to transfer detainees from Guantanamo Bay. Republicans were able to launch a campaign featuring the slogan, “not in my backyard” (Schor, 2009). By locating the nexus of insecurity as close as geographically possible, the GOP were able to instill a fear of national insecurity that made deliberation in the public sphere not possible. When collegiate debaters translate their knowledge of the policy wonkery on such issues into public deliberation, it serves to cut against the alarmist rhetoric purported by opponents. In addition to combating misperceptions concerning detainee transfers, the investigative capacity of collegiate debate provides a constant check on governmental policies. A new trend concerning national security policies has been for the government to provide “status updates” to the public. On March 28, 2011, Obama gave a speech concerning Operation Odyssey Dawn in Libya and the purpose of the bombings. Jeremy Engels and William Saas describe this “post facto discourse” as a “new norm” where “Americans are called to acquiesce to decisions already made” (2013, p. 230). Contra to the alarmist strategy that made policy deliberation impossible, this rhetorical strategy posits that deliberation is not necessary. Collegiate debaters researching war powers are able to interrogate whether deliberation is actually needed. Given the technical knowledge base needed to comprehend the mechanism of how war powers operate, debate programs serve as a constant investigation into whether deliberation is necessary not only for prior action but also future action. By raising public awareness, there is a greater potential that “the public’s inquiry into potential illegal action abroad” could “create real incentives to enforce the WPR” (Druck, 2010, p. 236). While this line of interrogation could be fulfilled by another organization, collegiate debaters who translate their competitive knowledge into public awareness create a “space for talk” where the public has “previously been content to remain silent” (Engels & Saas, 2013, p. 231). Given the importance of presidential war powers and the strategies used by both sides of the aisle to stifle deliberation, the import of competitive debate research into the public realm should provide an additional check of being subdued by alarmism or acquiescent rhetorics. After creating that space for deliberation, debaters are apt to influence the policies themselves. Mitchell furthers, “Intercollegiate debaters can play key roles in retrieving and amplifying positions that might otherwise remain sedimented in the policy process” (2010, p. 107). With the timeliness of the war powers controversy and the need for competitive debate to reorient publicly, the CEDA/Miller Center series represents a symbiotic relationship that ought to continue into the future. Not only will collegiate debaters become better public advocates by shifting from competition to collaboration, the public becomes more informed on a technical issue where deliberation was being stifled. As a result, debaters reinvigorate debate.

**A general subject isn’t enough—debate requires a specific point of difference in order to promote effective exchange**

**Steinberg and Freeley 13**, \* David, Lecturer in Communication studies and rhetoric, Advisor to Miami Urban Debate League, Director of Debate at U Miami, Former President of CEDA, and \*\* Austin, attorney who focuses on criminal, personal injury and civil rights law, JD, Suffolk University, *Argumentation and Debate***,** *Critical Thinking for Reasoned Decision Making*, 121-4

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 well-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.

**The impact outweighs—deliberative debate models impart skills vital to respond to existential threats**

Christian O. **Lundberg 10** Professor of Communications @ University of North Carolina, Chapel Hill, “Tradition of Debate in North Carolina” in Navigating Opportunity: Policy Debate in the 21st Century By Allan D. Louden, p. 311

The second major problem with the critique that identifies a naivety in articulating debate and democracy is that it presumes that the primary pedagogical outcome of debate is speech capacities. But the democratic capacities built by debate are not limited to speech—as indicated earlier, debate builds capacity for critical thinking, analysis of public claims, informed decision making, and better public judgment. If the picture of modem political life that underwrites this critique of debate is a pessimistic view of increasingly labyrinthine and bureaucratic administrative politics, rapid scientific and technological change outpacing the capacities of the citizenry to comprehend them, and ever-expanding insular special-interest- and money-driven politics, it is a puzzling solution, at best, to argue that these conditions warrant giving up on debate. If democracy is open to rearticulation, it is open to rearticulation precisely because as the challenges of modern political life proliferate, the citizenry's capacities can change, which is one of the primary reasons that theorists of democracy such as Ocwey in The Public awl Its Problems place such a high premium on education (Dewey 1988,63, 154). Debate provides an indispensible form of education in the modem articulation of democracy because it builds precisely the skills that allow the citizenry to research and be informed about policy decisions that impact them, to sort through and evaluate the evidence for and relative merits of arguments for and against a policy in an increasingly information-rich environment, and to prioritize their time and political energies toward policies that matter the most to them. The merits of debate as a tool for building democratic capacity-building take on a special significance in the context of information literacy. John Larkin (2005, HO) argues that one of the primary failings of modern colleges and universities is that they have not changed curriculum to match with the challenges of a new information environment. This is a problem for the course of academic study in our current context, but perhaps more important, argues Larkin, for the future of a citizenry that will need to make evaluative choices against an increasingly complex and multimediated information environment (ibid-). Larkin's study tested the benefits of debate participation on information-literacy skills and concluded that in-class debate participants reported significantly higher self-efficacy ratings of their ability to navigate academic search databases and to effectively search and use other Web resources: To analyze the self-report ratings of the instructional and control group students, we first conducted a multivariate analysis of variance on all of the ratings, looking jointly at the effect of instmction/no instruction and debate topic . . . that it did not matter which topic students had been assigned . . . students in the Instnictional [debate) group were significantly more confident in their ability to access information and less likely to feel that they needed help to do so----These findings clearly indicate greater self-efficacy for online searching among students who participated in (debate).... These results constitute strong support for the effectiveness of the project on students' self-efficacy for online searching in the academic databases. There was an unintended effect, however: After doing ... the project, instructional group students also felt more confident than the other students in their ability to get good information from Yahoo and Google. It may be that the library research experience increased self-efficacy for any searching, not just in academic databases. (Larkin 2005, 144) Larkin's study substantiates Thomas Worthcn and Gaylcn Pack's (1992, 3) claim that debate in the college classroom plays a critical role in fostering the kind of problem-solving skills demanded by the increasingly rich media and information environment of modernity. Though their essay was written in 1992 on the cusp of the eventual explosion of the Internet as a medium, Worthcn and Pack's framing of the issue was prescient: the primary question facing today's student has changed from how to best research a topic to the crucial question of learning how to best evaluate which arguments to cite and rely upon from an easily accessible and veritable cornucopia of materials. There are, without a doubt, a number of important criticisms of employing debate as a model for democratic deliberation. But cumulatively, the evidence presented here warrants strong support for expanding debate practice in the classroom as a technology for enhancing democratic deliberative capacities. The unique combination of critical thinking skills, research and information processing skills, oral communication skills, and capacities for listening and thoughtful, open engagement with hotly contested issues argues for debate as a crucial component of a rich and vital democratic life. In-class debate practice both aids students in achieving the best goals of college and university education, and serves as an unmatched practice for creating thoughtful, engaged, open-minded and self-critical students who are open to the possibilities of meaningful political engagement and new articulations of democratic life. Expanding this practice is crucial, if only because the more we produce citizens that can actively and effectively engage the political process, the more likely we are to produce revisions of democratic life that are necessary if democracy is not only to survive, but to thrive. Democracy faces a myriad of challenges, including: domestic and international issues of class, gender, and racial justice; wholesale environmental destruction and the potential for rapid climate change; emerging threats to international stability in the form of terrorism, intervention and new possibilities for great power conflict; and increasing challenges of rapid globalization including an increasingly volatile global economic structure. More than any specific policy or proposal, an informed and active citizenry that deliberates with greater skill and sensitivity provides one of the best hopes for responsive and effective democratic governance, and by extension, one of the last best hopes for dealing with the existential challenges to democracy [in an] increasingly complex world.

Deliberation and engagment in the context of war powers is uniquely empowering—provides us with critical thinking and decision-making skills and inculcates agency

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

2. Factual Chaos and Uncertainty

One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often under-taught in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to swiftly and efficiently engage in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions related to professional responsibility that will confront them in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the ability to create conditions of learning.

