Topicality File

Framework Michigan 7

Policy Framework Yes

1nc

1nc – Top Level Definitions

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

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

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

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

"Resolved" is legislative

Jeff **Parcher 1**, former debate coach at Georgetown, Feb 2001
http://www.ndtceda.com/archives/200102/0790.html

Pardon me if I turn to a source besides Bill. American Heritage Dictionary: Resolve: 1. To make a firm decision about. 2. To decide or express by formal vote. 3. To separate something into constiutent parts See Syns at *analyze* (emphasis in orginal) 4. Find a solution to. See Syns at *Solve* (emphasis in original) 5. To dispel: resolve a doubt. - n 1. Firmness of purpose; resolution. 2. A determination or decision. (2) The very nature of the word "resolution" makes it a question. American Heritage: A course of action determined or decided on. A formal statement of a decision, as by a legislature. (3) The resolution is obviously a question. Any other conclusion is utterly inconceivable. Why? Context. The debate community empowers a topic committee to write a topic for ALTERNATE side debating. The committee is not a random group of people coming together to "reserve" themselves about some issue. There is context - they are empowered by a community to do something. In their deliberations, the topic community attempts to craft a resolution which can be ANSWERED in either direction. They focus on issues like ground and fairness because they know the resolution will serve as the basis for debate which will be resolved by determining the policy desirablility of that resolution. That's not only what they do, but it's what we REQUIRE them to do. We don't just send the topic committee somewhere to adopt their own group resolution. It's not the end point of a resolution adopted by a body - it's the preliminary wording of a resolution sent to others to be answered or decided upon. (4) Further context: the word resolved is used to emphasis the fact that it's policy debate. Resolved comes from the adoption of resolutions by **legislative bodies.** A resolution is either adopted or it is not. It's a question before a legislative body. Should this statement be adopted or not. (5) The very terms 'affirmative' and 'negative' support my view. One affirms a resolution. Affirmative and negative are the equivalents of 'yes' or 'no' - which, of course, are answers to a question.

"Should" requires defending federal action

Judge Henry **Nieto 9**, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, **obligation**, propriety, or **expediency**." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or **obligation and not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

1nc – decisionmaking

Decisionmaking skills are the most valuable benefit from debate because they're used in all aspects of life – preserving the best deliberation for inculcating decisionmaking skills comes before considering the policy/kritik divide or other substantive issues

Strait & Wallace, 8 – Lecturer, Communication, University of Southern California AND BA, George Washington University (Laurance Paul and Brett, "Academic Debate as a Decision Making Game Inculcating the Virtue of Practical Wisdom," Contemporary Argumentation and Debate, Vol. 29, 3-6, http://www.cedadebate.org/files/2008CAD.pdf)//SY

Since the inception of modern academic debate, much of the praise it has received for educating students has focused on the real-world skills acquired in the processes of research, argumentation, critical thinking, and policy analysis. Students develop these skills and apply them to jobs, politics, fields of study, and their personal lives. Indeed, in every decision, trivial ('Where should I eat dinner?'), and non-trivial ('What college should I attend?' 'Who should I marry?'), we evaluate all of the relevant advantages and disadvantages, consider possible alternatives, and come to some conclusion. Apologists for policy debate often champion the increased critical thinking skills taught by the activity that are necessarily used to work through these kinds of choices, particularly under rigid time and speech constraints. If this is truly the desired goal of policy debate, one would think that the way in which debates are framed, discussed, and adjudicated should closely resemble the process of deliberation that everyone, from the highest government officials to the most inconsequential members of society, uses. Aristotle (c. 330bce/1941a) argues that this decisionmaking process combines desire and reasoning in the act of deliberation focused on some end. The ability to make good decisions (and to follow through with them) is associated with the virtue of practical wisdom: Practical wisdom… is concerned with things human and things about which it is possible to deliberate; for we say this is above all the work of the person2 of practical wisdom, to deliberate well, but no one deliberates about things invariable, nor about things which have not an end, and that a good that can be brought about by action. The person who is without qualification good at deliberating is the person who is capable of aiming in accordance with calculation at the best for humanity of things attainable by action. Nor is practical wisdom concerned with universals only—it must also recognize the particulars; for it is practical, and practice is concerned with particulars. (#1141b 6-16). This underlies our contention that practical wisdom is the final cause of debate. Practical wisdom is broad, provides coherence and unity in a non-arbitrary way, and is **value-neutral with respect to the growing divide between the policy-focused and the critically-inclined**. Non-practical ends are not helpful – as Aristotle (c. 330bce/1941a) argues: The origin of action—its efficient, not its final cause—is choice, and that of choice is desire and reasoning with a view to an end… Intellect itself, however, moves nothing, but only the intellect which aims at an end and is practical; for this rules the productive intellect as well, since everyone who makes makes for an end, and that which is made is not an end in the unqualified sense. (#1139a32 – 37). Practical ends that are not unqualified—e.g., Mitchell's (1995) 'outward activist turn,'—are not necessarily bad aims, but the interests of many participants lie outside the circumference of those ends, while practical wisdom in general addresses the broadest possible range of decisions.3 Some people debate in order to hone skills as an activist, others for social purposes, and many just believe it is fun. These and other motives for participation certainly are relevant considerations for individuals deciding to join a debate team. As theorists attempting to discover the telos of our activity, however, our concern lies in finding a framework for debate that educates the largest quantity of students with the highest quality of skills, while at the same time preserving competitive equity. The ability to make decisions deriving from deliberation, argumentation or debate, is that key skill. It is **the one thing all humans will do every day of their lives** aside from breathing and other automatic processes. Practical wisdom **transcends boundaries between categories of learning such as 'policy education' or 'critique education,'** it **makes irrelevant considerations of whether we will eventually become policymakers**, and it completely **overshadows questions of what substantive content** a debate round should involve. The implication for this analysis is that the critical thinking and argumentative skills offered

