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### Interp

#### Definitional support for our interpretation proves that the resolution is the closest thing we have to a shared-norm ---- Webster’s Dictionary from 2000 finds that “the clause following the colon represents the real business”, especially for the phrase Resolved which is defined by American Heritage Dictionary 2000 to find a solution to. The American Heritage also finds that Should is used to denote an expectation of that solution for the plan, which is about the United States Federal Government, or the central government located in Washington DC as defined by Encarta Encyclopedia from 2000.

Everything after the colon matters.

Webster’s Guide to Grammar and Writing – 2000 <http://ccc.commnet.edu/grammar/marks/colon.htm>

Use of a colon before a list or an explanation that is preceded by a clause that can stand by itself. Think of the colon as a gate, inviting one to go on… If the introductory phrase preceding the colon is very brief and the clause following the colon represents the real business of the sentence, begin the clause after the colon with a capital letter.

“Resolved” expresses intent to find solution for the plan

American Heritage Dictionary 2000 [www.dictionary.com/cgi-bin/dict.pl?term=resolved](http://www.dictionary.com/cgi-bin/dict.pl?term=resolved)

To find a solution to; solve …To bring to a usually successful conclusion

“Should” denotes an expectation of that

American Heritage Dictionary – 2000 [www.dictionary.com]

3 Used to express probability or expectation

“The USFG” is the government in Washington D.C.

Microsoft Encarta Online Encyclopedia 2000 [http://encarta.msn.com]

“The federal government of the United States is centered in Washington DC.”

#### That specific agent must place statutory or judicial restrictions on the executive, which as Todd Peterson in 1991 argues, is through Congressional statues or Federal Court rulings because “congress can control the President’s authority by passing a statute” and “judicial restrictions on power sharing are important”.

(Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

#### The President’s War Powers Authority is a legal term of art, namely the Commander in Chief powers vested in the constitution as Robert Bejesky in 2013 finds, which in this topic resides over Obama’s targeted killing, indefinite detention, offensive cyber operations authority, or the authority to introduce our Armed Forces into hostilities.

(Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami, ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers )

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

### Argument Testing – Morson 2004

#### Unpredictable research burden and unequal distribution of argument ground results in a failure to test arguments --- this turns the case

Morson 4 - Northwestern Professor, Prof. Morson's work ranges over a variety of areas: literary theory (especially narrative); the history of ideas, both Russian and European; a variety of literary genres (especially satire, utopia, and the novel); and his favorite writers -- Chekhov, Gogol, and, above all, Dostoevsky and Tolstoy. He is especially interested in the relation of literature to philosophy http://www.flt.uae.ac.ma/elhirech/baktine/0521831059.pdf#page=331

Bakhtin viewed the whole process of “ideological” (in the sense of ideas and values, however unsystematic) development as an endless dialogue. As teachers, we find it difficult to avoid a voice of authority, however much we may think of ours as the rebel’s voice, because our rebelliousness against society at large speaks in the authoritative voice of our subculture.We speak the language and thoughts of academic educators, even when we imagine we are speaking in no jargon at all, and that jargon, inaudible to us, sounds with all the overtones of authority to our students. We are so prone to think of ourselves as fighting oppression that it takes some work to realize that we ourselves may be felt as oppressive and overbearing, and that our own voice may provoke the same reactions that we feel when we hear an authoritative voice with which we disagree. So it is often helpful to think back on the great authoritative oppressors and reconstruct their self-image: helpful, but often painful. I remember, many years ago, when, as a recent student rebel and activist, I taught a course on “The Theme of the Rebel” and discovered, to my considerable chagrin, that many of the great rebels of history were the very same people as the great oppressors. There is a famous exchange between Erasmus and Luther, who hoped to bring the great Dutch humanist over to the Reformation, but Erasmus kept asking Luther how he could be so certain of so many doctrinal points. We must accept a few things to be Christians at all, Erasmus wrote, but surely beyond that there must be room for us highly fallible beings to disagree. Luther would have none of such tentativeness. He knew, he was sure. The Protestant rebels were, for a while, far more intolerant than their orthodox opponents. Often enough, the oppressors are the ones who present themselves and really think of themselves as liberators. Certainty that one knows the root cause of evil: isn’t that itself often the root cause? We know from Tsar Ivan the Terrible’s letters denouncing Prince Kurbsky, a general who escaped to Poland, that Ivan saw himself as someone who had been oppressed by noblemen as a child and pictured himself as the great rebel against traditional authority when he killed masses of people or destroyed whole towns. There is something in the nature of maximal rebellion against authority that produces ever greater intolerance, unless one is very careful. For the skills of fighting or refuting an oppressive power are not those of openness, self-skepticism, or real dialogue. In preparing for my course, I remember my dismay at reading Hitler’s Mein Kampf and discovering that his self-consciousness was precisely that of the rebel speaking in the name of oppressed Germans, and that much of his amazing appeal – otherwise so inexplicable – was to the German sense that they were rebelling victims. In our time, the Serbian Communist and nationalist leader Slobodan Milosevic exploited much the same appeal. Bakhtin surely knew that Communisit totalitarianism, the Gulag, and the unprecedented censorship were constructed by rebels who had come to power. His favorite writer, Dostoevsky, used to emphasize that the worst oppression comes from those who, with the rebellious psychology of “the insulted and humiliated,” have seized power – unless they have somehow cultivated the value of dialogue, as Lenin surely had not, but which Eva, in the essay by Knoeller about teaching The Autobiography of Malcolm X, surely had. Rebels often make the worst tyrants because their word, the voice they hear in their consciousness, has borrowed something crucial from the authoritative word it opposed, and perhaps exaggerated it: the aura of righteous authority. If one’s ideological becoming is understood as a struggle in which one has at last achieved the truth, one is likely to want to impose that truth with maximal authority; and rebels of the next generation may proceed in much the same way, in an ongoing spiral of intolerance.

### Switch-Side – Rameakers

#### debating both sides of an issue preserves vital function in debate where we must learn about and respect the others arguments and even embody it at times

Rameakers 1 (Stefan, Centre for Philosophy of Education U of Leuven, “Teaching to lie and obey: Nietzsche and Education.” Journal of philosophy and education. 35.2, EBSCO) jl

Much as one values Nietzsche for his cultural criticism and for his culturally innovative ideas, it would be a mistake to overlook the importance he attaches to obedience. Johnston argues that one cannot infer an anarchistic account of education from Nietzsches writings because of his emphasis on obedience and discipline in the primary school. However, Johnston fails to give obedience its rightful place. for Nietzsche's account of morality (particularly in Beyond Good and Evil and more specifically in the chapter "The Natural History of Morals') shows the obedience is not just about keeping pupils in line, but means obedience to cultural and historical rules, and as such is a moral imperative for all humankind. The most important thing about every system of morals for Nietzsche is that it is a 'long constraint’ a 'tyranny of arbitrary laws'. For such cultural and historical phenomena as virtue, art, music, dancing, reason, spirituality, philosophy, politics, and so on the creative act requires not absolute freedom or spontaneous unconstrained development but subordination to what is or at least appears to be 'arbitrary'. It entails a long bondage of the spirit. The singular fact remains...that every of the nature of freedom, elegance, boldness, dance, and masterly certainty, which exists or has existed, whether it be in thought itself, or in administration, or in speaking and persuading in art just as in conduct, has only developed by means of the tyranny of such arbitrary laws, and in all seriousness, it is not at all improbable that precisely this is 'nature' and 'natural'-and not laisser-aller! The nature of morality inspires us to **stay far from an excessive freedom and cultivates the need for restricted horizons**. This narrowing of perspective is for Nietzsche **a condition of life and growth**. It is interesting to see how this is prefigured in Nietzsche’s second Unfashionable Observation (On the Utility and Liability of History for Life). The culture for what he there calls 'the historical sickness', i.e. an excess of history which attacks the shaping power of life and no longer understands how to utilise the past as a powerful source of nourishment, is (among others) the ahistorical: 'the art and power to be able to forget and to enclose oneself in a limited horizon'. Human beings cannot live with a belief in something lasting and eternal. **Subordination to the rules** of a system of morality **should not be understood as a deplorable restriction of an individual's possibilities and creative freedom**; on the contrary, **it** **is the necessary determination of limitation of the conditions under which anything can be conceived as possible**. **Only from** within a particular and **arbitrary framework can freedom itself be interpreted as freedom.** In other words, Nietzsche points to the necessity of being embedded in a particular cultural and historical frame. The pervasiveness of this embeddedness can be shown in at least four aspects of Nietzsche's writings. First, in his critique of morality Nietzsche realises all too well that it is impossible to criticise a system of morals from outside, as a view from nowhere. Instead, a particular concretisation is required. Beyond Good and Evil may very well, as a prelude to a philosophy of the future, excite dreams about unlooked-for horizons and unknown possibilities. IN The Genealogy of Morals, however, written by Nietzsche as further elaboration of elucidation of the same themes, he explicitly states that Beyond Good and Evil does not imply going beyond good and bad. Criticising a system of morals inevitably means judging from a particular point of view.

### Government Arg Testing – Chandler 2009

#### specifically debating about governmental policy is key ---- the alternative leads to a fracturing of politics

Chandler 9 (David Chandler is Professor of International Relations at the University of Westminster, “Questioning Global Political Activism”, What is Radical Politics Today?, Edited by Jonathan Pugh, pp. 81-2)