**Specifically, legal reforms can utilized to protect vulnerable populations if we remain conscious of its dangers—the alternative leaves groups stranded**

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B. Conceptual Boundaries: When the Dichotomies of Exit Are Unchecked At first glance, the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, we are attracted to declarations about newness - new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures. n186 However, the critical insights about law's reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as the "state" is not a single organism but a multiplicity of legislative, administrative, and judicial organs, "nonstate arenas" are dispersed, multiple, and constructed. The focus on action in a separate sphere broadly defined as civil society can be self-defeating precisely because it conceals the many ways in which law continues to play a crucial role in all spheres of life. Today, the lines between private and public functions are increasingly blurred, forming what Professor Gunther Teubner terms "polycorporatist regimes," a symbiosis between private and public sectors. n187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities. n188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard [\*979] to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good. n189 In the same way, legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts. n190 These false dichotomies should resonate well with classic cooptation analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives. Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, voluntary associations have flourished in mutually beneficial relationships with federal regulations. n191 A dichotomized notion of a shift between spheres - between law and informalization, and between regulatory and nonregulatory schemes - therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. The challenge for social reform groups and for policymakers today is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality. Community empowerment requires ongoing government commitment. n192 In fact, the most successful community-based projects have been those which were not only supported by public funds, but in which public administration also continued to play some coordination role. n193 At both the global and local levels, with the growing enthusiasm around the proliferation of new norm-generating actors, many envision a nonprofit, nongovernmental organization-led democratization of new informal processes. n194 Yet this Article has begun to explore the problems with some of the assumptions underlying the potential of these new actors. Recalling the unbundled taxonomy of the cooptation critique, it becomes easier to identify the ways extralegal activism is prone to problems of fragmentation, institutional limitation, and professionalization. [\*980] Private associations, even when structured as nonprofit entities, are frequently undemocratic institutions whose legitimacy is often questionable. n195 There are problematic structural differences among NGOs, for example between Northern and Southern NGOs in international fora, stemming from asymmetrical resources and funding, n196 and between large foundations and struggling organizations at the national level. Moreover, direct regulation of private associations is becoming particularly important as the roles of nonprofits increase in the new political economy. Scholars have pointed to the fact that nonprofit organizations operate in many of the same areas as for-profit corporations and government bureaucracies. n197 This phenomenon raises a wide variety of difficulties, which range from ordinary financial corruption to the misrepresentation of certain partnerships as "nonprofit" or "private." n198 Incidents of corruption within nongovernmental organizations, as well as reports that these organizations serve merely as covers for either for-profit or governmental institutions, have increasingly come to the attention of the government and the public. n199 Recently, for example, the IRS revoked the tax-exempt nonprofit status of countless "credit counseling services" because these firms were in fact motivated primarily by profit and not by the not-for-profit cause of helping consumers get out of debt. n200 Courts have long recognized that the mere fact that an entity is a nonprofit does not preclude it from being concerned about raising cash revenues and maximizing profits or affecting competition in the market. n201 In the [\*981] application of antitrust laws, for example, almost every court has rejected the "pure motives" argument when it has been put forth in defense of nonprofits. n202 Moreover, akin to other sectors and arenas, nongovernmental organizations - even when they do not operate within the formal legal system - frequently report both the need to fit their arguments into the contemporary dominant rhetoric and strong pressures to subjugate themselves in the service of other negotiating interests. This is often the case when they appear before international fora, such as the World Bank and the World Trade Organization, and each of the parties in a given debate attempts to look as though it has formed a well-rounded team by enlisting the support of local voluntary associations. n203 One NGO member observes that "when so many different actors are drawn into the process, there is a danger that our demands may be blunted ... . Consequently, we may end up with a "lowest common denominator' which is no better than the kind of compromises the officials and diplomats engage in." n204 Finally, local NGOs that begin to receive funding for their projects from private investors report the limitations of binding themselves to other interests. Funding is rarely unaccompanied by requirements as to the nature and types of uses to which it is put. n205 These concessions to those who have the authority and resources to recognize some social demands but not others are indicative of the sorts of institutional and structural limitations that have been part of the traditional critique of cooptation. In this situation, local NGOs become dependent on players with greater repeat access and are induced to compromise their initial vision in return for limited victories. The concerns about the nature of both civil society and nongovernmental actors illuminate the need to reject the notion of avoiding the legal system and opting into a nonregulated sphere of alternative social activism. When we understand these different realities and processes as also being formed and sustained by law, we can explore new ways in which legality relates to social reform. Some of these ways include efforts to design mechanisms of accountability that address the concerns of the new political economy. Such efforts include [\*982] treating private entities as state actors by revising the tests of joint participation and public function that are employed in the state action doctrine; extending public requirements such as nondiscrimination, due process, and transparency to private actors; and developing procedural rules for such activities as standard-setting and certification by private groups. n206 They may also include using the nondelegation doctrine to prevent certain processes of privatization and rethinking the tax exemption criteria for nonprofits. n207 All of these avenues understand the law as performing significant roles in the quest for reform and accountability while recognizing that new realities require creative rethinking of existing courses of action. Rather than opting out of the legal arena, it is possible to accept the need to diversify modes of activism and legal categories while using legal reform in ways that are responsive to new realities. Focusing on function and architecture, rather than on labels or distinct sectors, requires legal scholars to consider the desirability of new legal models of governmental and nongovernmental partnerships and of the direct regulation of nonstate actors. In recent years, scholars and policymakers have produced a body of literature, rooted primarily in administrative law, describing ways in which the government can harness the potential of private individuals to contribute to the project of governance. n208 These new insights develop the idea that administrative agencies must be cognizant of, and actively involve, the private actors that they are charged with regulating. These studies, in fields ranging from occupational risk prevention to environmental policy to financial regulation, draw on the idea that groups and individuals will [\*983] better comply with state norms once they internalize them. n209 For example, in the context of occupational safety, there is a growing body of evidence that focusing on the implementation of a culture of safety, rather than on the promulgation of rules, can enhance compliance and induce effective self-monitoring by private firms. n210 Consequently, social activists interested in improving the conditions of safety and health for workers should advocate for the involvement of employees in cooperative compliance regimes that involve both top-down agency regulation and firm-and industry-wide risk-management techniques. Importantly, in all of these new models of governance, the government agency and the courts must preserve their authority to discipline those who lack the willingness or the capacity to participate actively and dynamically in collaborative governance. Thus, unlike the contemporary message regarding extralegal activism that privileges private actors and nonlegal techniques to promote social goals, the new governance scholarship is engaged in developing a broad menu of legal reform strategies that involve private industry and nongovernmental actors in a variety of ways while maintaining the necessary role of the state to aid weaker groups in order to promote overall welfare and equity. A responsive legal architecture has the potential to generate new forms of accountability and social responsibility and to link hard law with "softer" practices and normativities. Reformers can potentially use law to increase the power and access of vulnerable individuals and groups and to develop tools to increase fair practices and knowledge building within the new market.

## Case

**Change won’t trickle up**

**Jensen, PhD student in Philosophy, 2009**

(Tim, “Bridging Micro and Macro :: Setting the Stage”, 4-6, <http://candidcandidacy.wordpress.com/2009/04/06/bridging-micro-and-macro-setting-the-stage/>, ldg)

Oliver Marchart asks the same question in his essay, “Bridging the Micro-Macro Gap: Is There Such a Thing as a Post-subcultural Politics?“ “What criteria,” he asks, have to be met by micro-practices in order to ‘go macro’? Do we need a new concept of ‘organization’? Can there be a subcultural politics of pure particularism or does it take a dimension of universalism?’ Marchart begins by debunking what he sees as a heroism myth that dominates subcultures and those who study them academically. While others have certainly critiqued the narrative of “co-optation,” it’s still necessary to do so, and Marchart does it swiftly and with eloquence. I say that it’s still necessary because there are still plenty of folks (punks, activists, liberals) who believe they can “drop-out” of capitalism in many ways and narratives of “selling out” continue to proliferate. In this set-up, a subculture is designated as “authentic” to the degree that it remains unappropriated by the mainstream. The group or set of practices remains heroic in relation to how much it resists commodification and recuperation. Marchart notes that this narrative of the process of subculture’s incorporation into the mainstream construes “subcultures as some sort of substance–noise from the viewpoint of the dominant system, and the precedes any cooptation by the latter” (author’s emphasis 87). This myth is used to show how the “defending of micro-political practices eo ipso” obviates any move to the macro-political, since those micro-practices are always already political, “simply by virtue of resisting cooptation” (88). Some theorists laud this indirect, style-driven form of dissent and its oblique challenge to exploitative powers. Not Marchart, for sure. And I have some pretty serious reservations about it, too. Who has time to take direct action when one is busy looking like they’re constantly dissenting? (This also becomes an issue, as we shall see in later posts, when dealing with internet cultures of protest.) Much of postmodernism and cultural studies in particular has done excellent–and needed–work in revealing the political nature of our everd ay acts. The cultural and the political have been blurred for some time now. But you can see where this may stunt the move to macro action: if we’re always already political, how do we judge a scale of action? I agree with Marchart that, “What is needed today is an analysis of the passage between culture and macro-politics, that is, an analysis of the process of ‘becoming macro’” (90). We’re missing an understanding of the links between ever day life and organized, collective action, especially with regard to the communicative process. So we must ask, is an answer to be found in the micro-politics of everyday life or in the marco-political movements of collective will and deep structural and cultural reorganization? Where do we start in attempting to make sense of this line between micro and macro; and what role do information communication technologies play in the communication process of this movement between micro and macro? Marchart lists four preconditions for the passage of micro going macro: 1) A situation of explicit antagonization; 2) The emergence of a collectivity; 3) The function of organization; 4) A movement towards universalization. So, for Marchart, what is necessary is a swing towards the macro, a recognition that as long as resistance to hegemony remains at the level of symbolic rituals of the micro-political, we’re in trouble.