by real-world decision-making are comparatively more important than any educational disadvantage weighed against them. It is the skills we learn, not the content of our arguments that can best improve all of our lives. While policy comparison skills are necessarily learned through debate in one way or another, those skills are useless if they are not grounded in the process actually used to make good decisions. This means that whenever any proposition of policy is considered, the appropriate decision-maker(s) must be identified: The appropriate decision makers are those necessary to the ultimate implementation of the decision. You may win adherence of fellow students to the proposition that the midterm exam should count less than the final paper in grading your class, but if the professor says no, little is gained… It is important for… [arguers] to recognize who the appropriate decision makers are. (Rieke & Sillars, 1993, p. 2). Since policy debate aims at determining whether a particular course of action is expedient, all arguments which misapprehend the appropriate decision maker(s) are red herrings and interfere with true rational deliberation.

1nc – deliberation

Being able to deliberate about policy problems means that bad things won't happen again

Glezos 11 (Simon, Department of Political Science, University of Victoria, "The ticking bomb: Speed, liberalism and ressentiment against the future", LB)

This is not to say that liberalism, or liberal democracies, are inherently doomed to shift away from democracy.3 However, avoiding this desire to hand over control to a unitary, authoritative executive means, in at least someway, learning to loosen one's attachment to a particular teleological narrative, and to reaffirm one's commitment to democratic deliberation, even (or especially) in the face of an open and uncertain future. Such an approach would require the development and reinforcement of a liberalism that is willing to accede to the event, to think in terms of an open future and, in at least some way, to embrace speed. 4 This is by no means an easy task, and requires the ability to give up the sense of security that a stable teleological projection of identity provides. 'That is why', says Connolly, 'so many queasy democrats want to slow the world down in the name of democracy. They are worn out by the workload imposed upon them' (p. 158). That workload however, is the very thing that is supposed to be the central function of democracy: the collective production of identity and community. If we are unwilling to accept democracy in the face of an uncertain future, then we were never truly democrats in the first place. What is more, far from being inefficient, this reaffirmation to democracy can have potentially positive effects in terms of legislation. If we return to the discussion of the ticking bomb with which this article begins, we might notice that one of the frequent arguments for the expansion of executive power lies in what John Yoo refers to as the 'cost of inaction' (2005, p. x). It is important to note he does not mention a concomitant danger of action; the danger of acting too quickly. Indeed, in retrospect, in the case of the Iraq war, we can see that it would have been exceedingly desirable if the 'vetoes of multiple decisionmakers' had been allowed 'to block warmaking' (p. x). In this case, the political process would have been well served with a touch of inefficiency (or rather, with a touch of more patience and thoughtfulness). A willingness to accept the uncertainty and insecurity of the rift in time might also make us more willing to accept bouts of 'inaction', to allow for additional debate and discussion, thus hopefully avoiding overreaction and unnecessary violence.

1nc – fairness

Fairness doesn't just matter in the abstract – it's key to a balanced dialogue and developing research, critical thinking, and decisionmaking skills

Galloway, 7 – Professor, Communication Studies, Samford University (Ryan, "Dinner and Conversation at the Argumentative Table: Reconceptualizing Debate as an Argumentative Dialogue," Contemporary Argumentation and Debate, Vol. 28, 5-7, http://www.cedadebate.org/files/2007CAD.pdf)//SY

Debate as a dialogue sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. The affirmative side is set by the topic and fairness requirements. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure. Setting the affirmative reciprocally sets the negative. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table. When one side takes more than its share, competitive equity suffers. However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it fundamentally denies the personhood of the other participant (Ehninger, 1970, p. 110). A pedagogy of debate as dialogue takes this respect as a fundamental component. **A desire to be fair is a fundamental condition of a dialogue that takes the form of a demand for equality of voice**. Far from being a banal request for links to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon months of preparation, research, and critical thinking not be silenced. Affirmative cases that suspend basic fairness norms operate to exclude particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue. They are unable to "understand what 'went on…'" and are left to the whims of time and power (Farrell, 1985, p. 114). Hugh Duncan furthers this line of reasoning: Opponents not only tolerate but honor and respect each other because in doing so they enhance their own chances of thinking better and reaching sound decisions. Opposition is necessary because it sharpens thought in action. We assume that argument, discussion, and talk, among free an informed people who subordinate themselves to rules of discussion, are the best ways to decisions of any kind, because it is only through such discussion that we reach agreement which binds us to a common cause…If we are to be equal…relationships among equals must find expression in many formal and informal institutions (Duncan, 1993, p. 196-197). Debate compensates for the exigencies of the world by offering a framework that maintains equality for the sake of the conversation (Farrell, 1985, p. 114). For example, an affirmative case on the 2007-2008 college topic might defend neither state nor international action in the Middle East, and yet claim to be germane to the topic in some way. The case essentially denies the arguments that state action is oppressive or that actions in the international arena are philosophically or pragmatically suspect. Instead of allowing for the dialogue to be modified by the interchange of the affirmative case and the negative response, the affirmative subverts any meaningful role to the negative team, preventing them from offering effective "counter-word" and undermining the value of a meaningful exchange of speech acts. **Germaneness and other substitutes for topical action do not accrue the dialogical benefits of topical advocacy**.