However, politics is no less important to many of us today. Politics still gives us a sense of social connection and social rootedness and gives meaning to many of our lives. It is just that the nature and practices of this politics are different. We are less likely to engage in the formal politics of representation - of elections and governments - but in post-territorial politics, a politics where there is much less division between the private sphere and the public one and much less division between national, territorial, concerns and global ones. This type of politics is on the one hand ‘global’ but, on the other, highly individualised: it is very much the politics of our everyday lives – the sense of meaning we get from thinking about global warming when we turn off the taps when we brush our teeth, take our rubbish out for recycling or cut back on our car use - we might also do global politics in deriving meaning from the ethical or social value of our work, or in our subscription or support for good causes from Oxfam to Greenpeace and Christian Aid. I want to suggest that when we do ‘politics’ nowadays it is less the ‘old’ politics, of self-interest, political parties, and concern for governmental power, than the ‘new’ politics of global ethical concerns. I further want to suggest that the forms and content of this new global approach to the political are more akin to religious beliefs and practices than to the forms of our social political engagement in the past. Global politics is similar to religious approaches in three vital respects: 1) global post-territorial politics are no longer concerned with power, its’ concerns are free-floating and in many ways, existential, about how we live our lives; 2) global politics revolve around practices with are private and individualised, they are about us as individuals and our ethical choices; 3) the practice of global politics tends to be non-instrumental, we do not subordinate ourselves to collective associations or parties and are more likely to give value to our aspirations, acts, or the fact of our awareness of an issue, as an end in-itself. It is as if we are upholding our goodness or ethicality in the face of an increasingly confusing, problematic and alienating world – our politics in this sense are an expression or voice, in Marx’s words, of ‘the heart in a heartless world’ or ‘the soul of a soulless condition’. The practice of ‘doing politics’ as a form of religiosity is a highly conservative one. As Marx argued, religion was the ‘opium of the people’ - this is politics as a sedative or pacifier: it feeds an illusory view of change at the expense of genuine social engagement and transformation. I want to argue that global ethical politics reflects and institutionalises our sense of disconnection and social atomisation and results in irrational and unaccountable government policy making. I want to illustrate my points by briefly looking at the practices of global ethics in three spheres, those of radical political activism, government policy making and academia. Radical activism People often argue that there is nothing passive or conservative about radical political activist protests, such as the 2003 anti-war march, anti-capitalism and anti-globalisation protests, the huge march to Make Poverty History at the end of 2005, involvement in the World Social Forums or the radical jihad of Al-Qaeda. I disagree; these new forms of protest are highly individualised and personal ones - there is no attempt to build a social or collective movement. It appears that theatrical suicide, demonstrating, badge and bracelet wearing are ethical acts in themselves: personal statements of awareness, rather than attempts to engage politically with society. This is illustrated by the ‘celebration of differences’ at marches, protests and social forums. It is as if people are more concerned with the creation of a sense of community through differences than with any political debate, shared agreement or collective purpose. It seems to me that if someone was really concerned with ending war or with ending poverty or with overthrowing capitalism, that political views and political differences would be quite important. Is war caused by capitalism, by human nature, or by the existence of guns and other weapons? It would seem important to debate reasons, causes and solutions, it would also seem necessary to give those political differences an organisational expression if there was a serious project of social change. Rather than a political engagement with the world, it seems that radical political activism today is a form of social disengagement – expressed in the anti-war marchers’ slogan of ‘Not in My Name’, or the assumption that wearing a plastic bracelet or setting up an internet blog diary is the same as engaging in political debate. In fact, it seems that political activism is a practice which isolates individuals who think that demonstrating a personal commitment or awareness of problems is preferable to engaging with other people who are often dismissed as uncaring or brain-washed by consumerism. The narcissistic aspects of the practice of this type of global politics are expressed clearly by individuals who are obsessed with reducing their carbon footprint, deriving their idealised sense of social connection from an ever increasing awareness of themselves and by giving ‘political’ meaning to every personal action. Global ethics appear to be in demand because they offer us a sense of social connection and meaning while at the same time giving us the freedom to construct the meaning for ourselves, to pick our causes of concern, and enabling us to be free of responsibilities for acting as part of a collective association, for winning an argument or for success at the ballot-box. While the appeal of global ethical politics is an individualistic one, the lack of success or impact of radical activism is also reflected in its rejection of any form of social movement or organisation. Strange as it may seem, **the only people** who are **keener on global ethics** than radical activists **are political elites**. Since the end of the Cold War, global ethics have formed the core of foreign policy and foreign policy has tended to dominate domestic politics. Global ethics are at the centre of debates and discussion over humanitarian intervention, ‘healing the scar of Africa’, the war on terror and the ‘war against climate insecurity’. Tony Blair argued in the Guardian last week that ‘foreign policy is no longer foreign policy’ (Timothy Garten Ash, ‘Like it or Loath it, after 10 years Blair knows exactly what he stands for’, 26 April 2007), this is certainly true. Traditional foreign policy, based on strategic geo-political interests with a clear framework for policy-making, no longer seems so important. The government is down-sizing the old Foreign and Commonwealth Office where people were regional experts, spoke the languages and were engaged for the long-term, and provides more resources to the Department for International Development where its staff are experts in good causes. This shift was clear in the UK’s attempt to develop an Ethical Foreign Policy in the 1990s – an approach which openly claimed to have rejected strategic interests for values and the promotion of Britain’s caring and sharing ‘identity’. Clearly, the projection of foreign policy on the basis of demonstrations of values and identity, rather than an understanding of the needs and interests of people on the ground, leads to ill thought-through and short-termist policy-making, as was seen in the ‘value-based’ interventions from Bosnia to Iraq (see Blair’s recent Foreign Affairs article, ‘A Battle for Global Values’, 86:1 (2007), pp.79–90). Governments have been more than happy to put global ethics at the top of the political agenda for - the same reasons that radical activists have been eager to shift to the global sphere – the freedom from political responsibility that it affords them. Every government and international institution has shifted from strategic and instrumental policy-making based on a clear political programme to the ambitious assertion of global causes – saving the planet, ending poverty, saving Africa, not just ending war but solving the causes of conflict etc – of course, the more ambitious the aim the less anyone can be held to account for success and failure. In fact, the more global the problem is, the more responsibility can be shifted to blame the US or the UN for the failure to translate ethical claims into concrete results. Ethical global questions, where the alleged values of the UN, the UK, the ‘civilised world’, NATO or the EU are on the line in ‘wars of choice’ from the war on terror to the war on global warming lack traditional instrumentality because they are driven less by the traditional interests of Realpolitik than the narcissistic search for meaning or identity. Governments feel the consequences of their lack of social connection, even more than we do as individuals; it undermines any attempt to represent shared interests or cohere political programmes. As Baudrillard suggests, without a connection to the ‘represented’ masses, political leaders are as open to ridicule and exposure as the ‘Emperor with no clothes’ (In the Shadow of the Silent Majorities, New York: Semiotext(e), 1983, for example). It is this lack of shared social goals which makes instrumental policy-making increasingly problematic. As Donald Rumsfeld stated about the war on terror, ‘there are no metrics’ to help assess whether the war is being won or lost. These wars and campaigns, often alleged to be based on the altruistic claim of the needs and interests of others, are demonstrations and performances, based on ethical claims rather than responsible practices and policies. Max Weber once counterposed this type of politics – the ‘ethics of conviction’ – to the ‘ethics of responsibility’ in his lecture on ‘Politics as a Vocation’. The desire to act on the international scene without a clear strategy or purpose has led to highly destabilising interventions from the Balkans to Iraq and to the moralisation of a wide range of issues from war crimes to EU membership requirements. Today more and more people are ‘doing politics’ in their academic work. This is the reason for the boom in International Relations (IR) study and the attraction of other social sciences to the global sphere. I would argue that the attraction of IR for many people has not been IR theory but the desire to practise global ethics. The boom in the IR discipline has coincided with a rejection of Realist theoretical frameworks of power and interests and the sovereignty/anarchy problematic. However, I would argue that this rejection has not been a product of theoretical engagement with Realism but an ethical act of rejection of Realism’s ontological focus. It seems that our ideas and our theories say much more about us than the world we live in. Normative theorists and Constructivists tend to support the global ethical turn arguing that we should not be as concerned with ‘what is’ as with the potential for the emergence of a global ethical community. Constructivists, in particular, focus upon the ethical language which political elites espouse rather than the practices of power. But the most dangerous trends in the discipline today are those frameworks which have taken up Critical Theory and argue that focusing on the world as it exists is conservative problem-solving while the task for critical theorists is to focus on emancipatory alternative forms of living or of thinking about the world. Critical thought then becomes a process of wishful thinking rather than one of engagement, with its advocates arguing that we need to focus on clarifying our own ethical frameworks and biases and positionality, before thinking about or teaching on world affairs. This becomes ‘me-search’ rather than research**.** We have moved a long way from Hedley Bull’s (1995) perspective that, for academic research to be truly radical, we had to put our values to the side to follow where the question or inquiry might lead. The inward-looking and narcissistic trends in academia, where we are more concerned with our reflectivity – the awareness of our own ethics and values – than with engaging with the world, was brought home to me when I asked my IR students which theoretical frameworks they agreed with most. They mostly replied Critical Theory and Constructivism. This is despite the fact that the students thought that states operated on the basis of power and self-interest in a world of anarchy. Their theoretical preferences were based more on what their choices said about them as ethical individuals, than about how theory might be used to understand and engage with the world. Conclusion I have attempted to argue that there is a lot at stake in the radical understanding of engagement in global politics. Politics has become a religious activity, an activity which is no longer socially mediated; it is less and less an activity based on social engagement and the testing of ideas in public debate or in the academy. Doing politics today, whether in radical activism, government policy-making or in academia, seems to bring people into a one-to-one relationship with global issues in the same way religious people have a one-to-one relationship with their God. Politics is increasingly like religion because when we look for meaning we find it inside ourselves rather than in the external consequences of our ‘political’ acts. What matters is the conviction or the act in itself: its connection to the global sphere is one that we increasingly tend to provide idealistically. Another way of expressing this limited sense of our subjectivity is in the popularity of globalisation theory – the idea that instrumentality is no longer possible today because the world is such a complex and interconnected place and therefore there is no way of knowing the consequences of our actions. The more we engage in the new politics where there is an unmediated relationship between us as individuals and global issues, the less we engage instrumentally with the outside world, and the less we engage with our peers and colleagues at the level of political or intellectual debate and organisation.

### Law Turns Ontology – Bouie 2013

#### that specifically turns the aff and anti-black racism

Jamelle Bouie 13, staff writer at The American Prospect, Making and Dismantling Racism, http://prospect.org/article/making-and-dismantling-racism