**Multiple statistical measures prove a trend towards equality---this isn’t to say that everything is OK, but that falsifiable claims matter for assessing impacts AND that engagement can be effective**

**Currie 8**

<http://www.american.com/archive/2008/november-11-08/the-long-march-of-racial-progress/>

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Measuring racial progress is all about perspective. Since Appomattox, the struggle for racial equality has seen triumphs and setbacks alike. On balance, however, the story of race relations in America is one of extraordinary change and transformation. According to Princeton historian James McPherson, the rate of black illiteracy dropped from roughly 90 percent in 1865 to 70 percent in 1880 and to under 50 percent in 1900. “From the perspective of today, this may seem like minimal progress,” McPherson wrote in his 1991 book, Abraham Lincoln and the Second American Revolution (a collection of essays). “But viewed from the standpoint of 1865 the rate of literacy for blacks increased by 200 percent in fifteen years and by 400 percent in thirty-five years.” McPherson also noted that the share of school-age black children attending school jumped from 2 percent in 1860 to 34 percent in 1880. “During the same period,” he said, “the proportion of white children of school age attending school had grown only from 60 to 62 percent.” In 1908, 100 years before the election of America’s first black president, there was a bloody race riot in Springfield, Illinois, which began when an angry mob surrounded a prison where a black man falsely accused of rape was being held. As columnist George Will has observed, “The siege of the jail, the rioting, the lynching, and mutilating all occurred within walking distance of where, in 2007, Barack Obama announced his presidential candidacy.” Over the past century, the racial attitudes of white Americans have undergone a sea change. The shift toward greater racial tolerance was driven by many factors, including blacks’ participation in World War II, the integration of professional sports and the military, and the civil rights movement. “Even as Americans were voting more conservatively in the 1980s, their views on race were becoming more liberal,” Wall Street Journal senior editor Jonathan Kaufman wrote recently. “More than three quarters of whites in 1972 told pollsters that ‘blacks should not push themselves where they are not wanted.’ Two-thirds of whites that same year said they opposed laws prohibiting racial discrimination in the sale of homes. Forty percent said whites had the right to live in segregated neighborhoods.” However, “By the end of 1980s, all those numbers had fallen markedly and [they] continued to fall through the following decades.” As University of Michigan sociologist Reynolds Farley points out in a new paper, there are now 41 African Americans serving in the House of Representatives, compared to only six when the Kerner Commission issued its famous report on race and poverty in 1968. During the years following the Kerner Report, “The slowly rising incomes of black men and the more rapidly rising incomes of black women produced an important economic change for African Americans,” Farley writes. “In 1996, for the first time, the majority of blacks were in the economic middle class or above, if that means living in a household with an income at least twice the poverty line.” According to Farley, “Only three percent of African Americans could be described as economically comfortable in 1968. That has increased to 17 percent at present. This is an unambiguous sign of racial progress: one black household in six could be labeled financially comfortable.” He notes that the black-white poverty gap “is much smaller now” than it was in the late 1960s. Residential and marriage trends are also encouraging. “The trend toward less residential segregation that emerged in the 1980s and accelerated in the 1990s continues in this century,” says Farley. Meanwhile, interracial marriage rates have increased dramatically. “At the time of the Kerner Report, about one black husband in 100 was enumerated with a white spouse. By 2006, about 14 percent of young black husbands were married to white women.”

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 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.