1nc – game theory

Debate is a game that should be governed by a specific and fixed set of rules. Its value is in the act of participating, not in the skills we learn or the education we gain. Their nihilistic refusal to abide by the rules strips the game of its intrinsic value, rendering it meaningless.

Caillois, 1961- French philosopher (Roger, 1961, "Man, Play and Games," pg. 5-12, fg)

Property is exchanged, but no goods are produced. What is more, this exchange affects only the players, and only to the degree that they accept, through a free decision remade at each game, the probability of such transfer. A characteristic of play, in fact, is that it creates no wealth or goods, thus differing from work or art. At the end of the game, all can and must start over again at the same point. Nothing has been harvested or manu- factured, no masterpiece has been created, no capital has ac- crued. Play is an occasion of pure waste: waste of time, energy, ingenuity, skill, and often of money for the purchase of gambling equipment or eventually to pay for the establishment. As for the professionals—the boxers, cyclists, jockeys, or actors who earn their living in the ring, track, or hippodrome or on the stage, and who must think in terms of prize, salary, or title—it is clear that they are not players but workers. When they play, it is at some other game. There is also no doubt that play must be defined as a free and voluntary activity, a source of joy and amusement. A game which one would be forced to play would at once cease being play. It would become constraint, drudgery from which one would strive to be freed. As an obligation or simply an order, it would lose one of its basic characteristics: the fact that the player devotes himself spontaneously to the game, of his free will and for his pleasure, each time completely free to choose retreat, silence, meditation, idle solitude, or creative activity. From this is derived Valery's proposed definition of play: it occurs when "I'ennui peut delier ce que Ventrain avait lie"2 It happens only when the players have a desire to play, and play the most absorbing, exhausting game in order to find diversion, escape from responsibility and routine. Finally and above all, it is necessary that they be free to leave whenever they please, by saying: "I am not playing any more." In effect, play is essentially a separate occupation, carefully isolated from the rest of life, and generally is engaged in with precise limits of time and place. There is place for play: as needs dictate, the space for hopscotch, the board for checkers or chess, the stadium, the racetrack, the list, the ring, the stage, the arena, etc. Nothing that takes place outside this ideal frontier is rele- vant. To leave the enclosure by mistake, accident, or necessity, to send the ball out of bounds, may disqualify or entail a penalty. The game must be taken back within the agreed boundaries. The same is true for time: the game starts and ends at a given signal. Its duration is often fixed in advance. It is improper to abandon or interrupt the game without a major reason (in children's games, crying "I give up," for example). If there is occasion to do so, the game is prolonged, by agreement between the contestants or by decision of an umpire. In every case, the game's domain is therefore a restricted, closed, protected universe: a pure space. The confused and intricate laws of ordinary life are replaced, in this fixed space and for this given time, by precise, arbitrary, unexceptionable rules that must be accepted as such and that govern the correct playing of the game. If the cheat violates the rules, he at least pretends to respect them. He does not discuss them: he takes advantage of the other players' loyalty to the rules. From this point of view, one must agree with the writers who have stressed the fact that the cheat's dishonesty does not destroy the game. **The game is ruined by the nihilist who denounces the rules as absurd and conventional**, who refuses to play because the game is meaningless. His arguments are irrefutable. **The game has no other but an intrinsic meaning.** That is why its rules are imperative and absolute, beyond discussion. There is no reason for their being as they are, rather than other- wise. Whoever does not accept them as such must deem them manifest folly. One plays only if and when one wishes to. In this sense, play is free activity. It is also uncertain activity. Doubt must remain until the end, and hinges upon the denouement. In a card game, when the outcome is no longer in doubt, play stops and the players lay down their hands. In a lottery or in roulette, money is placed on a number which may or may not win. In a sports contest, the powers of the contestants must be equated, so that each may have a chance until the end. Every game of skill, by definition, involves the risk for the player of missing his stroke, and the threat of defeat, without which the game would no longer be pleasing. In fact, the game is no longer pleasing to one who, because he is too well trained or skillful, wins effortlessly and infallibly. An outcome known in advance, with no possibility of error or surprise, clearly leading to an inescapable result, is incompatible with the nature of play. Constant and unpredictable definitions of the situation are necessary, such as are