Over at The Atlantic, Ta-Nehisi Coates has been exploring the intersection of race and public policy, with a focus on white supremacy as a driving force in political decisions at all levels of government. This has led him to two conclusions: First, that anti-black racism as we understand it is a **creation of explicit policy choices—**the decision to exclude, marginalize, and stigmatize Africans and their descendants has as much to do with racial prejudice as does any intrinsic tribalism. And second, that it's possible to **dismantle this prejudice using public policy**. Here is Coates in his own words: Last night I had the luxury of sitting and talking with the brilliant historian Barbara Fields. One point she makes that very few Americans understand is that racism is a creation. You read Edmund Morgan’s work and actually see racism being inscribed in the law and the country changing as a result. If we accept that racism is a creation, then we must then accept that it can be destroyed. And if we accept that it can be destroyed, we must then accept that it can be destroyed by us and that it likely must be destroyed by methods kin to creation. Racism was created by policy. It will likely only be ultimately destroyed by policy. Over at his blog, Andrew Sullivan offers a reply: I don’t believe the law created racism any more than it can create lust or greed or envy or hatred. It can encourage or mitigate these profound aspects of human psychology – it can create racist structures as in the Jim Crow South or Greater Israel. But it can no more end these things that it can create them. A complementary strategy is finding ways for the targets of such hatred to become inured to them, to let the slurs sting less until they sting not at all. Not easy. But a more manageable goal than TNC’s utopianism. I can appreciate the point Sullivan is making, but I'm not sure it's relevant to Coates' argument. It is absolutely true that "Group loyalty is deep in our DNA," as Sullivan writes. And if you define racism as an overly aggressive form of group loyalty—basically just prejudice—then Sullivan is right to throw water on the idea that the law can "create racism any more than it can create lust or greed or envy or hatred." But Coates is making a more precise claim: That **there's nothing natural about the black/white divide that has defined American history**. White Europeans had contact with black Africans well before the trans-Atlantic slave trade **without the emergence of an anti-black racism**. It took particular choices made by particular people—in this case, plantation owners in colonial Virginia—to make black skin a stigma, to make the "one drop rule" a defining feature of American life for more than a hundred years. By enslaving African indentured servants and allowing their white counterparts a chance for upward mobility, colonial landowners began the process that would **make white supremacy the ideology of America**. The position of slavery generated a stigma that then justified continued enslavement—blacks are lowly, therefore we must keep them as slaves. Slavery (and later, Jim Crow) **wasn't built to reflect racism as much as it was built in tandem with it**. And later policy, in the late 19th and 20th centuries, further entrenched white supremacist attitudes. Block black people from owning homes, and they're forced to reside in crowded slums. Onlookers then use the reality of slums to deny homeownership to blacks, under the view that they're unfit for suburbs. In other words, create a prohibition preventing a marginalized group from engaging in socially sanctioned behavior—owning a home, getting married—and then blame them for the adverse consequences. Indeed, in arguing for gay marriage and responding to conservative critics, Sullivan has taken note of this exact dynamic. Here he is twelve years ago, in a column for The New Republic that builds on earlier ideas: Gay men--not because they're gay but because they are men in an all-male subculture--are almost certainly more sexually active with more partners than most straight men. (Straight men would be far more promiscuous, I think, if they could get away with it the way gay guys can.) Many gay men value this sexual freedom more than the stresses and strains of monogamous marriage (and I don't blame them). But this is not true of all gay men. Many actually yearn for social stability, for anchors for their relationships, for the family support and financial security that come with marriage. To deny this is surely to engage in the "soft bigotry of low expectations." They may be a minority at the moment. But with legal marriage, their numbers would surely grow. And they would function as emblems in gay culture of a sexual life linked to stability and love. [Emphasis added] What else is this but a variation on Coates' core argument, that society can create stigmas by using law to force particular kinds of behavior? Insofar as gay men were viewed as unusually promiscuous, it almost certainly had something to do with the fact that society refused to recognize their humanity and sanction their relationships. The absence of any institution to mediate love and desire encouraged behavior that led this same culture to say "these people are too degenerate to participate in this institution." If the prohibition against gay marriage helped create an anti-gay stigma, then lifting it—as we've seen over the last decade—has helped destroy it. There's no reason racism can't work the same way.

### Law Turns Black Women Agency – Harris 2004

#### if we win these arguments it’s a reason to vote neg --- Engaging the law is key to transforming racist structures—our vision of inclusive debate incorporating policy reform doesn’t rely on a rationalist subjectivity, it doesn’t exclude alternative models of knowledge production, and it’s uniquely liberatory

Harris, professor of law – UC Berkeley, ‘94

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

Reacting to the nihilist threat, some writers have argued that postmodernism is antithetical to feminism and should be rejected by feminist theorists. n93 Race-crits could take a similar position, rejecting postmodernist philosophizing in favor of the certainties of universal truth and justice. In my view, however, this response would be a mistake for two reasons. First, postmodernism does not represent an independent alternative to modernism that can be accepted or rejected; it is the voice of modernism's discontents, and as such is not easily stilled. Second, part of the reason why race-crits have tried to distance themselves from traditional civil rights scholarship is precisely that the old verities, the old optimistic faith in reason, truth, blind justice, and neutrality, have not brought us to racial justice, but have rather left us "stirring the ashes." n94 History has shown that racism can coexist happily with formal commitments to objectivity, neutrality, and colorblindness. Perhaps what CRT needs is simply a redoubled effort to reach true objectivity and neutrality. But, then again, perhaps those concepts themselves need reexamination. [\*760] If race-crits can neither reject postmodernism nor accept it wholeheartedly without undermining the CRT project itself, what (to ask the legal scholar's perennial normative question) should we do? To talk as if one has the choice to "accept" or "reject" these world views is certainly misleading. We live in a political and legal world shaped by modernism; we cannot step out of it. Nor can we, as good modernist intellectuals, ignore modernism's discontents. As Anthony Cook and others have written, the task should not be to try to somehow resolve the philosophical tension between modernism and postmodernism, but rather consciously to inhabit that very tension. n95 This work requires both a commitment to modernism and a willingness to acknowledge its limits. At its best, it inspires a jurisprudence of reconstruction - the attempt to reconstruct political modernism itself in light of the difference "race" makes. Race-crits, along with other outsider scholars, have a distinctive contribution to make to this endeavor. The source of this contribution, I argue in this Section, is an engagement with "the politics of difference." Through their commitment both to anti-racism and to affirming the cultural "differences" that the concept of "race" has produced, race-crits bring a distinctive perspective to the jurisprudential "problem of the subject." n96 More broadly, this dual commitment to eliminating oppression and celebrating difference impels race-crits to live in the tension between modernism and postmodernism, transforming political modernism in the process. In this latter project, race-crits are part of a global movement by intellectuals in previously colonized nations, not to abandon the Enlightenment ideals of freedom and liberal democracy, but to make good on their promises. A. CRT and the Problem of the Subject Unlike crits, whose primary intellectual-political commitment is to criticism itself, race-crits hold a dual commitment to anti-racist critique and to maintaining the distinctive cultures formed in part by concepts of "race." This dual commitment engages CRT in what I call the "politics of difference." One notable characteristic about contemporary American left political movements is their obsession with issues of identity. n97 The second wave of [\*761] the women's movement and the Civil Rights Movement, for example, built their strength on reconceiving their constituents' collective identities; subsequent movements such as Gay Liberation and its contemporary descendants have similarly engaged in "identity politics." n98 In these movements, the construction of one's identity has been both a personal and a political act, linking the individual with a distinct social and political community. n99 Rather than supporting assimilation to the dominant culture, the new social movements have demanded a recognition of their members' "difference." This claim to equality based not on sameness but rather on difference is at the heart of the politics of difference. Intellectuals' engagement in the politics of difference has resulted in a rejection of the binary distinction between "same" and "different" itself. Instead, these scholars see "identity" as a complex and changing interaction between internal and external forces, between individual agency and structures of power. n100 For example, by complicating the notion of "female identity," feminist theorists have tried to move beyond the proposition that gender equality requires either "the same" treatment or "different" (usually meaning "special," and hence disfavored) treatment. n101 Instead, feminist theorists have explored how both "sameness" and "difference" are based on a non-neutral, male [\*762] standard. n102 Equality in this formulation demands transformation of the existing structure, not just tolerance of or remediation for those who are "different." Second-wave crits have argued that the reconstruction of political modernism in light of postmodernist critique requires addressing the problem of the subject. n103 Just whom is being spoken of when law review authors recommend that "we" do this or that? What issues are being avoided when legal writers seek to understand the legal system without asking how understanding changes the self? n104 Race-crits, like other intellectuals engaged in the politics of difference, are well situated to speak to "the problem of the subject." The language of race creates, maintains, and destroys subjects, both inside and outside the law. The study of race is in part the study of how individual personalities are melted down into collective subjects. It is also the study of how racialized subjects can be subjected to, yet not represented in, the law. In coming to terms with the long exclusion of people of color from full legal "belonging," race-crits seek not just to expand the subject "we the people," but to turn a critical eye on the legal subject itself. Just as feminist demands for equality require a transformation of traditional understandings of families and markets, n105 race-crit demands for equality under law require a transformation of traditional understandings of the legal subject. This task forces intellectuals to live in the conflict between modernism and postmodernism. The new social movements based on "difference" have renounced assimilation as the path toward equality and are suspicious of the old faith in integration. n106 At the same time, most of these movements are committed to seeking equality, justice, and pluralism within the nation rather than as separate political sovereigns. n107 This political task of [\*763] giving a new meaning to the phrase "e pluribus unum" thus demands both a commitment to political modernism and a deep skepticism of it. B. CRT and Resistance Culture For people of color, the politics of difference within the United States can be understood within the broader context of global post-colonialism. Edward Said has made a study of how the West justified colonialism, how colonized peoples resisted it, and how the cultural dialogue between colonizer and colonized is evident in the art and literature of each. n108 Since the end of formal colonialism, n109 Said argues, a distinctive "resistance culture" has emerged from formerly colonized peoples. Resistance culture, as Said describes it, consists of three projects. First is the reconstitution of the formerly colonized nation through consolidating a national language and national culture (a project that is always the product of invention rather than simple "recovery"). n110 Second is what Said calls "the voyage in": the "conscious effort to enter into the discourse of Europe and the West, to mix with it, transform it, to make it acknowledge marginalized or suppressed or forgotten histories." n111 Third, according to Said, resistance culture involves "a noticeable pull away from separatist nationalism toward a more integrative view of human community and human liberation." n112 Reading the history of "racial minorities" in the United States as part of the larger history of western colonialism, n113 race-crits are involved in the [\*764] project of "resistance culture" as well. Situated within the United States, where separatist nationalism has never been a viable alternative, n114 the domestic politics of difference has focused on Said's first and second projects: the constitution or reconstitution of the subordinated community and the transformation of the dominant community. Storytelling has contributed to much of the first project. Storytelling serves to create and confirm identity, both individual and collective. n115 As William Eskridge has argued, storytelling helps build new communities: stories of what it means to be gay and lesbian, for example, help individual gay and lesbian people locate themselves within a community and give the gay and lesbian community a collective sense of itself as an agent. n116 At the personal level, this community-building function is similar to what 1970s feminists termed "consciousness raising." n117 Storytelling in this sense is myth-making: the creation of a new collective subject with a history from which individuals can draw to shape their own identities. Literary and cultural critics have participated in the second aspect of resistance culture, the project of "writing back." For example, in the context of American literary studies, Toni Morrison argues that "Africanism" - the reference in literary works to an imaginary "Africa" has become, in the Eurocentric tradition that American education favors, both a way of talking about and a way of policing matters of class, sexual license, and repression, formations and exercises of power, and meditations on ethics and accountability. Through the simple expedient of demonizing and reifying the range of color on a palette, American Africanism makes it possible to say and not say, to inscribe and erase, to escape and engage, to act out and act on, to historicize and render timeless. It provides a way of contemplating [\*765] chaos and civilization, desire and fear, and a mechanism for testing the problems and blessings of freedom. n11 Morrison's project is to transform the reader's understanding of the American literary canon by calling her attention to how complexities within American social and political culture have been made into questions of "race." n119 Her effort, however, is not to throw certain works out of the canon and replace them with others, but rather to deepen the reader's understanding both of the works within and without the canon and of how and why canon formation itself takes place. Robert Williams is engaged in a similar task in his article in this Symposium. Williams points out that the history of the Encounter era in North America is not only one of conflict but also one of mutual accommodation. n120 In telling the story of the English-Iroquois Covenant Chain alliance, Williams does the historical work of adding back to the American legal and political tradition a story of Iroquois creativity and power that has been forgotten or suppressed. Williams engages in the transformational work of "exploring the commensurability of this North American indigenous vision of law and peace between different peoples with contemporary understandings of the problem of achieving human solidarity and accommodation in a multicultural world." n121 By recovering this and other neglected dialogues, race-crits can begin to reconstruct modern political theory. C. CRT as Reconstruction Jurisprudence Within legal studies, the attempt to use the dissonance between modernism and postmodernism creatively on behalf of people of color is what I call "reconstruction jurisprudence." Mari Matsuda, who coined this term, describes it as having a double meaning. n122 First, reconstruction jurisprudence is meant to distinguish CRT from CLS's project of deconstruction. Race-crits have rejected the project of "total critique" and are committed to transforming modernist paradigms as well as criticizing them. Second, the word "reconstruction" refers to the legacy of slavery in the New World and the unfinished revolutions of the First and Second Reconstructions. My third connotation for "reconstruction jurisprudence" is the project of "writing back" to white-dominated legal rules, reasoning, and institutions. The first step is the self-conscious formation of identity groups that [\*766] have been subject to racial oppression and now demand equality - a formation accomplished by collective myth-making. The second step involves the recovery and reworking of what has been lost or suppressed concerning "race" in legal doctrine and policy. The third step is the work of transforming existing jurisprudence and political theory.