# 2NC

## 2NC Top

**Zizek 2** Professor of Philosophy @ Institute for Sociology, Ljubljana, Slavoj, “Revolution at the Gates”, pg 167-172

The problem lies in the further implicit qualifications which can easily be discerned by a “concrete analysis of the concrete situation”, as Lenin himself would have put it. “Fidelity to the democratic consensus” means **acceptance of the present liberal**-parliamentary **consensus**, **which precludes any serious questioning of the way this liberal-democratic order is complicit in the phenomena it officially condemns**, and, of course, **any serious attempt to imagine a different sociopolitical order.** In short, it means: **say and write** whatever you like — **on condition that you do not actually question or disturb the prevailing political consensus**. Everything is allowed, solicited even, as a critical topic: the prospect of a global ecological catastrophe; violations of human rights; sexism, homophobia, anti-feminism; growing violence not only in faraway countries, but also in our own megalopolises; the gap between the First and the Third World, between rich and poor; the shattering impact of the digitalization of our daily lives ... today, there is nothing easier than to get international, state or corporate funds for a multidisciplinary research project on how to fight new forms of ethnic, religious or sexist violence. The problem is that all this occurs against the background of a fundamental Denkverbot: a **prohibition on thinking**. Today’s liberal-democratic hegemony is sustained by a kind of unwritten Denkverbot similar to the infamous Berufsverbot (prohibition on employing individuals with radical Left leanings in the state organs) in Germany in the late 1960s — the moment we show a minimal sign of engaging in political projects which aim seriously to challenge the existing order, the answer is immediately: “Benevolent as it is, this will inevitably end in a new Gulag!” The ideological function of constant references to the Holocaust, the Gulag, and more recent Third World catastrophes is thus to serve as the support of this Denkverbot by constantly reminding us how things could have been much worse: “Just look around and see for yourself what will happen if we follow your radical notions!” What we encounter here is the ultimate example of what Anna Dinerstein and Mike Neary have called the project of disutopia: “not just the temporary absence of Utopia, but the political celebration of the end of social dreams”.2 And the demand for “scientific objectivity” amounts to just another version of the same Denkverhot: the moment we seriously question the existing liberal consensus, we are accused of abandoning scientific objectivity for outdated ideological positions. This is the “Leninist” point on which one cannot and should not concede: today, **actual freedom** of thought **means** freedom **to question the prevailing liberal-democratic “post-ideological” consensus — or it means nothing**. The Right to Truth The perspective of the critique of ideology compels us to invert Wittgenstein’s “What one cannot speak about, thereof one should be silent” into “What one should not speak about, thereof one cannot remain silent”. If you want to speak about a social system, you cannot remain silent about its repressed excess. The point is not to tell the whole Truth but, precisely, to append to the (official) Whole the uneasy supplement which denounces its falsity. As Max Horkheimer put it back in the l930s: “If you don’t want to talk about capitalism, then you should keep silent about Fascism.” Fascism is the inherent “symptom” (the return of the repressed) of capitalism, the key to its “truth”, not just an external contingent deviation of its “normal” logic. And the same goes for today’s situation: those who do not want to subject liberal democracy and the flaws of its multiculturalist tolerance to critical analysis, should keep quiet about the new Rightist violence and intolerance. If we are to leave the opposition between liberal-democratic universalism and ethnic/religious fundamentalism behind, the first step is to acknowledge the existence of liberal fundamentalism: the perverse game of making a big fuss when the rights of a serial killer or a suspected war criminal are violated, while ignoring massive violations of “ordinary” people’s rights. More precisely, the politically correct stance betrays its perverse economy through its oscillation between the two extremes: either fascination with the victimized other (helpless children, raped women . . .), or a focus on the problematic other who, although criminal, and so on, also deserves protection of his human rights, because “today it’s him, tomorrow it’ll be us” (an excellent example is Noam Chomsky’s defence of a French book advocating the revisionist stance on the Holocaust). On a different level, a similar instance of the perversity of Political Correctness occurs in Denmark, where people speak ironically of the “white woman’s burden”, her ethico-political duty to have sex with immigrant workers from Third World countries — this being the final necessary step in ending their exclusion. Today, in the era of what Habermas designated as die neue Unubersichtlichkeit (the new opacity),~ our everyday experience is more mystifying than ever: modernization generates new obscurantisms; the reduction of freedom is presented to us as the dawn of new freedoms. The perception that we live in a society of free choices, in which we have to choose even our most “natural” features (ethnic or sexual identity), is the form of appearance of its very opposite: of the absence of true choices. The recent trend for “alternate reality” films, which present existing reality as one of a multitude of possible outcomes, is symptomatic of a society in which choices no longer really matter, are trivialized. The lesson of the time-warp narratives is even bleaker, since it points towards a total closure: the very attempt to avoid the predestined course of things not only leads us back to it, but actually constitutes it — from Oedipus onwards, we want to avoid A, and it is through our very detour that A realizes itself. In these circumstances, we should be especially careful not to confuse the ruling ideology with ideology which seems to dominate. More than ever, we should bear in mind Walter Benjamin’s reminder that it is not enough to ask how a certain theory (or art) positions itself with regard to social struggles — we ask how it actually functions in these very struggles. In sex, the true hegemonic attitude is not patriarchal repression, but free promiscuity; in art, provocations in the style of the notorious “Sensation” exhibitions are the norm, the example of art fully integrated into the establishment. Ayn Rand brought this logic to its conclusion, supplementing it with a kind of Hegelian twist, that is, reasserting the official ideology itself as its own greatest transgression, as in the title of one of her late non-fiction books: “Capitalism, This Unknown Ideal”, or in “top managers, America’s last endangered species”. Indeed, since the “normal” functioning of capitalism involves some kind of disavowal of the basic principle of its functioning (today’s model capitalist is someone who, after ruthlessly generating profit, then generously shares parts of it, giving large donations to churches, victims of ethnic or sexual abuse, etc., posing as a humanitarian), **the ultimate act of transgression is to assert this principle directly, depriving it of its humanitarian mask**. I am therefore tempted to reverse Marx’s Thesis 11: **the first task today is precisely not to succumb to the temptation to act, to intervene directly and change things** (which then inevitably ends in a cul-de-sac of debilitating impossibility: “What can we do against global capital?”), but to question the hegemonic **ideological co-ordinates**. In short, our historical moment is still that of Adorno: To the question “What should we do?” I can most often truly answer only with “I don’t know.” I can only try to analyse rigorously what there is. Here people reproach me: When you practise criticism, you are also obliged to say how one should make it better. To my mind, this is incontrovertibly a bourgeois preiudice. Many times in history it so happened that the very works which pursued purely theoretical goals transformed consciousness, and thereby also social reality. If, today, we follow a direct call to act, **this act will not be performed in an empty space** — **it will be an act within the hegemonic ideological coordinates**: those who “really want to do something to help people” get involved in (undoubtedly honourable) exploits like Mediecins sans frontieres, Greenpeace, feminist and anti-racist campaigns, which are all not only tolerated but even supported by the media, even if they seemingly encroach on economic territory (for example, denouncing and boycotting companies which do not respect ecological conditions, or use child labour) — they are tolerated and supported as long as they do not get too close to a certain limit.6 This kind of activity provides the perfect example of interpassivity: **of doing things not in order to achieve something, but to prevent something from really** happening, really **changing**. All this frenetic humanitarian, Politically Correct, etc., activity fits the formula of “Let’s go on changing something all the time so that, globally, things will remain the same!”. If standard Cultural Studies criticize capitalism, they do so in the coded way that exemplifies Hollywood liberal paranoia: the enemy is “the system”, the hidden “organization”, the anti-democratic “conspiracy”, not simply capitalism and state apparatuses. The problem with this critical stance is not only that it replaces concrete social analysis with a struggle against abstract paranoiac fantasies, but that — in a typical paranoiac gesture — it unnecessarily redoubles social reality, as if there were a secret Organization behind the “visible” capitalist and state organs. What we should accept is that there is no need for a secret “organization-within-an-organization”. the “conspiracy” is already in the “visible” organization as such, in the capitalist system, in the way the political space and state apparatuses work.8 Let us take one of the hottest topics in today’s “radical” American academia: postcolonial studies. The problem of postcolonialism is undoubtedly crucial; however, postcolonial studies tend to translate it into the multiculturalist problematic of the colonized minorities’ “right to narrate” their victimizing experience, of the power mechanisms which repress “otherness,” so that, at the end of the day, we learn that the root of postcolonial exploitation is our intolerance towards the Other, and, furthermore, that this intolerance itself is rooted in our intolerance towards the “Stranger in Ourselves”, in our inability to confront what we have repressed in and of ourselves — the politico-economic struggle is thus imperceptibly transformed into a pseudopsychoanalytic drama of the subject unable to confront its inner traumas. . . . (Why pseudo-psychoanalytic? Because the true lesson of psychoanalysis is not that the external events which fascinate and/or disturb us are just projections of our inner repressed impulses. The unbearable fact of life is that there really are disturbing events out there: there are other human beings who experience intense sexual enjoyment while we are half-impotent; there are people submitted to terrifying torture.. . . Again, the ultimate truth of psychoanalysis is not that of discovering our true Self, but **that of the traumatic encounter with an unbearable Real**.) The true corruption of American academia is not primarily financial, it is not only that universities are able to buy many European critical intellectuals (myself included — up to a point), but conceptual: notions of “European” critical theory are imperceptibly translated into the benign universe of Cultural Studies chic. At a certain point, this chic becomes indistinguishable from the famous Citibank commercial in which scenes of East Asian, European, Black and American children playing is accompanied by the voice-over: “People who were once divided by a continent ... are now united by an economy” — at this concluding highpoint, of course, the children are replaced by the Citibank logo. The great majority of today’s “radical” academics silently count on the long-term stability of the American capitalist model, with a secure tenured position as their ultimate professional goal (a surprising number of them even play the stock market). If there is one thing they are genuinely afraid of, it is a radical shattering of the (relatively) safe life-environment of the “symbolic classes” in developed Western societies. Their excessive Politically Correct zeal when they are dealing with sexism, racism, Third World sweatshops, and so on, is thus ultimately a defence against their own innermost identification, a kind of compulsive ritual whose hidden logic is: “Let’s talk as much as possible about the necessity of a radical change, **to make sure that nothing will really change**!” The journal October is typical of this: when you ask one of the editors what the title refers to, they half-confidentially indicate that it is, of course, that October — in this way, you can indulge in jargonistic analyses of modern art, with the secret assurance that you are somehow retaining a link with the radical revolutionary past.. . . With regard to this radical chic, our first gesture towards Third Way ideologists and practitioners should be one of praise: at least they play their game straight, and are honest in their acceptance of the global capitalist co-ordinates — unlike pseudo-radical academic Leftists who adopt an attitude of utter disdain towards the Third Way, while their own radicalism ultimately **amounts to an empty gesture which obliges no one to do anything definite**. There is, of course, a strict distinction to be made here between authentic social engagement on behalf of exploited minorities (for example, organizing illegally employed chicano field workers in California) and the multiculturalist/postcolonial “plantations of no-risk, no-fault, knock-off rebellion” which prosper in “radical” American academia. If, however, in contrast to corporate multiculturalism”, we define “critical multiculturalism” as a strategy of pointing out that “there are common forces of oppression, common strategies of exclusion, stereotyping, and stigmatizing of oppressed groups, and thus common enemies and targets of attack,” I do not see the appropriateness of the continuing use of the term “multiculturalism”, since the accent shifts here to the common struggle. In its normal accepted meaning, multiculturalism perfectly fits the logic of the global market.