produced by each attack or counterattack in fencing or football, in each return of the tennis ball, or in chess, each time one of the players moves a piece. The game consists of the need to find or continue at once a response which is free within the limits set by the rules. This latitude of the player, this margin accorded to his action is essential to the game and partly explains the pleasure which it excites. It is equally accountable for the remarkable and mean- ingful uses of the term "play," such as are reflected in such ex- pressions as the playing of a performer or the play of a gear, to designate in the one case the personal style of an interpreter, in the other the range of movement of the parts of a machine. Many games do not imply rules. No fixed or rigid rules exist for playing with dolls, for playing soldiers, cops and robbers, horses, locomotives, and airplanes—games, in general, which presuppose free improvisation, and the chief attraction of which lies in the pleasure of playing a role, of acting as if one were someone or something else, a machine for example. Despite the assertion's paradoxical character, I will state that in this instance the fiction, the sentiment of as if replaces and performs the same function as do rules. Rules themselves create fictions. The one who plays chess, prisoner's base, polo, or baccara, by the very fact of complying with their respective rules, is separated from real life where there is no activity that literally corresponds to any of these games. That is why chess, prisoner's base, polo, and baccara are played for real. As if is not necessary. On the contrary, each time that play consists in imitating life, the player on the one hand lacks knowledge of how to invent and follow rules that do not exist in reality, and on the other hand the game is accompanied by the knowledge that the required behavior is pretense, or simple mimicry. This awareness of the basic unreality of the assumed behavior is separate from real life and from the arbitrary legislation that defines other games. The equivalence is so precise that the one who breaks up a game, the one who denounces the absurdity of the rules, now becomes the one who breaks the spell, who brutally refuses to acquiesce in the proposed illusion, who reminds the boy that he is not really a detective, pirate, horse, or submarine, or reminds the little girl that she is not rocking a real baby or serving a real meal to real ladies on her miniature dishes. Thus games are not ruled and make-believe. Rather, they are ruled or make-believe. It is to the point that if a game with rules seems in certain circumstances like a serious activity and is be yond one unfamiliar with the rules, i.e. if it seems to him like real life, this game can at once provide the framework for a diverting make-believe for the confused and curious layman. One easily can conceive of children, in order to imitate adults, blindly manipulating real or imaginary pieces on an imaginary chessboard, and by pleasant example, playing at "playing chess." This discussion, intended to define the nature and the largest common denominator of all games, has at the same time the advantage of placing their diversity in relief and enlarging very meaningfully the universe ordinarily explored when games are studied. In particular, these remarks tend to add two new domains to this universe: that of wagers and games of chance, and that of mimicry and interpretation. Yet there remain a number of games and entertainments that still have imperfectly defined characteristics— for example, kite-flying and top-spin ning, puzzles such as crossword puzzles, the game of patience, horsemanship, seesaws, and certain carnival attractions. It will be necessary to return to this problem. But for the present, the preceding analysis permits play to be defined as an activity which is essentially: 1. Free: in which playing is not obligatory; if it were, it would at once lose its attractive and joyous quality as diversion; 2. Separate: circumscribed within limits of space and time, defined and fixed in advance; 3. Uncertain: the course of which cannot be determined, nor the result attained beforehand, and some latitude for innovations being left to the player's initiative; 4. Unproductive: creating neither goods, nor wealth, nor new elements of any kind; and, except for the exchange of property among the players, ending in a situation identical to that prevail ing at the beginning of the game; 5. Governed by rules: under conventions that suspend ordi nary laws, and for the moment establish new legislation, which alone counts; 6. Make-believe: accompanied by a special awareness of a second reality or of a free unreality, as against real life. These diverse qualities are purely formal. They do not pre judge the content of games. Also, the fact that the two last qualities—rules and make-believe—may be related, shows that the intimate nature of the facts that they seek to define implies, perhaps requires, that the latter in their turn be subdivided. This would attempt to take account not of the qualities that are opposed to reality, but of those that are clustered in groups of games with unique, irreducible characteristics. The multitude and infinite variety of games at first causes one to despair of discovering a principle of classification capable of subsuming them under a small number of well-defined categories. Games also possess so many different characteristics that many approaches are possible. Cur rent usage sufficiently demonstrates the degree of hesitance and uncertainty: indeed, several classifications are employed con currently. To oppose card games to games of skill, or to oppose parlor games to those played in a stadium is meaningless. In effect, the implement used in the game is chosen as a classificatory instrument in the one case; in the other, the qualifications required; in a third the number of players and the atmosphere of the game, and lastly the place in which the contest is waged. An additional over-all complication is that the same game can be played alone or with others. A particular game may require several skills simultaneously, or none. Very different games can be played in the same place. Merry- go-rounds and the diabolo are both open-air amusements. But the child who passively enjoys the pleasure of riding by means of the movement of the carousel is not in the same state of mind as the one who tries as best he can to correctly whirl his diabolo. On the other hand, many games are played without implements or accessories. Also, the same implement can fulfill different functions, depending on the game played. Marbles are generally the equipment for a game of skill, but one of the players can try to guess whether the marbles held in his opponent's hand are an odd or even number. They thus become part of a game of chance. This last expression must be clarified. For one thing, it alludes to the fundamental characteristic of a very special kind of game. Whether it be a bet, lottery, roulette, or baccara, it is clear that the player's attitude is the same. He does nothing, he merely awaits the outcome. The boxer, the runner, and the player of chess or hopscotch, on the contrary, work as hard as they can to win. It matters little that some games are athletic and others intellectual. The player's attitude is the same: he tries to vanquish a rival operating under

the same conditions as himself. It would thus appear justified to contrast games of chance with competitive games. Above all, it becomes tempting to investigate the possibility of discovering other attitudes, no less fundamental, so that the categories for a systematic classification of games can eventually be provided. After examining different possibilities, I am proposing a di vision into four main rubrics, depending upon whether, in the games under consideration, the role of competition, chance, simulation, or vertigo is dominant. I call these agon, alea, mimicry, and ilinx, respectively. All four indeed belong to the domain of play. One plays football, billiards, or chess (agon); roulette or a lottery (alea) ; pirate, Nero, or Hamlet (mimicry) ; or one produces in oneself, by a rapid whirling or falling movement, a state of dizziness and disorder (ilinx). Even these designations do not cover the entire universe of play. It is divided into quadrants, each governed by an original principle. Each section contains games of the same kind. But inside each section, the different games are arranged in a rank order of progression. They can also be placed on a continuum between two opposite poles. At one extreme an almost indivisible principle, common to diversion, turbulence, free improvisation, and carefree gaiety is dominant. It manifests a kind of uncontrolled fantasy that can be designated by the term paidia. At the opposite extreme, this frolicsome and impulsive exuberance is almost entirely absorbed or disciplined by a complementary, and in some respects inverse, tendency to its anarchic and capricious nature: there is a growing tendency to bind it with arbitrary, imperative, and purposely tedious conventions, to oppose it still more by ceaselessly practicing the most embarrassing chicanery upon it, in order to make it more uncertain of attaining its desired effect. This latter principle is completely impractical, even though it requires an ever greater amount of effort, patience, skill, or ingenuity. I call this second component ludus.