### Topical Version – 1AC Card

#### Their own evidence indicates the necessity of engaging the state- proves engagement with the state is key

In 1989, officials in Charleston, South ‘Carolina, initiated a policy of arresting pregnant women whose prenatal tests revealed they were smoking crack. In some cases, a team of police tracked down expectant mothers in the city’s poorest neighborhoods. In others, officers invaded the maternity ward to haul away patients in handcuffs and leg irons, hours after giving birth. One woman spent the final weeks of pregnancy detained in a clingy cell in the Charleston County Jail. When she went into labor, she was transported in chains to the hospital, and remained shackled to the bed during the entire delivery. All but one of the four-dozen women arrested for prenatal crimes in Charleston were Black. We are in the midst of an explosion of rhetoric and policies that degrade Black women’s reproductive decisions. Poor Black mothers are to blame for perpetuating social problems by transmitting defective genes, irreparable crack damage, and a deviant lifestyle to their children. A controversial editorial in the Philadelphia Inquirer suggested coerced contraception as a solution to the Black underclass. Noting that “[t]he main reason more black children are living in poverty is that the people having the most children are the ones least capable of supporting them,” the editorial proposed reducing the number of children born to poor Black women by implanting them with the long-acting contraceptive Norplant. This thinking was supported by the best-selling book The Bell Curve, which claims that social disparities stem from the higher fertility rates of genetically less intelligent groups, including Blacks. Along with this disparagement of Black motherhood, policymakers have initiated a new wave of reproductive regulation. The targeting of Black women who use drugs during pregnancy is only one example. State legislatures across the country are considering measures designed to keep women on welfare from having babies — a goal also advanced by Newt Gingrich’s Contract with America and then incorporated in the newly enacted federal welfare law. The plans range from denying benefits to children born to welfare mothers to mandatory insertion of Norplant as a condition of receiving aid. Many family-planning clinics, with the support of Medicaid, are already encouraging young Black women to keep the risky device implanted in their arms. The emerging agenda is reminiscent of government-sponsored programs as late as the 1970s that coerced poor Black women by the thousands into being sterilized. Meanwhile, a fertility business devoted to helping white middle-class couples to have children is booming. How can we possibly confront racial injustice in America without tackling this assault on Black women’s procreative freedom? How can we possibly talk about reproductive health policy without addressing race, as well as gender? Yet books on racial justice tend to neglect the subject of reproductive rights; and books on reproductive freedom tend to neglect the influence of race. Few, if any, have addressed the many dimensions of governmental regulation of Black women’s childbearing or the impact this repression has had on the way Americans think about reproductive liberty. The story I tell about reproductive rights differs dramatically from the standard one. In contrast to the account of American women’s increasing control over their reproductive decisions, centered on the right to an abortion to describe a long experience of dehumanizing attempts to control Black women’s reproductive lives. The systematic institutionalized denial of reproductive freedom has uniquely marked Black women’s history in America. Considering this history—from slave masters’ economic stake in bonded women’s fertility to the racist strains of early birth control policy to sterilization abuse of Black women during the 1960s and 1970s to the current campaign to inject Norplant and Depo-Provera in the arms of Black teenagers and welfare mothers — paints a powerful picture of the link between race and reproductive freedom in America. Several years ago I spoke at a forum in a neighborhood church entitled “Civil Rights Under Attack: Recent Supreme Court Decisions,” Sponsored by several civil rights organizations. I chose to focus on how the Supreme Court’s decision in Webster Reproductive Health Studies, which weakened the holding in Roe Wade and denied women a right to abortion in publicly funded hospitals, hurt Black women. I linked the decision to a series of current attacks on Black women’s reproductive autonomy, including the growing trend to prosecute poor Black mothers for smoking crack while pregnant. When it came time for questions, I was immediately assailed by a man in the audience for risking solidarity around racial issues by interjecting the controversial issue of reproduction. He thought it was dangerous to mention the word “abortion.” He said that reproductive rights was a “white woman’s issue,” and he advised me to stick to traditional civil rights concerns, such as affirmative action, voting rights, and criminal justice. While this man felt that the civil rights agenda should leave out reproductive health concerns, the mainstream reproductive rights agenda has neglected Black women’s concerns. Public and scholarly debate about reproductive freedom has centered on abortion, often ignoring other important reproductive health policies that are most likely to affect Black women. Yet I came to grasp the importance of women’s reproductive autonomy, not from the mainstream abortion rights movement, but from studying the lives of slave women, like those described by Anna Julia Cooper, who fought to retain control over their reproductive lives. The feminist focus on gender and identification of male dominations and the source of reproductive repression often overlooks the importance of racism in shaping other understandings of reproductive liberty and the degree of “choice” that women really have. I want this book to convince readers that reproduction is an important topic and that it is especially important to Black people. It is important not only because the policies I discuss keep Black women from having children but because these policies persuade people that racial inequality is perpetuated by Black people themselves. The belief that Black procreations the problem remains a major barrier to radical change in America. It is my hope that by exposing its multiple reincarnations, this book will help to put this dangerous fallacy to rest. I also want this book to convince readers to think about reproduction in a new way. These policies affect not only Black Americans but also the very meaning of reproductive freedom. My objective is to place these issues in their broader political context by exploring how the denial of Black reproductive autonomy serves the interests of white supremacy. I am also interested in the way in which the dominant understanding of reproductive rights has been shaped by racist assumptions about Black procreation. Three central themes, then, run through the chapters of this book. The first is that regulating Black women’s reproduction has been a central aspect of racial oppression in America. Not only do these policies injure individual Black women, but they also are a principal means of justifying the perpetuation of a racist social structure. Second, the control of black women reproduction has shaped the meaning of reproductive liberty in America. The traditional understanding of reproductive freedom has had to accommodate practices that blatantly deny Black women control over critical decisions about their bodies highlighting the racial dimensions of contemporary debates such as welfare reform, the safety of Norplant, public funding of abortion, and the morality of new reproductive technologies is like shaking up a kaleidoscope and taking another look. Finally, in light of the first two themes, we need to reconsider the meaning of reproductive liberty to take into account its relationship to racial oppress sum. While Black women’s stories are sometimes inserted as an aside in deliberations about reproductive issues, I place them at the center of this reconstructive project. How does Black women’s experience change the current interpretation of reproductive freedom? The dominant notion of reproductive liberty is flawed in several ways and is limited by the liberal ideals of individual autonomy and freedom from government interference; it is primarily concerned with the interests of white, middle-class women; and it is focused on the right to abortion. The full extent of many Americans’ conception of reproductive freedom is the Constitution’s protection against laws that ban abortion. I suggest an expanded and less individualistic conception of re productive liberty that recognizes control of reproduction as a critical means of racial oppression and liberation in America do not deny the importance of autonomy over one’s own reproductive life, but I also recognize that reproductive policy affects the status of entire groups. Reproductive liberty must encompass more than the protection of an individual woman’s choice to end her pregnancy. It must encompass the full range of procreative activities, including the ability to child bear, and it must acknowledge that we make reproductive decisions with a social context, including inequalities of wealth and power Reproductive freedom and justice are not individual choice. Black women’s earliest experience in America was one of brutal denial of autonomy over reproduction. In Chapter 1, I describe the exploitation of slave women’s capacity to produce more slaves and the denial of their rights as mothers After Emancipation, racism continued to corrupt notions of reproductive liberty, helping to direct the birth control movement which emerged early in this century. Chapter 2 explores the alliances between birth control advocates and eugenicists during the 1920s and 1930s, as well as the rampant sterilization abuse of black women in later decades. It also considers the debate about family planning and genocide that took place within the Black communist throughout this period. In Chapters 3 through 5, 1 demonstrates that a panoply of policies continue to degrade Black women’s reproductive decisions. Plans to distribute Norplant in Black communities as a means of addressing their poverty, law enforcement practices that penalize Black women for bearing a child, and welfare reform measures that cut off assistance for children born to welfare mothers all proclaim the same message: The key to solving America’s social problem is to curtail Black women’s birth rates. In Chapter 6, I argue that race also determines the use and popularity of technologies designed to enable people to have children. Finally, Chapter 7 presents a perception of liberty that takes into account this relationship between race and reproduction. The book ends by proposing an approach to reproductive rights that acknowledges the complementary and overlapping qualities of the Constitution’s guarantees of liberty and equality. This approach recognizes the connection between the dehumanization of the individual and the repression of the group. It provides a positive claim to state support for poor women’s procreative decisions that counters proposals to cut funding both for children born to women on welfare and for abortion. It also acids a compelling dimension to the feminist claim that reproductive liberty is essential to women’s political and social citizenship. Thus, I hope to show that, while racism has perverted dominant notions of reproductive freedom, the quest to secure Black women’s reproductive autonomy can transform the meaning of liberty for everyone.... The greatest risk in writing a book about reproductive domination is that it will leave the false impression that Black women have been no more than passive puppets in a one-dimensional plot to control their actions. I try to avoid that perception by showing throughout this book Black women’s activism in the struggle to control their own bodies. The full story of Black women’s resistance and its impact on the national movement for reproductive freedom is long overdue. As Anna Julia Cooper recognized a century ago, this “fight, as of an entrapped tigress, . . . would furnish material for epics.” Before turning to the history of reproductive regulation, it is important to recognize the images of Black women that form its backdrop. America has always viewed unregulated Black reproduction as dangerous. For three centuries, Black mothers have been thought to pass down to their offspring the traits that marked them as inferior to any white person. Along with this biological impairment, it is believed that Black mothers transfer a deviant lifestyle to their children that dooms each succeeding generation to a life of poverty, delinquency, and despair. A persistent objective of American social policy has been to monitor and restrain this corrupting tendency of Black motherhood. Regulating Black women’s fertility seems so imperative because of the powerful stereotypes that propel these policies. A popular mythology that portrays Black women as unfit to be mothers has left a lasting impression on the American psyche. Although these attitudes are not universally held, they influence the way many Americans think about reproduction. Myths are more than made-up stories. They are also firmly held beliefs that represent and attempt to explain what we perceive to be the truth. They can become more credible than reality holding fast even in the face of airtight statistics and rational argument !o the contrary, American culture is replete with derogatory icons of Black women — Jezebel, Mammy, Tragic Mulatto, Aunt Jemima, Sapphire, Matriarch, and Welfare Queen. Over the centuries these myths have made Black women seem like “nothing more than the bearers of ‘incurable immorality.’ “2 In this introduction, I focus on those images that have justified the restrictions on Black women’s childbearing explored in subsequent chapters. She continues:

### Cyber Turns Case – Greenwald 2013

#### we have to debate about and simulate the intricate offensive cyber operations to learn about their various activities such as PSYOPS or different forms of monitoring protocols that the government is using. The military has carried out a modern COINTELPRO operation. They use online chat rooms to pretend they are part of the movement.....failure to understand how cyber operations work will mean that any radical movement of resistance will get infiltrated

Greenwald 13 (Glenn, Greenwald, worked as a constitutional and civil rights litigator, 1/28, “The Pentagon’s Massive Security Unit is All about offense” <http://www.businessinsider.com/the-pentagons-massive-expansion-of-its-cyber-security-unit-is-all-about-offense-2013-1>”)

As the US government depicts the Defense Department as shrinking due to budgetary constraints, [the Washington Post](http://www.washingtonpost.com/world/national-security/pentagon-to-boost-cybersecurity-force/2013/01/19/d87d9dc2-5fec-11e2-b05a-605528f6b712_story.html) this morning announces "a major expansion of [the Pentagon's] cybersecurity force over the next several years, increasing its size more than fivefold." Specifically, says [the New York Times this morning](http://www.nytimes.com/2013/01/28/us/pentagon-to-beef-up-cybersecurity-force-to-counter-attacks.html?smid=tw-share), "the expansion would increase the Defense Department's Cyber Command by more than 4,000 people, up from the current 900." The Post describes this expansion as "part of an effort to turn an organization that has focused largely on defensive measures into the equivalent of an Internet-era fighting force." This Cyber Command Unit operates under the command of Gen. Keith Alexander, who also happens to be the head of the National Security Agency, the highly secretive government network that spies on the communications of foreign nationals - and American citizens.¶ The Pentagon's rhetorical justification for this expansion is deeply misleading. Beyond that, these activities pose a wide array of serious threats to internet freedom, privacy, and international law that, as usual, will be conducted with full-scale secrecy and with little to no oversight and accountability. And, as always, there is a small army of private-sector corporations who will benefit most from this expansion.¶ Disguising aggression as "defense"¶ Let's begin with the way this so-called "cyber-security" expansion has been marketed. It is part of a sustained campaign which, quite typically, relies on blatant fear-mongering.¶ In March, 2010, the Washington Post published [an amazing Op-Ed](http://www.washingtonpost.com/wp-dyn/content/article/2010/02/25/AR2010022502493.html?sid=ST2010031901063) by Adm. Michael McConnell, Bush's former Director of National Intelligence and a past and current executive with Booz Allen, [a firm representing numerous corporate contractors](http://www.salon.com/2010/03/29/mcconnell_3/) which profit enormously each time the government expands its "cyber-security" activities. McConnell's career over the last two decades - both at Booz, Allen and inside the government - has been devoted to accelerating the merger between the government and private sector in all intelligence, surveillance and national security matters (it was he who led the successful campaign to retroactively immunize the telecom giants for their participation in the illegal NSA domestic spying program). Privatizing government cyber-spying and cyber-warfare is his primary focus now.¶ McConnell's Op-Ed was as alarmist and hysterical as possible. Claiming that "the United States is fighting a cyber-war today, and we are losing", it warned that "chaos would result" from an enemy cyber-attack on US financial systems and that "our power grids, air and ground transportation, telecommunications, and water-filtration systems are in jeopardy as well." Based on these threats, McConnell advocated that "we" - meaning "the government and the private sector" - "need to develop an early-warning system to monitor cyberspace" and that "we need to reengineer the Internet to make attribution, geolocation, intelligence analysis and impact assessment - who did it, from where, why and what was the result - more manageable." As Wired's Ryan Singel [wrote](http://www.wired.com/threatlevel/2010/03/cyber-war-hype/#ixzz0jZTBbm1b): "He's talking about changing the internet to make everything anyone does on the net traceable and geo-located so the National Security Agency can pinpoint users and their computers for retaliation."¶ The same week the Post published McConnell's extraordinary Op-Ed, the Obama White House issued [its own fear-mongering decree](http://www.whitehouse.gov/cybersecurity/comprehensive-national-cybersecurity-initiative) on cyber-threats, depicting the US as a vulnerable victim to cyber-aggression. It began with this sentence: "President Obama has identified cybersecurity as one of the most serious economic and national security challenges we face as a nation, but one that we as a government or as a country are not adequately prepared to counter." It announced that "the Executive Branch was directed to work closely with all key players in US cybersecurity, including state and local governments and the private sector" and to "strengthen public/private partnerships", and specifically announced Obama's intent to "to implement the recommendations of the Cyberspace Policy Review built on the Comprehensive National Cybersecurity Initiative (CNCI) launched by President George W. Bush."¶ Since then, the fear-mongering rhetoric from government officials has relentlessly intensified, all devoted to scaring citizens into believing that the US is at serious risk of cataclysmic cyber-attacks from "aggressors". This all culminated when Defense Secretary Leon Panetta, last October, [warned of what he called](http://www.nytimes.com/2012/10/12/world/panetta-warns-of-dire-threat-of-cyberattack.html?) a "cyber-Pearl Harbor". This "would cause physical destruction and the loss of life, an attack that would paralyze and shock the nation and create a profound new sense of vulnerability." Identifying China, Iran, and terrorist groups, he outlined a parade of horribles scarier than anything since Condoleezza Rice's 2002 Iraqi "mushroom cloud":¶ "An aggressor nation or extremist group could use these kinds of cyber tools to gain control of critical switches. They could derail passenger trains, or even more dangerous, derail passenger trains loaded with lethal chemicals. They could contaminate the water supply in major cities, or shut down the power grid across large parts of the country."¶ As usual, though, reality is exactly the opposite. This massive new expenditure of money is not primarily devoted to defending against cyber-aggressors. The US itself is the world's leading cyber-aggressor. A major purpose of this expansion is to strengthen the US's ability to destroy other nations with cyber-attacks. Indeed, even the Post report notes that a major component of this new expansion is to "conduct offensive computer operations against foreign adversaries".¶ It is the US - not Iran, Russia or "terror" groups - which already is the first nation (in partnership with Israel) to aggressively deploy a highly sophisticated and extremely dangerous cyber-attack. Last June, the New York Times' David Sanger [reported](http://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyberattacks-against-iran.html?pagewanted=all) what most of the world had already suspected: "From his first months in office, President Obama secretly ordered increasingly sophisticated attacks on the computer systems that run Iran's main nuclear enrichment facilities, significantly expanding America's first sustained use of cyberweapons." In fact, Obama "decided to accelerate the attacks . . . even after an element of the program accidentally became public in the summer of 2010 because of a programming error that allowed it to escape Iran's Natanz plant and sent it around the world on the Internet." According to the Sanger's report, Obama himself understood the significance of the US decision to be the first to use serious and aggressive cyber-warfare:¶ "Mr. Obama, according to participants in the many Situation Room meetings on Olympic Games, was acutely aware that with every attack he was pushing the United States into new territory, much as his predecessors had with the first use of atomic weapons in the 1940s, of intercontinental missiles in the 1950s and of drones in the past decade. He repeatedly expressed concerns that any American acknowledgment that it was using cyberweapons - even under the most careful and limited circumstances - could enable other countries, terrorists or hackers to justify their own attacks."¶ The US isn't the vulnerable victim of cyber-attacks. It's the leading perpetrator of those attacks. As Columbia Professor and cyber expert Misha Glenny [wrote in the NYT last June](http://www.nytimes.com/2012/06/25/opinion/stuxnet-will-come-back-to-haunt-us.html?): Obama's cyber-attack on Iran "marked a significant and dangerous turning point in the gradual militarization of the Internet."¶ Indeed, exactly as Obama knew would happen, revelations that it was the US which became the first country to use cyber-warfare against a sovereign country - just as it was the first to use the atomic bomb and then drones - would make it impossible for it to claim with any credibility (except among its own media and foreign policy community) that it was in a defensive posture when it came to cyber-warfare. As Professor Glenny wrote: "by introducing such pernicious viruses as Stuxnet and Flame, America has severely undermined its moral and political credibility." That's why, as the [Post reported yesterday](http://www.washingtonpost.com/world/national-security/fbi-is-increasing-pressure-on-suspects-in-stuxnet-inquiry/2013/01/26/f475095e-6733-11e2-93e1-475791032daf_story.html), the DOJ is engaged in such a frantic and invasive effort to root out Sanger's source: because it reveals the obvious truth that the US is the leading aggressor in the world when it comes to cyber-weapons.¶ This significant expansion under the Orwellian rubric of "cyber-security" is thus a perfect microcosm of US military spending generally. It's all justified under by the claim that the US must defend itself from threats from Bad, Aggressive Actors, when the reality is the exact opposite: the new program is devoted to ensuring that the US remains the primary offensive threat to the rest of the world. It's the same way the [US develops offensive biological weapons](http://www.guardian.co.uk/world/2002/oct/29/usa.julianborger) under the guise of developing defenses against such weapons (such as the 2001 anthrax that [the US government itself says came from a US Army lab](http://www.nytimes.com/2011/10/10/science/10anthrax.html?pagewanted=all)). It's how the US government generally convinces its citizens that it is a peaceful victim of aggression by others when the reality is that the US builds more weapons, sells more arms and bombs more countries than virtually the rest of the world combined.¶ Threats to privacy and internet freedom¶ Beyond the aggressive threat to other nations posed by the Pentagon's "cyber-security" programs, there is the profound threat to privacy, internet freedom, and the ability to communicate freely for US citizens and foreign nationals alike. The US government has long viewed these "cyber-security" programs as a means of monitoring and controlling the internet and disseminating propaganda. The fact that this is all being done under the auspices of the NSA and the Pentagon means, by definition, that there will be no transparency and no meaningful oversight.¶ Back in 2003, the Rumsfeld Pentagon prepared [a secret report](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/27_01_06_psyops.pdf) entitled "Information Operations (IO) Roadmap", which laid the foundation for this new cyber-warfare expansion. The Pentagon's self-described objective was "transforming IO into a core military competency on par with air, ground, maritime and special operations". In other words, its key objective was to ensure military control over internet-based communications:¶ It further identified superiority in cyber-attack capabilities as a vital military goal in PSYOPs (Psychological Operations) and "information-centric fights":¶ And it set forth the urgency of dominating the "IO battlespace" not only during wartime but also in peacetime:¶ As [a 2006 BBC report](http://news.bbc.co.uk/2/hi/americas/4655196.stm) on this Pentagon document noted: "Perhaps the most startling aspect of the roadmap is its acknowledgement that information put out as part of the military's psychological operations, or Psyops, is finding its way onto the computer and television screens of ordinary Americans." And while the report paid lip service to the need to create "boundaries" for these new IO military activities, "they don't seem to explain how." Regarding the report's plan to "provide maximum control of the entire electromagnetic spectrum", the BBC noted: "Consider that for a moment. The US military seeks the capability to knock out every telephone, every networked computer, every radar system on the planet."¶ Since then, there have been countless reports of the exploitation by the US national security state to destroy privacy and undermine internet freedom. In November, [the LA Times described](http://articles.latimes.com/2012/nov/22/nation/la-na-cyber-school-20121123) programs that "teach students how to spy in cyberspace, the latest frontier in espionage." They "also are taught to write computer viruses, hack digital networks, crack passwords, plant listening devices and mine data from broken cellphones and flash drives." The program, needless to say, "has funneled most of its graduates to the CIA and the Pentagon's National Security Agency, which conducts America's digital spying. Other graduates have taken positions with the FBI, NASA and the Department of Homeland Security."¶ In 2010, Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, [gave a speech](http://www.ntia.doc.gov/speechtestimony/2010/remarks-assistant-secretary-strickling-media-institute) explicitly announcing that the US intends to abandon its policy of "leaving the Internet alone". Noting that this "has been the nation's Internet policy since the Internet was first commercialized in the mid-1990s", he decreed: "This was the right policy for the United States in the early stages of the Internet, and the right message to send to the rest of the world. But that was then and this is now."¶ The documented power of the US government to monitor and surveil internet communications is already unfathomably massive. Recall that the Washington Post's 2010 "Top Secret America" series [noted that](http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/print/): "Every day, collection systems at the National Security Agency intercept and store 1.7 billion e-mails, phone calls and other types of communications." And the Obama administration [has formally demanded](http://boingboing.net/2010/09/27/obama-administration.html) that it have access to any and all forms of internet communication.¶ It is hard to overstate the danger to privacy and internet freedom from a massive expansion of the National Security State's efforts to exploit and control the internet. As Wired's Singel wrote back in 2010:¶ "Make no mistake, the military industrial complex now has its eye on the internet. Generals want to train crack squads of hackers and have wet dreams of cyberwarfare. Never shy of extending its power, the military industrial complex wants to turn the internet into yet another venue for an arms race".¶ Wildly exaggerated cyber-threats are the pretext for this control, the "mushroom cloud" and the Tonkin Gulf fiction of cyber-warfare. As Singel aptly put it: "the only war going on is one for the soul of the internet." That's the vital context for understanding this massive expansion of Pentagon and NSA consolidated control over cyber programs.