**Zizek 2** Slavoj, The Puppet and the Dwarf, 94-95

Insofar as “death” and “life” desgnate for Saint paul **two existential (subjective) positions, not “objective” facts**, we are fully justified in rasing the old Pauline question: who is really alive today? What if **we are “really alive’ only if and when we engage ourselves with** an excessive **intensity which puts us beyond “mere life”?** What if, when we **focus on mere survival,** even if it is qualified as “having a good time**,” what we ultimately lose is life itself**? What if the Palestinian suicide bomber on the point of blowing himself (and others) up is, in an emphatic sense, “more alive” than the American Soldier engaged in a war in front of a computer screen hundreds of miles away from the enemy, or a New York yuppie jogging along the Hudson river in order to keep his body in shape? Or, in terms of the psychoanalytic clinic, what if a hysteric is truly alive in her permanent, excessive, provoking questioning of her existence, while an obsessional is the very model of choosing a “life in death”? That is to say, is not the ultimate aim of his compulsive rituals to prevent the “thing” from happening—this “thing” being the excess of life itself? Is not the catastrophe he fears the fact that, finally, something will really happen to him? Or in terms of the revolutionary process, what if the difference that separates Lenin’s era from Stalinism is, again, the difference between life an death? There is an apparently marginal feature which clearly illustrates this point: the basic attitude of a Stalinist Communist is that of following the correct Party Line against “rightist” or “leftist” deviation—in short, to steer a safe middle course; for authentic Leninism, in clear contrast, there is ultimately only one deviation, the Centrist one—that of “playing it safe,” of opportunistically avoiding the risk of clearly and excessively taking sides. There was no deeper historical necessity, for example, in the sudden shift of Soviet policy from War communism to the New economic policy in 1921—it was just a desperate strategic zigzag between the leftist and the rightist line, or as Lenin himself put it in 1922, the Bolsheviks made “all the possible mistakes.” This excessive “taking sides,” this permanent imbalance of zigzag is ultimately (the revolutionary political) life itself—for a Leninist, the ultimate name of the counterrevolutionary Right is “center” itself, the fear of introducing a radical imbalance into the social edifice. It is a properly Nietzschean paradox that the greatest loser in this apparent assertion of Life against all transcendent causes is actual life itself. What **makes life worth living** is the very excess of life: the awareness that **there is something for which we are ready to risk our life** (we may call this excess “freedom,” “honor,” “dignity”, “autonomy” etc.) Only when we are ready to take this risk are we really alive. So when Holderlin wrote: “To live is to defend a form,” this form is not simply a Lebensform, but the form of excess of life, the way this excess violently inscribes itself into the life-texture. Chesterton makes this point apropos the paradox of courage:

## 2NC

**The 1AC has got it wrong—race is a regime of looking, and their focus on the historical and material fails because it can’t explain why certain signifiers are given power over others**

**Seshandri-Crooks 2k** Kalpana, Assistant Professor of English at Boston College, Desiring Whiteness: A Lacanian Analysis of Race, London, GBR: Routledge, p.1-3

Growing up in India with a marked sense of caste identity, I found group difference to be a complex weave of practices and beliefs pertaining to a certain texture of life; it was in my experience irreducible to one’s physical appearance. This is not to say that appearance plays no role in India. A glance at “matrimonial advertisements” in any Indian newspaper will demonstrate the ubiquity of physical ideals that include attributes such as being “fair”-skinned or tall. But in this thoroughly heterogeneous society (where the truth can never be told because anything is possible), the physical ideal functions as a form of preference, as an aesthetic choice, without the ontological and legal significance it has acquired in the West. Even in the more racially selfconscious north of India, where the colonialist interpellation of the elite by a so-called Aryan heritage produces those familiar symptoms of denial that Frantz Fanon (1952:141– 54) has analyzed in the context of Martinique, physical attributes do not seem so definitive, so determining of one’s destiny or one’s subjectivity. The size of one’s nose, the degree of pigmentation, or the texture of one’s hair, is not considered to be an index of ability, character or culture. Differences are marked rather by economic status, but even more by one’s last name and regional and linguistic affiliations, the latter being indices of religion, caste, and what is known as “community.” It is this seemingly trivial point, the indifference to “biological” difference, that radically distinguishes caste thinking, which can cut across religions, from race thinking. This distinction has not been adequately marked or theorized given the popular and simplistic absorption of caste (or jati) within the fourfold varna scheme, particularly since varna is often translated (from the Satapatha Brahmana [Srinivas 1962:63– 4]) as color, and thereby subsumed within race. The controversial translation of scripture notwithstanding, 1 caste difference is always marked by cultural accoutrements such as clothing, dialect, and one’s name, but rarely, if ever, by bodily marks. Let me clarify once and for all that I am not valorizing caste, nor idealizing India as an egalitarian society. I only want to stress that in a wholly racialized society such as the US, Europe, or the Caribbean, appearance or physical attributes have come to be more starkly vested, more consequential than anything else such as family, wealth, culture, education or personal achievement. The investment in bodies may differ, and their meanings and ordering may vary according to each society, but the fundamental significance of physical attributes remains constant. It was to explain and understand **this seeming irrationality at the heart of rational modern cultures** (and within Western postcolonial societies) that I undertook to explore the fundamental questions that inform this book: **how and why do we read certain marks of the body as privileged sites of racial meaning?** How did we come to organize difference along **arbitrarily chosen** physical characteristics, thereby generating group formations and identifications? Why some marks like hair, skin and bone, and not others? How is it that when society organizes itself— its system of rewards and punishments, inclusions and exclusions— around appearance, appearance begins to exceed the constructs of a simple narcissism, to the point that it is always the neighbor’s appearance that one is concerned with over and above one’s own? I decided to pursue these questions and some others through psychoanalysis, for it seemed to me that **the investment we make in appearance is beyond simple historical or material explanation**, and that it was only by exploring the psychical import of race **that one could hope to understand its resilient non-sense.** Taking irrationality seriously, then, I began with the observation that debates pertaining to racial theory, which have largely preoccupied social scientists and cultural critics, **rarely have an impact on racial practice**. Race is fundamentally a regime of looking, although race cannot be reduced to the look. By visibility, I do not mean the deployment of stereotype whereby all African Americans have dark skin, and all Caucasians are blond and blue-eyed. Obviously, the correspondence between color and race is too unstable for such simplified looking. It is common knowledge that some “black” people can be very white, and some “whites” can be very dark; identity is a question of “heritage,” not skin color. Once claimed, however, heritage is ultimately marked by the body. Some small bodily mark lends authenticity to the claim of racial belonging. The discourse on racial passing offers the richest sample of such anxious fascination with miniscule but all important differences. Thus by visibility I refer to a regime of looking that thrives on “major” and “minor” details in order to **shore up one’s symbolic position**. It is this concentration on minute difference, perfected by antiSemitism into a mode of looking, that informs my model of visibility. In the following, I therefore focus on race as a practice of visibility rather than as scientific, anthropological or cultural theory. My premise is that **the regime of visibility secures the investment that we make in “race,”** and there are good reasons why such an investment cannot be easily surrendered. I suggest that Lacan’s theory of subject constitution provides us with cognitive landmarks or positions by which to bring the subject of race into representation. Lacan’s provocative thesis that the unconscious is structured like a language and the general precision of his “anti-system” seemed to provide the requisite tools and a language with which to explore and delineate the subject’s acquisition of racial identity. My use of Lacanian psychoanalysis is not a passive “application of Lacanian concepts to issues of race.” I have tried to work with the richest aspects of the theory, and in the process have found it necessary to wrestle with it, and to exert considerable force in inducing it to address race. However, the “appropriation” of Lacan that follows does not take the expected form of ideological revision. I have deliberately avoided the customary ideological “critique” of Lacan, nor do I press the obligatory charge against him for neglecting the all-important issue of race in a France that was, at the moment of his theoretical elaboration, involved in a bloody colonial and racist war against the Algerians. Attention to the person of Lacan and his political responsibility in failing to detail a theory of race is not relevant to my project. 2 It seems much more important to stay focused on the question of race itself, and to derive some insight into the issues rather than to be distracted by an essentially academic argument about the “politics of psychoanalysis.” The evident fealty I demonstrate to Lacanian psychoanalysis derives from my belief that first, in its consistency and precision, Lacanian theory offers a vocabulary of linguistic deciphering in relation to subject constitution that is simply unavailable elsewhere; and second, it is important to remain tenacious in one’s intellectual pursuit, here the interrogation of the mystique of “race.” Where race is concerned too much energy is spent on talking about how we talk about race; thus with the clamor of voices sounding off on political correctness, hate speech, the rights of representation, etc., very little attention is devoted to analyzing what race is and why we need it. 3 The theory of race that follows aims to supplement one of the richest aspects of Lacan’s theory, the issue of sexual difference. In using Lacan’s theory of sexual difference as the cornerstone of my analysis of race, I have tried to evolve a procedure that does not require an analogy between sex and race. The temptation to symmetry in translating formulas from the realm of sex to that of race (such as sex is in the Real, therefore race is in the Real, etc.) is great indeed. But such morphologies are, of course, inherently nonpsychoanalytical. In reading race with sex, I have tried to go beyond the piety of asserting the specificity of each category of experience. I have sought to discover the intricate structural relations between race and sex, to see how race articulates itself with sex to gain access to desire or lack— the paradoxical guarantee of the subject’s sovereignty beyond symbolic determination. 4