Human nature is geared toward brutality, domination, and conflict-- playing games governed by strict rules changes our culture and helps us overcome our evil nature-- their abandonment of rules and order causes endless warfare

Caillois, 1961- French philosopher (Roger, 1961, "Man, Play and Games," pg. 53-58, fg)

As for ludus and paidia, which are not categories of play but ways of playing, they pass into ordinary life as invariable opposites, e.g. the preference for cacaphony over a symphony, scribbling over the wise application of the laws of perspective. Their continuous opposition arises from the fact that a concerted enterprise, in which various expendable resources are well utilized, has nothing in common with purely disordered movement for the sake of paroxysm. What we set out to analyze was the corruption of the principles of play, or preferably, their free expansion without check or convention. It was shown that such corruption is produced in identical ways. It entails consequences which seem to be inordinately serious. Madness or intoxication may be sanctions that are disproportionate to the simple overflow of one of the play instincts out of the domain in which it can spread without irreparable harm. In contrast, the superstitions engendered by deviation from alea seem benign. Even more, **when the spirit of competition freed from rules of equilibrium** and loyalty **is added to unchecked ambition, it seems to be profitable for the daring one who is abandoned to it.** Moreover, the temptation to guide one's behavior by resort to remote powers and magic symbols in automatically applying a system of imaginary correspondences does not aid man to exploit his basic abilities more efficiently. He becomes fatalistic. He becomes incapable of deep appreciation of relationships between phenomena. Perseverance and trying to succeed despite unfavorable circumstances are discouraged. Transposed to reality, the only goal of agon is success. The rules of courteous rivalry are forgotten and scorned. They seem merely irksome and hypocritical conventions. Implacable competition becomes the rule. Winning even justifies foul blows. If the individual remains inhibited by fear of the law or public opinion, it nonetheless seems permissible, if not meritorious, for nations to wage unlimited ruthless warfare. Various restrictions on violence fall into disuse. Operations are no longer limited to frontier provinces, strongholds, and military objectives. They are no longer conducted according to a strategy that once made war itself resemble a game. War is far removed from the tournament or duel, i.e. from regulated combat in an enclosure, and now finds its fulfillment in massive destruction and the massacre of entire populations. Any corruption of the principles of play means the abandonment of those precarious and doubtful conventions that it is always permissible, if not profitable, to deny, but the arduous adoption of which is a milestone in the development of civilization. If the principles of play in effect

correspond to powerful instincts (competition, chance, simulation, vertigo), it is readily understood that they can be positively and creatively gratified only under ideal and circumscribed conditions, which in every case prevail in the rules of play. Left to themselves, destructive and frantic as are all instincts, these basic impulses can hardly lead to any but disastrous consequences. **Games discipline instincts and institutionalize them.** For the time that they afford formal and limited satisfaction, they educate, enrich, and immunize the mind against their virulence. At the same time, **they** are made fit to **contribute** usefully **to the** enrichment and the **establishment of various patterns of culture.** For a long time the study of games has been scarcely more than the history of games. Attention has been focused upon the equipment used in games more than on their nature, characteristics, laws, instinctive basis, or the type of satisfaction that they provide. They have generally been regarded as simple and insignificant pastimes for children. There was no thought of attributing the slightest cultural value to them. Researches undertaken on the origin of games and toys merely confirm this first impression that playthings are mere gadgets and games are diverting and unimportant activities better left to children when adults have found something better to do. Thus, weapons fallen into disuse become toys—bows, shields, pea-shooters, and slingshots. The cup-and-ball and top originally were magical devices. A number of other games are equally based upon lost beliefs or reproduce in a vacuum rites that are no longer significant. Roundelays and counting-out rhymes also seem to be ancient incantations now obsolete. "In play, all is lost," is the conclusion to which the reader of Hirm, Groos, Lady Gomme, Carrington Bolton, and so many others is l e d . 22 Huizinga, however, in his key work Homo Ludens, published in 1938, defends the very opposite thesis, that culture is derived from play. Play is simultaneously liberty and invention, fantasy and discipline. **All important cultural manifestations are based upon it.** It creates and sustains the spirit of inquiry, **respect for rules**, and detachment. In some respects the rules of law, prosody, counterpoint, perspective, stagecraft, liturgy, military tactics, and debate are rules of play. **They constitute conventions that must be respected. Their** subtle **interrelationships are the basis for civilization.** In concluding Homo Ludens, one asks one self, "What are the social consequences of play?" The two theses are almost entirely contradictory. The only purpose in presenting them is perhaps to choose between them or to better articulate them. It must be admitted that they are not easily reconciled. In one case games are systematically viewed as a kind of degradation of adult activities that are trans formed into meaningless distractions when they are no longer taken seriously. In the other case, the spirit of play is the source of the fertile conventions that permit the evolution of culture. It stimulates ingenuity, refinement, and invention. At the same time it teaches loyalty in the face of the adversary and illustrates competition in which rivalry does not survive the encounter. **To the degree that he is influenced by play, man can check the** monotony, determinism, and **brutality of nature. He learns to** construct order, conceive economy, and **establish equity.**

1nc – portable skills

Critical thinking and decision making skills are at an all time now – kids are in desperate need of some plantexts