### Detention Turns Aff – Jenks 2011

#### The power to detain means that the GOVERNMENT will determine that their form of activism in the streets constitutes terrorism - terror is an inherently broad construct that allows the government to target their enemies...This is exactly what happened to Assata Shakur of the Black Panthers. It was her knowledge of war powers that caused her to flee the US to Cuba to evade US detention.

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory,

but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

### Targeted Killing Turns Aff – Krasman

#### we have already droned US citizens - they have the power to change - if the 1ac is right and the US government does not care about oppressed populations - we need a broader struggle against weapons to prevent oppressed populations from being killed

**Krasmann 12**—prof. Dr, Institute for Criminological Research, University of Hamburg [added the word “the” for correct sentence structure—denoted by brackets]

(Susanne, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship”, Leiden Journal of International Law (2012), 25, pp. 665–682, dml)

It was only with President Barack Obama’s ‘drone program’30 that targeted killing operations were systematically and more openly employed in the fight against terrorism. Since Obama entered office, there has reportedly been a conspicuous increase of aerial strikes, mainly in Pakistan. Targeted killing became a subject of public knowledge and thus publicly visible.31 As a security technology assigned to the context of military operations, the term itself then came to represent a rather new phenomenon of (mainly drone-launched) air strikes on a foreign territory – which, of course, does not preclude intelligence continuing to play a crucial role in the fight against terrorism and accomplishing respective missions.32 Yet, within the ‘theatre of war’, as this telling phrase indicates, the practice of killing political opponents takes an entirely different shape. The exercise of sovereign power sees itself authorized to address corresponding bodies of law, notably around ‘self-defence’ and ‘armed conflict’. It is with these legal references that a justification of (TKOs) Targeted Killing Operations apparently ceases to be required, according to US State Department Legal Advisor Harald S. Koh: Some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force.33 At the very same moment as targeted killing entered the public stage, it became legalizable. It did so as a security dispositif by locating itself within the legal discourse and at the same time relocating elementary conceptions of existing international law. It was the identification of a new dimension of threats that, in the first instance, paved the way for targeted killing’s surfacing on the political and legal stage. With the ability to utilize weapons of mass destruction or to display the capacity to invent such weapons, contemporary terrorism has been perceived as competing with the destructive power of states and, at the same time,34 being organized in transnationally operating networks, as an unforeseeable threat. The rationale of facing this threat no longer consists of deterring the attack by a known enemy state, but of pre-empting ‘the danger before it is known’ and before it has a chance to even emerge.35 If international law was prepared to accommodate targeted killing in legal terms, this was also the case because radical uncertainty, in the sense of the unforeseeable and possible, had already been introduced into legal reasoning.36 The precautionary logic constitutes a crucial feature of the new security dispositif – and a condition of possibility for targeted killing to be embraced by international law. As a dispositif, targeted killing entails the claim of its being an appropriate response to the new dimension of threats. Its promise is that a limited, or ‘surgical’, intervention brings about the greatest effects. The rationale is to intercept, or preempt, any preparatory terrorist action and thereby figure out the source of the problem – in the present context, leaders and core figures of a terrorist organization – in order to disrupt the whole matter. Terror networks, through this lens, then, appear to be the mirror image of this dispositif. Rather than merely being a response to the presumed problem, targeted killing asserts that this kind of organization would in fact be its very structure. It thus relocates the legal notions of war and self defence, once clearly attributable to ‘the political space of sovereignty’,37 within an entirely new constellation. What is at stake is no longer the idea of a confrontation between states, but rather the concerted acts of individuals. If targeted killing could re-emerge as a new phenomenon and legitimate subject of legal debate, gradually losing resemblance to the classical forms of political assassination, this induced a distinctive kind of politico-legal question. The fight against terrorism, namely, is to be assigned to the legal sphere of either warfare or crime control. This decision makes a considerable difference as regards both the rights of state authorities to exercise lethal force and the due-process guarantees of the impacted individuals.38 It is, however, only the traditional notion of sovereign states that suggests a clear distinction be made between foreign and internal affairs, military and criminal cases, war- and peacetime, in accordance with bodies of law. Reluctance to accept targeted killing as a legitimate measure, even when basically assenting to ‘the morality of killing in the context of war’,39 within this framework seems quite rational – that is to say, once targeted killing is regarded as being an instrument of ordinary law enforcement.40 Those clear distinctions, however, have always been an idealization. Wartime, which is thought of as an exception to the norm, intrudes into everyday life through both memories and anticipation.41 The presence of past wars in public debates is as much a testimony to this phenomenon as current political invocations to prepare for the next attack. There is also continuity between war- and peacetime that is reinforced by technologies and institutions.42 The convertibility of military into civilian techniques, and vice versa, is to mention just one facet: the possible double use of drones in war- and in peace times another. It is only the awareness of boundaries being blurred that is a rather recent phenomenon.43 And, in fact, to the extent that targeted killing replaces the notion of assassination, the targets themselves are no longer civilian political leaders, but terrorists44 – a term that comes to be located within the juridical debate beyond the distinction of soldier or civilian. If targeted killing today in the fight against terrorism appears to be an appropriate security technology, embedded within international law, this acceptance in turn is evidence of a new security dispositif’s becoming the norm. Within a Foucauldian perspective, talk about a new security dispositif does not imply that one dispositif would replace the other altogether, but rather that established notions and practices become relocated and linked to new ones. Sovereign power thus in no way loses its significance, but sees itself confronted with new challenges and obligations, and endowed with new momentums of authorization. Targeted killing, in this sense, itself shapes state formation,45 namely our understanding of sovereignty, of the rule of law, and of what is a legal and an illegal practice. Rather than asking whether international law competes with the sovereignty of states, focus, within this perspective, is on how sovereignty transforms and constitutes itself anew by enforcing international law; how distinctions are being made, for example, between national and international legal matters or between laws of war and ordinary law enforcement; and what kinds of concept underlie legal norms and are being inscribed into the law. 3. A FOUCAULDIAN PERSPECTIVE ON LAW Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law’s political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject’s singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice.

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Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law’s ‘innermorality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, [the] focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law**.**

### Simulation Turns Aff – Donohue and Mellor

#### This process of simulation is essential for students who engage in discussions that interact with questions of national security

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

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

#### Focus on legal process is good; debating about specific policy helps inculcate the language of the institution to better change war powers

Ewan E. **Mellor** – European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference 20**13**, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, online

**This section of the paper considers** more generally **the need for** just war **theorists to engage with** policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. **It draws on John Kelsay’s conception of just war thinking as being a social practice**,35 **as well as on** Michael **Walzer’s understanding of the role of the social critic in society**.36 It argues that **the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.**”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “**good just war thinking involves continuous and complete deliberation**, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 **This is important as it highlights the need for** just war **scholars to engage with the ongoing operations in war and the** specific policies **that are involved**. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. **Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”**40 **in terms of being able to discuss it and judge it in moral terms**.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. **The** just war **theorist, as a social critic, must be involved with his or her own society and its** practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 **the** just war **theorist must be close to and must understand the** language through which war is constituted

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**, interpreted and reinterpreted**.42 **It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to**¶ **demonstrate its hypocrisy and to show the gap that exists between its practice and its values**.43 **The tradition** itself provides a set of values and principles and, as argued by Cian O’Driscoll, **constitutes a “language of engagement” to spur participation in public and political debate.**44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 **By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis**.¶ **Engaging with the reality of war requires recognising that war is**, as Clausewitz stated, **a continuation of policy**. **War**, according to Clausewitz, **is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued**.47 ***Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship***.48 ***This engagement must bring*** just war ***theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers***, **however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power**. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition **the policy-makers will be forced to account for their decisions and justify them in just war language**. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 **it is incumbent upon** just war **theorists to ensure that the public are informed and are capable of holding their political leaders to account**. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, **it is precisely because it is “our country” that we are “especially obligated to criticise its policies**.”51

### A2 Liberalism – Curtler 1997

#### Modernity and liberalism isn’t the root cause of violence—it’s always proximately caused. The alternative leaves us unable to deal with any global problems.