**The 1AC’s appeal to race sustains the very system of Whiteness that they claim to reject---they further entrench the validity of a master signifier that structurally requires the annihilation of difference**

**Seshandri-Crooks 2k** Kalpana, Assistant Professor of English at Boston College, Desiring Whiteness: A Lacanian Analysis of Race, London, GBR: Routledge, p.3-7

I argue that the inaugural signifier of race, which I term Whiteness, **implicates us all equally in a logic of difference**. **By Whiteness**, **I do not mean** a physical or **ideological property as it is invoked in “Whiteness Studies**” 5 or a concept, a set of meanings that functions as a transcendental signified. By Whiteness, I refer to a master signifier (without a signified) that establishes a structure of relations, a signifying chain that through a process of inclusions and exclusions constitutes a pattern for organizing human difference. This chain provides subjects with certain symbolic positions such as “black,” “white,” “Asian,” etc., in relation to the master signifier. “Race,” in other words, is a system of categorization that once it has been organized **shapes** human **difference in** certain seemingly **predetermined ways**. We will therefore have to see how this symbolic structuration is related to visibility. This is where Lacanian theory will be especially useful. As a system of organizing difference, race is very distinctive in relation to other forms of organizations such as caste, ethnicity and nation. It is distinctive as a belief structure and evokes powerful and very particular investments in its subjects. Consider the peculiar intensification of racial identification and racial discourse even as the scientific untenability of race is ever more insisted upon by scientists and anthropologists. Even though it has now become commonplace to utter rote phrases such as “race is a construct” or “race does not exist,” etc., race itself shows no evidence of disappearing or evaporating in relevance. It is common sense to believe in the existence of race. **Why do we hold on to race?** What is it about race that is difficult to give up? I suggest that race should be understood in its particularity as something that is neither totally like sexual difference, which is indeterminate and exceeds language, nor purely symbolical or cultural like class or ethnicity. Race resembles class in that it is of purely cultural and historical origin, but it is also like sex in that it produces extra-discursive effects. From a certain perspective, it seems marked on the body, something inherited like sex; from a Lacanian perspective, one might even suggest (erroneously) that it seems to exceed language. The signification of class belonging, so long as it is purely a category of economic discrepancy, can be manipulated by its subjects. But the minute class makes a claim to inheritance through the language of “stock” and “blood,” it lapses into “race,” and this is true for all other categories of group identity. Scratch the surface of culture or ethnicity, and race will appear underneath it all to found its essence. 6 Race is historical and material as well, but unlike class it is not at all malleable. It is assumed that one cannot change one’s accent and clothing and thereby change one’s race. We cannot change it because race is supposedly inscribed on one’s body. 7 Does that mean that it is simply a fact of nature? Is phenotype a transcendental category? In response, I suggest that **we should ask why we invest in the notion of phenotype**. **Why do we feel that we must** necessarily **insist on the evidence of our eyes?** We may venture one kind of an answer using Teresa Brennan’s (1993) analysis of modernity. In History After Lacan, Brennan presents an extended psychoanalytic and materialist critique of what she terms the foundational fantasy of modem societies: a psychotic fantasy that by conceiving of the subject as the origin, cause, and end of knowledge wreaks incalculable havoc upon the environment. Such a fantasy presupposes an entirely self-contained and autonomous subject that is characterized by the dominance of the narcissistic ego, severed from all forms of inter-subjectivity. Perhaps we can consider race itself as a symptom of what Brennan terms the “ego’s era,” when objectification and dominance of others and of the environment are paramount. Among the many insights she offers about the historicity of such a subject of knowledge, Brennan suggests that the dominance of the visual is a symptom of such “social psychosis”: “Visualization, whether in the form of hallucination or visual perception, observes difference rather than connection” (ibid: 12). One consequence of such an intensification of visual difference is borne out in Lacan’s reworking of the Hegelian dialectic in relation to the signifier and the look. She writes: the imaginary process of fixing the other is not only confined to seeing; it also involves naming. More accurately, naming is part of how the other is seen, as well as being part of the way out. In sum, when the master becomes the master, identified with and as a namer-shaper, released into and through a cultural linguistic tradition, the master simultaneously directs aggression towards the one who is seen to be passified. But this leaves the passified in a position where they are dependent (at the level of the ego) on the image they receive from the other. (Brennan 1993:60) According to Brennan, modernity is characterized by the objectification of an other in support of one’s narcissistic fantasy. This “imaginary fixing,” she implies, also bears a relation to the symbolic order. By seizing the apparatus of a regimented look, Brennan argues, one takes possession of the nominal function of language. 8 Language in this schema is engaged in the service of the ego and the foundational fantasy of self-containment. In relation to “race,” however, we may well invert this argument. I suggest that **it is the symbolic order of racial difference** itself **that governs seeing**, rather than the reverse. We believe in the factuality of difference in order to see it, **because the order of racial difference is an order that promises access to an absolute wholeness** to its subjects— white, black, yellow or brown. The relation of fantasy to the symbolic order of race must be construed somewhat differently. **The fantasy of wholeness**, of being, **that the signifier holds out** is not a case of narcissistic misrecognition, but **is a fundamental fantasy that determines the trajectory of the subject of “race**.” Thus visuality in the realm of race should be understood as functioning in support of and as a defence **against the fantasy of a totalized subject**. My argument is that this fantasy of wholeness, which the signifier offers to the subject of race, is entirely predicated on sexual difference. Briefly, my point of departure is the Lacanian view that sexual difference is in the Real (and not, as feminists have understood it, in the symbolic). This Lacanian axiom alludes to sex as that which escapes or confounds language, which view, as Joan Copjec has pointed out, is the guarantee, not of the subject’s incompletion, but her “sovereign incalculably” (1994:208). Whiteness, I am suggesting, **attempts to install itself in this place of linguistic contradiction— of being— where the subject fades from meaning**. Such an attempt to totalize and inflate the subject **can only produce anxiety**. Visual difference then rescues the subject from such anxiety by **reinstalling difference**. To elaborate: in Lacan’s theory, the order of sexual difference, which acknowledges male and female, is organized around the non-reciprocity of man and woman. Sexed reproduction here is but the failure of Oneness that is poorly compensated for by the heterosexuality. It is an order that is predicated on the impossibility of representing the sexual relation. Lacan’s aphorism “there is no sexual relation” turns on the asymmetry and nonreciprocity of the sexes. Sexual difference is marked by the impasse of signification, and the impossibility of gratifying desire, of love as jouissance. 9 It is missing a signifier that can organize male and female in a binary relation. In the article entitled “The subjective import of the castration complex,” published in Scilicet, we read that “the difference between the sexes introduces a non-representable instance which is found to coincide with the point of failing that the subject encounters in the signifying chain” (Lacan, FS: 119). As Joan Copjec puts it: “Sex is the stumbling block of sense” (1994:206); she further adds: When…sex is disjoined from the signifier, it becomes that which does not communicate itself, that which marks the subject as unknowable. To say that the subject is sexed is to say that it is no longer possible to have any knowledge of him or her. Sex serves no other function than to limit reason, to remove the subject from the realm of possible experience or pure understanding. This is the meaning, when all is said and done, of Lacan’s notorious assertion that “there is no sexual relation”: sex, in opposing itself to sense, is also, by definition, opposed to relation, to communication. (1994:207) The claim that sex is in the Real pertains to the Freudian notion that there is only one libido, meaning that there is no psychic representative of the opposition masculine-feminine. The essence of castration and the link of sexuality to the unconscious both reside in this factor— that sexual difference is refused to knowledge [savoir], since it indicates the point where the subject of the unconscious subsists by being the subject of nonknowledge. (FS: 120) I am suggesting two things: first, the order of racial difference attempts to compensate for sex’s failure in language; second, we must not therefore analogize race and sex on the sexual model of linguistic excess or contradiction. The signifier Whiteness **tries to fill the constitutive lack** of the sexed subject. It promises a totality, an **overcoming of difference** itself. For the subject of race, **Whiteness represents complete mastery**, self-sufficiency, **and the jouissance of Oneness**. This is why the order of racial difference must be distinguished from, but read in relation to, sexual difference. If sex is characterized by a missing signifier, race, on the contrary, is not and cannot be organized around such an absence— a missing signifier— that escapes or confounds language and inter-subjectivity. Race has an all-too-present master signifier— **Whiteness**— **which offers the illegal enjoyment of absolute wholeness**. Race, therefore, does not bear on the paradigm of failure or success of inter-subjectivity on the model of the sexual relation. The rationale of racial difference and its organization can be understood as a Hobbesian one. It is a social contract among potential adversaries **secured to perpetuate singular claims to power and dominance**, **even as it seeks to contain the consequences of such singular interests**. The shared insecurity of claiming absolute humanness, which is what race as a system manages, induces the social and legal validation of race as a discourse of neutral differences. In other words, race identity can have only one function— it **establishes differential relations among the races** in order to constitute the logic of domination. **Groups must be differentiated and related in order to make possible the claim to power and domination**. Race identity is about the sense of one’s exclusiveness, exceptionality and uniqueness. Put very simply, it is an identity that, if it is working at all, can only be about pride, being better, being the best. Race is inextricably caught up in a Hobbesian discourse of social contract, where personal (or particular) interest masquerades as public good. Sexual difference, on the other hand, cannot be founded upon such a logic. The values attached to male and female are historically contingent as feminists have long suggested, but power cannot be the ultimate cause of sexual difference. Racial difference, on the other hand, has no other reason to be but power, and yet it is not power in the sense of material and discursive agency that can be reduced to historical mappings. If such were the case, as many have assumed, then a historicist genealogy of the discursive construction of race would be in order: Foucault not Lacan, discourse analysis not psychoanalysis. But race organizes difference and elicits investment in its subjects because it promises access to being itself. It offers the prestige of being better and superior; it is the **promise of being more human**, more full, less lacking. The possibility of this enjoyment is at the core of “race.” But enjoyment or jouissance is, we may recall, pure unpleasure. The possibility of enjoyment held out by Whiteness is also horrific as it **implies the annihilation of difference**. The subject of race therefore typically resists race as mere “social construction,” **even as it holds on to a notion of visible, phenotypal difference.**