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

The need for improving student critical thinking and decision-making skills is urgent. There is a clear need for decision makers who can address complex problems and find ethical, feasible solutions. We cannot solve those problems if we do not produce skilled decisionmakers, we cannot produce skilled decision-makers without effective approaches to teaching decision-making, and we cannot even assess our current approaches without knowing what material we currently teach. Research has established that argumentation and debate instruction is an effective method for improving critical thinking ability in students. Despite this clear relationship, there is room for improvement. William Keith (2007) argued that despite the ongoing nature and mixed results of this struggle for improvement, there is room for hope: The apparent mismatch between popular government and the scale and complexity of modern life…continues to confound us, and every other modern democracy as well. We certainly do value our democratic ideals, but humans are fallible, and so is their decision making. John Dewey saw human thought and life as a continuous process of making choices to solve problems, whether they are smaller, more local problems (what to have for dinner) or larger problems (the best response to global warming). At each level, human beings' ongoing attempts to perfect their decisions seem to meet with mixed success, yet their hope persists that decision making can be improved. (p. 2) Yet, our continued improvement should not be something that we take for granted. In Chapter 1, I made the case that changes in government policy are not a substitute for public education to increase critical thinking and decision-making. Despite this orientation, it is clear to me that argumentation and debate instruction relies on support from school and government officials. High school argument classes have been cut to facilitate more attention to standardized tests (Matthews, 1997). High school and college debate programs are often among the first targets of budget cuts (Blake, 1994; Sowa-Jamrock, 1994; Summerfield, 1997) and even when funds are available, debate teams seldom receive the funding or attention given to other programs, especially sports (Lombard, 1997; Lowe, 1997). None of the recommendations I propose mean anything if debate programs and/or argumentation classes cease to exist. While the primary audience of this monograph is argumentation and debate instructors, I hope some of the material herein will help make the case to high school principals, school boards, department chairs, and other university administrators that argumentation and debate education is a valuable investment. Paul and Willsen (1995) concluded that the case for improving critical thinking and decisionmaking skills should continue to grow stronger: What we can be sure of is that the persuasiveness of the argument for critical thinking will only grow year by year, day by day—for the logic of the argument is simply the only prudent response to the accelerating change, to the increasing complexity of our world. No gimmick, no crafty substitute, can be found for the cultivation of quality thinking. The quality of our lives can only become more and more obviously the product of the quality of the thinking we use to create them. (p. 16)

1nc – roleplaying

Roleplaying games like debate foment awareness about actual problems and act as a stepping stone for our actions in the real world – nobody thinks that debate's simulation is real

Goodman, 95 – Professor Emeritus, School of Education, University of Michigan (Frederick L., "Practice in Theory," Simulation and Gaming, June, 184-185, http://sag.sagepub.com.proxy.lib.umich.edu/content/26/2/178.full.pdf)//SY

Simulation Games Those who deal with simulations continue to focus attention on the pressing question of verisimilitude ("the quality of appearing to be true or real" according to the American Heritage Dictionary). Consider the case of the University of Michigan's Interactive Communications & Simulations (ICS) computer-conference-based Arab-Israeli Conflict simulation that has, for a decade, connected secondary school students around the world to play the roles of five major political leaders in each of a dozen or so countries involved in this struggle in the Middle East. While a teaching assistant in 1974, Edgar Taylor initiated the Arab-Israeli Conflict exercise in a political science course at the University of Michigan. Leonard Suransky arrived at Michigan shortly thereafter and worked closely with Edgar on the development of the university version of the game. Edgar also worked with Bob Parnes, who in the latter half of the 1970s was designing CONFER, the computer-conferencing system that allowed us to extend the Arab-Israeli Conflict simulation to secondary schools around the world. Bob by then was also a veteran gamer, having worked very closely with me on the development of MARBLES. In the ICS, college students serve as mentors to the younger students to see to it that they, while playing their characters, stay in role with as much integrity as possible. No single economic or political theory lies at the heart of the exercise; there is no model that drives the game and determines the consequences of the players' actions. The college student mentors meet in weekly seminars to hammer out the advice they might give to the participants to keep their performance in line with anything that they know about that age-old conflict. It is, of course, still practice in theory because **no one can be sure that what the students are doing would actually match with the world** outside the game. However, because the actions taken and the consequences of those actions within the exercise are actively negotiated between the players and the mentors, the tentative and theoretical nature of the entire undertaking is conspicuous to the participants—whereas the **action is detailed, exciting and absorbing**. That, I submit, is an important step in the right direction. If one is going to build a simulation game around a model, in other words, around a specific theory, then the burden falls squarely on the designer to vouch for the validity of the theory. As economists and political scientists get better and better at modeling slices of their worlds, we may expect better and better games based on these models to appear. In the meantime, another approach may be taken. Simulation games can be turned around in the sense that participants can be switched from the role of players to the role of designers. This was the approach used in the line of the POLICY NEGOTIATIONS games that were developed at Michigan and elsewhere and in the extension of POLICY NEGOTIATIONS known as THE FLOATING CRAP GAME (Goodman, 1981). When this is done, the connections that the participants claim to see between various parts of the world that they themselves are modeling are rendered explicit for review, discussion, and revision. There is little reason to believe that actions that people take while playing such games would be the ones they would take or recommend taking in the real world. Neverthe-less, if people are designing a game with an eye to expressing their best generalizations about something, formulating rules that purport to capture the essence of some phenomenon as they have come to understand it, **there are good reasons to believe they are behaving in a way that they would behave outside the context of the game**. Put another way, they are practicing making theoretical statements; they are engaging in practice in theory. This twist on the meaning of the phrase "practice in theory" is discussed further in the next section.