Curtler 97 – PhD Philosophy, Hugh, “rediscovering values: coming to terms with postnmodernism” 44-7

The second and third concerns, though, are more serious and to a degree more legitimate. The second concern is that "reason is the product of the Enlightenment, modern science, and Western society, and as such for the postmodernists, it is guilty byassociation of allthe errors attributed to them, [namely], violence, suffering, and alienation in the twentieth century, be it the Holocaust, world wars, Vietnam, Stalin's Gulag, or computer record-keeping . . ." (Rosenau 1992, 129). Although this is a serious concern, it is hardly grounds for the rejection of reason, for which postmodernism calls in a loud, frenetic voice. There is precious little evidence that the problems of the twentieth century are the result of too much reason! On the contrary. To be sure, it was Descartes's dream to reduce every decision to a calculation, and in ethics, this dream bore fruit in Jeremy Bentham's abortive "calculus" of utilities. But at least since the birth of the social sciences at the end of the last century, and with considerable help from logical positivism, ethics (and values in general) has been relegated to the dung heap of "poetical and metaphysical nonsense," and in the minds of the general populace, reason has no place in ethics, which is the proper domain of feeling. The postmodern concern to place feelings at the center of ethics, and judgment generally—which is the third of their three objections to modern reason—simply plays into the hands of the hardened popular prejudice that has little respect for the abilities of human beings to resolve moral differences reasonably. Can it honestly be said of any major decision made in thiscentury that it was the result of "too much reason" and that feelings and emotions played no part? Surely not.Can this be said in the case of any of the concerns reflected in the list above: are violence, suffering, and alienation, or the Holocaust, Vietnam, Stalin's Gulag, or Auschwitz the result of a too reasonable approach to human problems? No one could possibly make this claim who has dared to peek into the dark and turbid recesses of the human psyche. In every case, it is more likely that these concerns result from such things as sadism, envy, avarice, love of power, the "death wish," or short-term self-interest, none of which is "reasonable."One must carefully distinguish between the methods ofthe sciences, which are thoroughly grounded in reason and logic, and the uses men and women make of science. The warnings of romantics such as Goethe (who was himself no mean scientist) and Mary Shelley were directed not against science per se but rather against the misuse of science and the human tendency to become embedded in the operations of the present moment. To the extent that postmodernism echoes these concerns, I would share them without hesitation. But the claim that our present culture suffers because of an exclusive concern with "reasonable" solutions to human problems, with a fixation on the logos, borders on the absurd.What is required here is not a mindless rejection of human reason on behalf of "intuition," "conscience," or "feelings" in the blind hope that somehow complex problems will be solved if we simply do whatever makes us feel good. Feelings and intuitions are notoriously unreliable and cannot be made the center of a workable ethic. We now have witnessed several generations of college students who are convinced that "there's no disputing taste" in the arts and that ethics is all about feelings. As a result, it is almost impossible to get them to take these issues seriously. The notion that we can trust our feelings to find solutions to complex problems is little more than a false hope.We are confronted today with problems on a scale heretofore unknown, and what is called for is patience, compassion (to be sure), and above all else, clear heads. In a word, what is called for is a balance between reason and feelings—not the rejection of one or the other. One need only recall Nietzsche's own concern for the balance between Dionysus and Apollo in his Birth of Tragedy. Nietzscheknew better than his followers, apparently, that one cannot sacrifice Apollo to Dionysus in the futile hope that we can rely on our blind instincts to get us out of the hole we have dug for ourselves.

# Case cards

### The Aff doesn’t Do anything

#### The aff’s method prioritizes observations without pragmatic strategy ---- continues to re-entrench the squo

Bryant 12 (Levi, Critique of the Academic Left, http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/)

I must be in a mood today– half irritated, half amused –because I find myself ranting. Of course, that’s not entirely unusual. So this afternoon I came across a post by a friend quoting something discussing the environmental movement that pushed all the right button. As the post read,¶ For mainstream environmentalism– conservationism, green consumerism, and resource management –humans are conceptually separated out of nature and mythically placed in privileged positions of authority and control over ecological communities and their nonhuman constituents. What emerges is the fiction of a marketplace of ‘raw materials’ and ‘resources’ through which human-centered wants, constructed as needs, might be satisfied. The mainstream narratives are replete with such metaphors [carbon trading!]. Natural complexity,, mutuality, and diversity are rendered virtually meaningless given discursive parameters that reduce nature to discrete units of exchange measuring extractive capacities. Jeff Shantz, “Green Syndicalism”¶ While finding elements this description perplexing– I can’t say that I see many environmentalists treating nature and culture as distinct or suggesting that we’re sovereigns of nature –I do agree that we conceive much of our relationship to the natural world in economic terms (not a surprise that capitalism is today a universal). This, however, is not what bothers me about this passage.¶ What I wonder is just what we’re supposed to do even if all of this is true? What, given existing conditions, are we to do if all of this is right? At least green consumerism, conservation, resource management, and things like carbon trading are engaging in activities that are making real differences. From this passage– and maybe the entire text would disabuse me of this conclusion –it sounds like we are to reject all of these interventions because they remain tied to a capitalist model of production that the author (and myself) find abhorrent. The idea seems to be that if we endorse these things we are tainting our hands and would therefore do well to reject them altogether.¶ The problem as I see it is that this is the worst sort of abstraction (in the Marxist sense) and wishful thinking. Within a Marxo-Hegelian context, a thought is abstract when it ignores all of the mediations in which a thing is embedded. For example, I understand a robust tree abstractly when I attribute its robustness, say, to its genetics alone, ignoring the complex relations to its soil, the air, sunshine, rainfall, etc., that also allowed it to grow robustly in this way. This is the sort of critique we’re always leveling against the neoliberals. They are abstract thinkers. In their doxa that individuals are entirely responsible for themselves and that they completely make themselves by pulling themselves up by their bootstraps, neoliberals ignore all the mediations belonging to the social and material context in which human beings develop that play a role in determining the vectors of their life. They ignore, for example, that George W. Bush grew up in a family that was highly connected to the world of business and government and that this gave him opportunities that someone living in a remote region of Alaska in a very different material infrastructure and set of family relations does not have. To think concretely is to engage in a cartography of these mediations, a mapping of these networks, from circumstance to circumstance (what I call an “onto-cartography”). It is to map assemblages, networks, or ecologies in the constitution of entities.¶ Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park:

The underpants gnomes have a plan for achieving profit that goes like this:¶

Phase 1: Collect Underpants¶ Phase 2: ?¶ Phase 3: Profit!¶ They even have a catchy song to go with their work:¶

Well this is sadly how it often is with the academic left. Our plan seems to be as follows:

¶ Phase 1: Ultra-Radical Critique¶ Phase 2: ?¶ Phase 3: Revolution and complete social transformation!¶

Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing?¶ But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done!¶ But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc.¶ What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle.¶ I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation.¶ “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

### Structural antagonism wrong

#### Their’theory of structural antagonism is wrong and too pessimistic, it prevents effective solvency

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(Reginald Leamon, 53 Am. U.L. Rev. 1361)