**Vote neg to traverse the fantasy of unity presented by the 1AC—race doesn’t have meaning unless it’s assigned one—grounding politics through other bodily identifications like nose size or hair length throws the master signifier of Whiteness into disarray and voiding it of meaning**

**Seshandri-Crooks 2k** Kalpana, Assistant Professor of English at Boston College, Desiring Whiteness: A Lacanian Analysis of Race, London, GBR: Routledge, p.158-160

We must develop a new adversarial aesthetics that will **throw racial signification into disarray**. Given that race discourse was produced in a thoroughly visual culture, it is necessary that the visual itself be used against the scopic regime of race. I have laid the basis for such an aesthetics in Chapters 4 and 5, where the relation of the bodily mark to the signifier is thrown into perplexity. In Suture, we as spectators are asked to give up our investment in Whiteness, the signifier that promises access to absolute humanness. The film puts pressure on the purely symbolic origins of race by unraveling the relation between racial gestalt and one’s identity. Clay is Vincent if he takes up his place in the signifying chain. Similitude is established not on the basis of the body’s gestalt, but the part object— ears, eyes, etc. In Toni Morrison’s “Recitatif,” it is racial reference that is called into question. As with Suture, the relation between visibility and the signifier is refused, but for another purpose. **By emptying the racial signifier of its properties**, **so that white and black have no connotations**, Morrison renders meaningless the relations among the signifier, the body, and identity. For Morrison, it is such emptiness that makes love approachable. I am proposing an adversarial aesthetics that **will destabilize racial looking** so that **racial identity will always be uncertain and unstable**. The point of such a practice would be to confront the symbolic constitution of race and of racial looking as the investment we make in difference for sameness. The confrontation has to entail more than an exploration of the fantasy, which process I detailed in Chapter 2 on “The secret sharer.” There we took measure of the fantasy of wholeness as the obliteration of difference that Whiteness holds out to the subject of race. A simple rejection of this fantasy of selfinflation on a political or ethical basis, such as the repugnance we see exhibited by Orwell, in Chapter 3, cannot be adequate. In Orwell’s case, his liberal rejection of mastery can only lead to the reproduction of the system of race. For it is not enough to be aware of the affect of anxiety that race invariably generates. **One must traverse the fundamental fantasy of singular humanity upon which racial identity is founded**. It is a question of resituating oneself in relation to the raced signifier. Such a practice would not aim so much at a cross-identification, such as ticking the “wrong” box on a questionnaire, or passing for another race. It would confound racial signification by stressing the continuity, the point of doubt among the so-called races, to the extent that each and every one of us must **mistrust the knowledge of our racial belonging**. The idea would be to void racial knowledge by releasing the racial signifier from its historical mooring in a signified. Such practices can only be, and **must be representational**, as **what they necessitate is a radical intervention into language** and signification. This entails the reinvention of culture as organized by differences based on other kinds of “reasonings” than race. Every medium of representation can and must be harnessed for such a practice. In addition to those I have cited earlier such as film, painting and literature, we must consider the possibilities presented by that other mode of representation, namely representation by proxy. The possibility of unsettling political representation, for instance, or procedures of verification based on race such as the passport, the visa and the driver’s license may renew and refresh questions of identity—what is worth preserving, what is not. **The idea is not to erase identity, even if such a preposterous act were possible**. Rather, we must **rethink identity** in tension with our usual habits of visual categorization of individuals. Ideally, the practice that I am advocating will deploy the visual against the visual. Such redefinition is thinkable only as a collective and normalizing project; it should be aimed at infiltrating normative bourgeois self-definition. The practice of “discoloration” will be more effective if it is not restricted to particular intellectual groups or artists. Gramsci suggests that a philosophical movement, even as it elaborates a form of thought superior to “common sense” and coherent on a scientific plane…. never forgets to remain in contact with the “simple” and indeed finds in this contact the source of the problems it sets out to study and to resolve. (Gramsci 1971:330) In other words, we cannot voluntarily abandon the quotidian logic of race. To do so would be a form of vanguardism that will only reinforce the system as the necessary point of differentiation. Rather, it is to the common sense of race that we must appeal. Otherwise, we will fail to address social contradiction in its specificity. Thus producing a sub-culture of “discolorationists” or encouraging subjects voluntarily to refuse racial identity (as advocated for “white” people by the journal Race Traitor) possibly will not be effective. **An anti-race praxis must aim at a fundamental transformation of social** and political **logic**. It cannot be a mere “phenomenon of individuals” which, as Gramsci reminds us, only marks the “‘high points’ of the progress made by common sense” (1971:331). As a praxis, psychoanalysis is the most appropriate discourse for the examination of why we or certain groups may resist such an adversarial aesthetics. Working through our fantasies will involve the risk of desubjectification that many of us dread. **Such dread**, such an encounter with our own limit, **is the only means of articulating the possibility of an ethics beyond the specious enjoyment promised by Whiteness**.

## 2NC Alt

Slavoj **Zizek 2000** (solvenian philosopher, The Fragile Absolute, pp 147-150)