1nc – SSD

Switch side debate creates social inclusion and democratic contestation – it leads to better info processing and a more well prepared opponent

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

After surveying literature dating back to the policy debate controversies of the 1950s and 1960s, Harrigan (2008) weighs the arguments for switch-side debate against the potential shortcomings associating with losing a sense of one's own personal convictions and/or the loss of intellectual certitude. Harrigan (2008) fuses these two concerns together in his answer. Submitting arguments for a debate surmounts to their dissection – exposing arguments to their assumptions, representations, framing, inferences, and consequences is the ultimate intellectual rigor of any given argument. "Switching sides grounds belief in reasonable reflexive thinking; it teaches that decisions should not be rendered until all positions and possible consequences have been considered in a reasoned manner" (Harrigan, 2008, p. 47). While debaters do not speak from a personal standpoint, they air arguments for critical consumption which may impact later personal advocacy. A paradox emerges; it is this distance from the argument that lays the foundation for personal advocacy. "…[S]ound convictions can only be truly generated by the reflexive thinking spurred by debating both sides" (Harrigan, 2008, p. 46). Furthermore, promoting argumentative pluralism offers hope for developing empathy, acceptance, and understanding. Acknowledging possible truths from a variety of perspectives lends credibility to belief in individual reason and the kernels of truth rooted in many perspectives. "[A]rgumentative pluralism holds great promise for a politics based on understanding and accommodation that runs contrary to the dominant forces of economic, political, and social exclusion. Pluralism requires that individuals acknowledge opposing beliefs and arguments by forcing an understanding that personal convictions are not universal… [I]nstead of being personally invested in the truth and general acceptance of a position, debaters use arguments instrumentally, as tools, and as a pedagogical devices in the search for larger truths" (Harrigan, 2008, p. 51-52). Taken together, switch-side debating at its best holds immense potential not only for argumentative critical thinking but also for the creation of critical personal advocacies and social forces encouraging social inclusion and democracy. Switch-side debating has been taken to heart by many in the debate community as well as attracting attention at the top levels of government. The 'real-world', a world conceived as being occupied by persons no longer engaged in debating contests, appears to be paying close attention to the benefits to switch-side debates. Mitchell (2010) conjures the up the ancient work of Protagoras and what he "…called dissoi logoi – the practice of airing multiple sides of vexing questions for the purpose of stimulating critical thinking" (Mitchell, 2010, p. 97-98). The US Intelligence Community and the Environmental Protection Agency are two real-world examples of organizations attempting to thwart the dangers of group-think. By encouraging switch-side debate within their organization, their goal is "…to untangle disparate threads of knotty technoscientific issues, in part by integrating structured debating exercises into institutional decision-making processes" (Mitchell, 2010, p. 95). By training persons within their organization in switch-side debate or by bringing in trained policy debaters to debate for their organization, multiple issues are aired which might not otherwise be given space for consideration. Switch-side debate "…requires more than the sheer information processing power; it demands forms of communicative dexterity that enable translation of ideas across differences and facilitate cooperative work by interlocutors from heterogeneous backgrounds" (Mitchell, 2010, p. 100). This deliberation often checks against dangerous institutional groupthink and counters traditional formulaic decision-making process. Switch-side debating offers a forum for the relatively safe exploration of a variety of issues and invites arguments from multiple sources of

authority. This practice may prove to be a bulwark against insular and isolated institutional or partisan practices. Citing Munksgaard and Pfister, Mitchell demonstrates the unique perspective debaters may bring to the table. 'Having a public debater argue against their convictions, or confess their indecision on a subject and subsequent embrace of argument as a way to seek clarity, could shake up the prevailing view of debate as a war of words. Public uptake of the possibility of switchside debate may help lessen the polarization of issues inherent in prevailing debate formats because students are no longer seen as wedded to their arguments. This could transform public debate from a tussle between advocates, with each public debater trying to convince the audience in a Manichean struggle about the truth of their side, to a more inviting exchange focused on the content of the other's argumentation and the process of deliberative exchange' (Mitchell citing Munksgaard and Pfister, 2010, p. 110). Basing debates on a predictable resolution invites discussion centered on argument and permits continuously adapting multiple perspectives in and out of a student's world-view.

1nc – Topic Education

Meaningful debate by the public about surveillance policy is critical to stop the unchecked expansion of state power-- it's key to dissident movements and allows democracy to flourish

Goold, 2009- Fellow in Law at Somerville College (Benjamin J. Goold, 2009, "SURVEILLANCE AND THE POLITICAL VALUE OF PRIVACY," published in the Amsterdam Law Forum, accessed: 5/9/15, fg)