Since the late 1980s, Race Crits have increasingly practiced n118 a standard methodology, through which they pursue justice and liberation. n119 With textbooks, n120 Race Crits have attempted to settle down what Angela P. Harris once described as an "eclectic, iconoclastic nature." n121 Nevertheless, Race Crits still experiment, perhaps encouraging Williams and Yamamoto to develop their antisubordination practices. In their writings, Race Crits have adopted modernism (or structuralism), allowing them to place faith in liberal ideas like rights, justice, and liberty, even though they deconstruct these legalisms so that they can unearth the truth. n122 Writing within this tension of modernism and postmodernism, these antisubordination practices suffer from the conceptual limits of this structuralist methodology, n123 one standing on the following themes: (1) an insistence on "naming our own reality"; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; [\*1381] (7) criticism of liberal legalisms; and (8) an interest in structural determinism - the ways in which legal tools and thought-structures can impede law reform. n124 Under CRT's modernist and postmodernist methodology, these themes divide two categories: (1) macro structuralism and (2) macro individual agency and social practices. Under macro structuralism, we find "an interest in structural determinism - the ways in which legal tools and thought-structures can impede law reform." n125 This feature forms a major set, within which we find its elements: "a readiness to question basic premises of moderate/incremental civil rights law;" "a more contextualized treatment of doctrine;" and "criticism of liberal legalisms." n126 Under macro individual agency and practices, we find an insistence on "naming our own reality," within which we find its elements: "the belief that knowledge and ideas are powerful;" "the borrowing of insights from social science on race and racism;" and "critical examination of the myths and stories powerful groups use to justify racial subordination." n127 Macro structuralism refers to structural forces. Macro individual agency purports to deconstruct these forces, suggesting that Race Crits can free themselves from white racism. Yet, the categories lack efficacy; they never recognize ordinary people as powerful reality creators, earthly gods who name and thus co-create their realities. Believing in rights and questioning how society recognizes these rights, Race Crits never ask if ordinary people currently name a reality that reinforces racism, the very experiences and realities against which they struggle. Rather, Race Crits simply take pity on these people, n128 viewing them as victims of white racism. Out of this view, they work to end white racism so that ordinary people like blacks can live as "free" blacks. If liberal society raced them, this mission belies real freedom. Escaping this tension requires Race Crits to reject a victimization theory, and they must ask: "what is reality?" Right now, these themes methodologically bracket [\*1382] Race Crits; they stunt them epistemologically. n129 By relying on these methodological themes, Race Crits can only imagine ordinary people as negated subjects victimized and dominated by white society. Can these ordinary people name their own reality? This question confesses another methodological contradiction. Race Crits like Williams and Yamamoto argue that structural forces rob ordinary people of their right to live as relatively unmediated citizens. These forces emit spirit-murdering stories that infect ordinary people. Whites consume these stories too, which convince them that worthy citizens benefit in a liberal society. If society mesmerizes ordinary people with these stories, are the authors immune? Using postmodernist tools, how do we remember our unmediated selves so that we can effectively violate these stories? Under structuralism, ordinary people cannot truly remember this Self, so on what source can ordinary people rely to name their own reality that helps recall that they have always been earthly gods? None. Ordinary people live as ever-questioning victims who are heartlessly mocked by liberal legalisms like Justice. By declaring that society mocks them and denies them Justice, ordinary people have effectively boiled their stories down to an oft-told sad tale of "structure" versus "agency," in a term: structural determinism. B. Structural Determinism As an antisubordination practice, Williams' Practice and Yamamoto's Praxis grow out of structural determinism. For didactic purposes, I divide this sociological concept into two parts: structuralism and determinism. Structuralism n130 directly links "words" and "reality." n131 It relates things to things. Speaker A talks of things, and even if ordinary people, the listeners, cannot actually "observe" these things, they become accustomed to experiencing the things as real, external forces. n132 Speaker A reveals how society's underlying structure shapes an individual's experience or group's life. n133 For Race Crits, an unseen thing like white racism limits and constrains how people believe, think, feel, and act. n134 [\*1383] Determinism states that a clear, narrow set of factors cause social events in a relatively predictable way. n135 Broadly speaking, determinism is any theory, like CRT, that explains the world (e.g., white racism) by definable factors. n136 This approach negates a host of other factors, including human agency. n137 As such, Race Crits can argue against the relative autonomy of ordinary people like blacks so that they can pursue other political ends. By so doing, Race Crits can say that things (or a set of things) cause ordinary people to be subtextual victims, thus explaining the moment-to-moment existence of, say, the black community. If these things victimize ordinary people, it follows that ordinary people lack meaningful human agency. In this way, determinism becomes a reductionist model, emphasizing a limited range of causal social factors that explains why ordinary people like Mexicans suffer racism and racial discrimination. n138 And so within the concept of structural determinism, Race Crits state that they "focus on ways in which the entire structure of legal thought, or at least of major doctrines like the First Amendment, influences its content, always tending toward maintaining the status quo." n139 Delgado and Stefancic go on to say that "once we understand how our categories, tools, and doctrines influence us, we may escape their sway and work more effectively for liberation." n140 That is, structural determinism represents a "concept that a mode of thought or widely shared practice determines significant social outcomes, usually without our conscious knowledge." n141 Yet, despite these determining factors, Delgado, like Williams and Yamamoto, suggests that the buried, negated subject will rise to act. Structural determinism informs not only CRT but also Practice and Praxis, in which the negated subject has only the power to identify structural forces that explain American Indian oppression and interracial conflicts. For example, Yamamoto declares that blacks can be victims and victimizers. n142 If they victimize, can they have agency? More broadly, does such victimizing of victims presuppose that blacks have always had agency, a kind of purposeful human action that sits astride core beliefs? Did Yamamoto mean that at the "borderlands" n143 blacks operate on false consciousness, a racist implant that destroys the respect and self-restraint they would otherwise express toward other blacks? Acting as duress, this [\*1384] implant prevents him from forming the criminal mind and volitional will to act criminally against other blacks. Should they be free from state prosecution? The mindset doctrine works seamlessly with structural determinism, thus suggesting that ordinary people cannot likewise name their own reality without reifying dominant values. Accordingly, Yamamoto insists that in the material inquiry, the consortium must reassess group cultural traits and re-articulate racial identities and relationships. n144 This reassessment and re-articulation vet structural forces like misogyny that turn black men against their lovers. n145 1. Macro structuralism In light of my critique, macro structuralism and macro individual agency and practices share common functions. Each major set reveals the degree to which white structural oppression works against ordinary people. Race Crits appear to use these themes to unearth invisible, deeply encrusted forms of structural injustice. n146 These hidden forms permit whites to control ordinary people and men to dominate women. By deconstructing elite white narratives, Race Crits must believe that a payoff exists. The payoff must be white guilt, consciousness raising, or the end of white oppression. n147 This expose should make visible the invisible privilege that whites unjustifiably enjoy, n148 and with real, sober analysis, n149 elite whites will suffer regime changing remorse. Feeling badly, they will condemn themselves as evil, greedy people. With heavy hearts and grieving minds, they will become better people. If CRT's political game is white guilt and black innocence, Race Crits cannot now surgically destroy the mindsets of ordinary people, implying that it is a locus for co-creating their personal experiences of white racism. From CRT's structural [\*1385] determinism perspective, ordinary people are simple, empty-headed sheep. Like other liberal subjects, ordinary people, having consumed ideas about limited autonomy, not only serve themselves up as meat for their keepers, but also fall easy prey to systemic predators. To this extent, Race Crits are academic priests who hope to redeem, not ordinary people who cannot control the next moments in their lives, but white elites who have structure-shaping agency. CRT's religious movement discounts ordinary people, seeking not to empower them, but to destroy white narratives, so that ordinary people like blacks can become the unabashedly raced people their parents train them to be! n150 Specifically, macro structuralism focuses on white structural oppression and how dominant narratives impact ordinary people. Let's consider public education. Blacks have struggled to educate their children and to break down artificial barriers to formal education. n151 Yet, during slavery and Jim Crow, blacks were educated, and they excelled academically. Do slavery and Jim Crow politics explain how ordinary people like blacks perform academically? If so, Race Crits must identify the specific historic markers that prevent ordinary people from academic excellence. If not, Race Crits must identify multiple factors, including parental role models, that perforce impact school-age children. n152 As such, structural forces alone cannot explain why blacks do not excel academically. By examining other factors, Race Crits would have to consider cultural practices, core beliefs, and emotions, including the power of thought. n153 This approach subjects ordinary people to attack, perhaps condemnation. Yet, if Race Crits give ordinary people like blacks a pass, thus suggesting that their core beliefs cannot govern academic performance, then they must blame structural forces. They must look to "out there" forces - the power elite and white oppressors. [\*1386] In this way, structural determinism is a proxy for mindsets. n154 It shapes and contours everything, displacing agency so that ordinary people serve ends beyond their known intentions. To bracket this liberal project, Race Crits convince themselves that they can discern the way language, culture, and practices operate against ordinary people and the public interest. Invariably, Race Crits start with slavery and Jim Crow politics. Proceeding linearly to the present, they question whether extant laws can cope with a history of racial discrimination. Logic thus mandates that slavery and Jim Crow must explain why ordinary people like blacks simply cannot keep up. Within the present effects of past discrimination, ordinary people and how they co-create are cast aside so that Race Crits can simply and gratuitously blame structural forces.

### Reformism and Consequences are Good

#### Their desire to ignore the consequences of their advocacy causes alt failure ---must evaluate consequences of proposals

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Second, reducing conversation on race matters to an ideological contest allows opponents to elide inquiry into whether the results of a particular preference policy are desirable. Policy positions masquerading as principled ideological stances create the impression that a racial policy is not simply a choice among available alternatives, but the embodiment of some higher moral principle. Thus, the "principle" becomes an end in itself, without reference to outcomes. Consider the prevailing view of colorblindness in constitutional discourse. Colorblindness has come to be understood as the embodiment of what is morally just, independent of its actual effect upon the lives of racial minorities. This explains Justice Thomas's belief in the "moral and constitutional equivalence" between Jim Crow laws and race preferences, and his tragic assertion that "Government cannot make us equal [but] can only recognize, respect, and protect us as equal before the law." [281](http://web.lexis-nexis.com/universe/document?_m=cd9713b340d60abd42c2b34c36d8ef95&_docnum=9&wchp=dGLbVzz-zSkVA&_md5=9645fa92f5740655bdc1c9ae7c82b328#n281) For Thomas, there is no meaningful difference between laws designed to entrench racial subordination and those designed to alleviate conditions of oppression. Critics may point out that colorblindness in practice has the effect of entrenching existing racial disparities in health, wealth, and society. But in framing the debate in purely ideological terms, opponents are able to avoid the contentious issue of outcomes and make viability determinations based exclusively on whether racially progressive measures exude fidelity to the ideological principle of colorblindness. Meaningful policy debate is replaced by ideological exchange, which further exacerbates hostilities and deepens the cycle of resentment.

#### Incremental reform is better than pure rejection---the alternative infinitely replicates the SQ

Jefferey Pyle 99, Boston College Law School, J.D., magna cum laude, Race, Equality and the Rule of Law: Critical Race Theory's Attack on the Promises of Liberalism, 40 B.C.L. Rev. 787

"Critique," however, never built anything, and liberalism, for all its shortcomings, is at least constructive. It provides broadly-accepted, reasonably well-defined principles to which political advocates may appeal in ways that transcend sheer power, with at least some hope of incremental success:26' Critical race theory would "deconstruct" this imperfect tradition, but offers nothing in its place.¶ An apt example of how unconstructive CRT is can be found in its approach to equality. To the extent that race-crits discuss "equality" at all, they do so less to advance tangible goals than to disparage liberalism's different approaches, including the ultimate goal of a society where race does not matter. 265 The race-crits are particularly hostile to the liberal ideal of "color blindness," expressed most eloquently by Martin Luther King's dream that his children "will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."266 To the race-crits, this integrationist goal of color-blind constitutionalism is not just naive or preinature. 2"7 In Neil Gotanda's words, it "supports the supremacy of white interests and must therefore be regarded as racist." !08 Unlike King, who saw affirmative action as a color-conscious means to a more inclusive, integrated nation ,"9 race-crits consider affirmative action an end in itself, more akin to an award of permanent damages than transitional assistance:270 To the race-crits, any doctrine that gets in the way of that end, including egalitarian colorblindness, is ipso facto "racist." 271¶ <cont>¶ Critical race theory's failure to address the difficulties of administering a reparations-based, "equality of result!' system leaves one with the impression that either they really are not. serious, or their invocation of "equality" is little more than an assertion of group interests. Indeed, the more pessimistic race-crits, like Derrick Bell, would be happiest if social reformers jettisoned the goal of "equality" altogether, because that goal "merely perpetuates our disempowerment."291 Illegal doctrine is to be judged solely by how it advances the interest of racial minorities, the race-crits implicitly dismiss any vision of equality that could aid other disadvantaged groups, or that could treat disadvantaged members of the racial majority with equal concern and respect.29' To the race-crits, the proper inquiry is not how the law lives up to aspirations or principles, but how it serves the interests of a constituen cy.297¶ In this respect, the race-crits are more political advocates than legal scholars.2"8 There is, of course, nothing wrong with being an advocate, and disadvantaged people certainly need advocates. But legal theories—the principles and ideas that guide the determination of legal outcomes—must transcend mere factional interests if they are to aid minorities. They must win the majority's acquiescence, if not its active support. So far, race-crits have not provided such a theory. CRT is only "scholarly resistance" that lives within, and indeed depends upon, the liberal legal order. 2"" Without liberalism to "critique," critical race theory would have little meaning. In the end, critical race theory could no more supplant liberalism than the mission statement of a political action committee could replace the Constitution.