Consequently, there are two ways of subverting the Law, the¶ 'masculine' and the ‘feminine’. One can violate/transgress its prohibi-¶ tions: this is the inherent transgression which sustains the Law,¶ like the advocates of liberal democracy who secretly (through the¶ CIA) train murderers-terrorists for the proto-Fascist regimes in¶ Latin America.. That is false rightist heroism: secretly doing the¶ 'necessary but dirty thing', that is, violating the explicit ruling¶ ideology (of human Rights, and so on) in order to sustain the¶ existing order. Much more subversive than this is simply to do what¶ is allowed that is, what the existing order explicitly allows,¶ although it prohibits it at the level of implicit unwritten prohibi-¶ tions. In short - to paraphrase Brechts well-known crack about¶ how mild robbing a bank is in comparison with founding a¶ bank - how mild transgressing the Law is in comparison with¶ obeying it thoroughly - or, as Kierkegaard put it, in his unique way:¶ We do not laud the son who said "No," but we endeavour to¶ learn from the gospel how dangerous it is to say, "Sir, I will."'98¶ What better example is there than Hasek's immortal 'good¶ soldier Schweik, who caused total havoc in the old Imperial¶ Austrian Army simply by obeying orders all too literally?¶ (Although, strictly speaking, there is a better example, namely¶ the "˜absolute example' [Hegel], Christ himself: when Christ¶ claims that he is here merely to fulfil the [Jewish] Law, he¶ thereby bears witness to how his act effectively cancels the Law.)¶ ' The basic paradox of the relationship between public power¶ and its inherent transgression is that the subject is actually ‘in’ (caught in the web of) power only and precisely insofar as he does not fully identify with it but maintains a kind of distance towards it; on the other hand, the¶ system (of public Law) is actually undermined by unreserved¶ identification with it. Stephen Kings 'Rita Hayworth and the¶ Shawshank Redemption' tackles this problem with due¶ stringency apropos of the paradoxes of prison life. The clichê¶ about prison life is that I am actually integrated into it, mined by¶ it, when my accommodation to it is so overwhelming that I can no¶ longer stand or even imagine freedom, life outside prison, so that¶ my release brings about a total psychic breakdown, or at least¶ gives rise to a longing For the lost safety of prison life. The actual¶ dialectic of prison life, however, is somewhat more refined. Prison¶ in effect destroys me, attains a total hold over me, precisely when¶ I do not fully consent to the fact that I am in prison but maintain¶ a kind of inner distance towards it, stick to the illusion that 'real¶ life is elsewhere' and indulge all the time in daydreaming about¶ life outside, about nice things that are waiting for me alien' my¶ release or escape. I thereby get caught in the vicious cycle of fan-¶ tasy, so that when, eventually, I am released, the grotesque¶ discord between fantasy and reality breaks me down, The only¶ true solution is therefore fully to accept the rules of prison life and¶ then, within the universe governed by these miles, to work out a¶ way to beat them. In short, inner distance and daydreaming¶ about Life Elsewhere in effect enchain me to prison, whereas full¶ acceptance of the fact that 1 am really there, bound by prison¶ rules, opens up a space for true hope.¶ What this means is that in order effectively to liberate oneself¶ from the grip of existing social reality, one should first renounce¶ the transgressive fantasmatic supplement that attaches us to it. In¶ what does this renunciation consist? In a series of recent (com-¶ mercial) films, we find the same surprising radical gesture. In¶ Speed when the hero (Keanu Reeves) is confronting the terrorist¶ blackmailer who is holding his partner at gunpoint, the hero¶ shoots not' the blackmailer. but his own partner in the leg - this¶ apparently senseless act momentarily shocks the blackmailer,¶ who releases the hostage and runs away .... In Ransom, when the¶ media tycoon (Nlel Gibson) goes on television to answer the¶ kidnappers' request for two million dollars as a ransom for his¶ son, he surprises everyone by saying that he will offer two million¶ dollars to anyone who will give him any information about the¶ kidnappers, and announces that he will pursue them to the end,¶ with all his resources, if they do not release his son immediately.¶ This radical gesture not only stuns the kidnappers - immediately¶ after accomplishing it, Gibson himself almost breaks down, aware¶ of the risk he is courting .... And, finally, the supreme case:¶ when, in the flashback scene from The Usual Suspects, the mysteri-¶ ous Keyser Soeze returns home and finds his wife and small¶ daughter held at gunpoint by the members of a rival mob, he¶ resorts to the radical gesture of shooting his wife and daughter¶ themselves dead ~ this act enables him mercilessly to pursue¶ members of the rival gang, their families, parents and friends,¶ killing them all .,.. What these three gestures have in common is¶ that in a situation of forced choice, the subject makes the "˜crazy',¶ impossible Choice of, in a way, striking at himself at what is most**¶** precious to himself. This act, far from amounting to a case of¶ impotent aggressivity turned against oneself, rather changes the¶ co-ordinates of the situation in which the subject finds himself:¶ by cutting himself loose from the precious object through whose¶ possession the enemy kept him in check, the subject gains the¶ space of free action. Is not such a radical gesture of 'striking at¶ oneself' constitutive of subjectivity as such?

# 1NR

Deliberation and engagment in the context of war powers is uniquely empowering—provides us with critical thinking and decision-making skills and inculcates agency

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

2. Factual Chaos and Uncertainty

One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often under-taught in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to swiftly and efficiently engage in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions related to professional responsibility that will confront them in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the ability to create conditions of learning.

**Impact to UN-negotiated-stasis is *knowledge*. BOTH TEAMS learn-less about the Aff’s subject-matter.**

**O’Donnell 4** – PhD, director of debate at Mary Washington (Tim, WFU Debaters Research Guide, “Blue helmet blues”, ed. Bauschard & Lacy, http://groups.wfu.edu/debate/MiscSites/DRGArticles/DRGArtiarticlesIndex.htm)

The answer, I believe, resides deep in the rhetorical tradition in the often overlooked notion of stasis. Although the concept can be traced to Aristotle’s Rhetoric, it was later expanded by Hermagoras whose thinking has come down to us through the Roman rhetoricians Cicero and Quintillian. Stasis is a Greek word meaning to “stand still.” It has generally been considered by argumentation scholars to be the point of clash where two opposing sides meet in argument. Stasis recognizes the fact that interlocutors engaged in a conversation, discussion, or debate need to have some level of expectation regarding what the focus of their encounter ought to be. To reach stasis, participants need to arrive at a decision about what the issue is prior to the start of their conversation. Put another way, they need to mutually acknowledge the point about which they disagree. What happens when participants fail to reach agreement about what it is that they are arguing about? They talk past each other with little or no awareness of what the other is saying. The oft used cliché of two ships passing in the night, where both are in the dark about what the other is doing and neither stands still long enough to call out to the other, is the image most commonly used to describe what happens when participants in an argument fail to achieve stasis. In such situations, genuine engagement is not possible because participants have not reached agreement about what is in dispute. For example, when one advocate says that the United States should increase international involvement in the reconstruction of Iraq and their opponent replies that the United States should abandon its policy of preemptive military engagement, they are talking past each other. When such a situation prevails, it is hard to see how a productive conversation can ensue. I do not mean to suggest that dialogic engagement always unfolds along an ideal plain where participants always can or even ought to agree on a mutual starting point. The reality is that many do not. In fact, refusing to acknowledge an adversary’s starting point is itself a powerful strategic move. However, it must be acknowledged that when such situations arise, and participants cannot agree on the issue about which they disagree, the chances that their exchange will result in a productive outcome are diminished significantly. In an enterprise like academic debate, where the goals of the encounter are cast along both educational and competitive lines, the need to reach accommodation on the starting point is urgent. This is especially the case when time is limited and there is no possibility of extending the clock. The sooner such agreement is achieved, the better. Stasis helps us understand that we stand to lose a great deal when we refuse a genuine starting point.

***Negotiated* Stasis is pre-req to knowledge – flips their method discussion**

**Zappen ‘4**

(James, Prof. Language and Literature – Rensselaer Polytechnic Institute, “The Rebirth of Dialogue: Bakhtin, Socrates, and the Rhetorical Tradition”, p. 35-36)

Finally, Bakhtin describes the Socratic dialogue as a carnivalesque debate between opposing points of view, with a ritualistic crownings and decrownings of opponents. I call this Socratic form of debate a contesting of ideas to capture the double meaning of the Socratic debate as both a mutual testing of oneself and others and a contesting or challenging of others' ideas and their lives. Brickhouse and Smith explain that Socrates' testing of ideas and people is a mutual testing not only of others but also of himself: Socrates claims that he has been commanded by the god to examine himself as well as others; he claims that the unexamined life is not worth living; and, since he rarely submits to questioning himself, "it must be that in the process of examining others Socrates regards himself as examining his own life, too." Such a mutual testing of ideas provides the only claim to knowledge that Socrates can have: since neither he nor anyone else knows the real definitions of things, he cannot claim to have any knowledge of his own; since, however, he subjects his beliefs to repeated testing, he can claim to have that limited human knowledge supported by the "inductive evidence" of "previous elenctic examinations." This mutual testing of ideas and people is evident in the Laches and also appears in the Gorgias in Socrates' testing of his own belief that courage is inseparable from the other virtues and in his willingness to submit his belief and indeed his life to the ultimate test of divine judgment, in what Bakhtin calls a dialogue on the threshold. The contesting or challenging of others' ideas and their lives and their ritualistic crowning/decrowning is evident in the Gorgias in Soocrates' successive refutations and humiliations of Gorgias, Polus, and Callicles.