Of all the rights typically enshrined in domestic and international human rights instruments, privacy is perhaps one of the most problematic.1 Although few people would suggest that privacy does not deserve to be protected as a right, many nonetheless find it difficult to explain why it should enjoy the same status as the right to free speech or freedom of religion. As a consequence, while academic lawyers, sociologists, and philosophers continue to engage in increasingly rarefied debates about the meaning and limits of privacy, for the public at large it remains one of the most difficult rights to understand. Given that the last twenty years has seen a profound expansion in the apparatus of surveillance in Europe and North America,2 this continuing disjuncture between the level of academic and public interest in privacy is deeply worrying. A public that is unable to understand why privacy is important – **or which lacks the conceptual tools necessary to engage in meaningful debates about its value** – is likely to be particularly susceptible to arguments that privacy should be curtailed. For evidence of this, one only has to reflect on how quickly advocates of increased surveillance invoke the mantra that 'those who have nothing to hide have nothing to fear.' Despite being deeply flawed, it is an argument that has proved to be remarkably effective in countries like Britain and the United States, and one that civil libertarians and privacy advocates have had considerable difficulty countering. Faced with politicians repeatedly reminding them of the grave threat posed by criminals and terrorists, it is hardly surprising that the public is attracted to the supposed benefits of surveillance, and left cold by arguments rooted in the need to 'preserve individual autonomy' or 'protect our dignity.' In part, the problem here is one of language. Explaining why privacy is important in terms that a lay member of the public is likely to engage with is difficult, mostly because privacy is an inherently complex concept. Although it is possible to talk of privacy as simply the right to be 'let alone',3 its status as a right derives primarily from its relationship to ideas of autonomy and self-determination. Privacy is valuable because it is necessary for the proper development of the self, the establishment and control of personal identity, and the maintenance of individual dignity.4 Without privacy, it not only becomes harder to form valuable social relationships – relationships based on exclusivity, intimacy, and the sharing of personal information – but also to maintain a variety of social roles and identities. Privacy deserves to be protected as a right because we need it in order to live rich, fulfilling lives, lives where we can simultaneously play the role of friend, colleague, parent and citizen without having the boundaries between these different and often conflicting identities breached without our consent. Because, however, none of these ideas are easily reduced to newspaper sound bites or capable of being adequately conveyed in a televised debate, they are not immediately familiar to the public. If asked 'why is privacy important', the average person on the street is unlikely to suddenly appeal to notions of identity and autonomy, and as such may struggle to explain why privacy deserves to be protected at all. It is for this reason that many privacy advocates have continued to evoke the nightmarish imagery of George Orwell's '1984' in their efforts to get the public to take privacy seriously. Aside from the fact that such imagery is both familiar and dramatic, it has the advantage of being sufficiently extreme to scare even the most complacent individual into at least thinking about the possible implications of technologies like CCTV and computerised databases. Yet it can be argued that even this rhetorical play is beginning to lose some of its power. As 1984 slips further into the past and the totalitarian future imagined by Orwell continues to remain a fiction rather than a reality, there are signs that such warnings are beginning to fall on deaf ears. Although surveillance has become ubiquitous, it has also become increasingly decentralised and ambiguous. In a world of online shopping, social networking websites, and GPS enabled smart phones, it is hard to point to a single Big Brother who fully embodies our fears about the loss of privacy and can serve as a focus for acts of resistance. As important as the problem of language may be, however, there is another reason why privacy has failed to capture the public imagination. Although academics and civil liberties groups have been right to draw attention to the importance of privacy to the individual, it can be argued that they have done so at the expense of developing a fully realised account of the political value of privacy. While it is true that privacy is important for the exercise of personal autonomy and the maintenance of dignity, we also need a measure of privacy in order to enjoy a range of other, more obviously political rights. It is hard to imagine, for example, being able to enjoy freedom of expression, freedom of association, or freedom of religion without an accompanying right to privacy. Indeed, one of the greatest dangers of unfettered mass surveillance is the potential chilling effect on political discourse, and on the ability of groups to express their views through protest and other forms of peaceful

civil action. By ensuring that there is a limit on what the state can reasonably expect to know about us, privacy not only helps to protect individual autonomy, but also ensures that we are free to use that autonomy in the exercise of other fundamental rights. Looked at from this perspective, privacy becomes both easier to understand and defend. **By focusing on the political** rather than the individual **dimension of privacy, we** not only free ourselves from complex discussions of individual autonomy and dignity, but also **ensure** that **the relationship between the individual and the state remains at the heart of any debate about** privacy and **surveillance.** Without privacy, it is much harder for dissent to flourish or for democracy to remain healthy and robust. Equally, **without privacy the individual is always at the mercy of the state,** forced to explain why the government should not know something rather than being in the position to demand why questions are being asked in the first place. Emphasising this dimension of privacy also has the advantage of focusing the public's attention on the political dangers of surveillance, dangers that can be explained in terms that are familiar and easily understandable, even to those who have no great interest in privacy per se. We should resist the spread of surveillance not because we have something to hide, but because it is indicative of an expansion of state power. While individuals might not be concerned about the loss of autonomy that comes from being subjected to more and more state scrutiny, it is unlikely that many would be comfortable with the suggestion that more surveillance inevitably brings with it more bureaucracy and bigger, more intrusive government. Of course, none of this should be taken as rejection of individualistic conceptions of privacy. Clearly, privacy is first and foremost a personal concern, and deserves to be treated as an individual right. Yet if we are to stem the growing tide of surveillance, civil libertarians and privacy advocates need to broaden their campaign of public education and do more to emphasise the political value of privacy. In particular, they must constantly remind government and the general public that in order for democracy to flourish, individuals must feel free to choose whom they associate with, whom they speak to, and who hears what they say, safe in the knowledge that such choices are free from routine scrutiny by the state. While it is true that privacy is one of the most difficult rights to define and appreciate, it is also one of the most important. Without privacy, many of the other rights that individuals and societies regard as fundamental are left even more vulnerable to the forces of right-scepticism, the demands of security, and the authoritarian instincts of over-zealous governments. If for no other reason, this should be enough for us to be worried about the spread of surveillance, and for the public to reject any suggestion that only those who have something to hide have anything to fear from technologies such as CCTV, DNA profiling, and data mining. Regardless of whether we have something to hide or not, in a world in which the possession and control of information is increasingly the basis of economic and political power, we should all be demanding more privacy – not just to protect ourselves as individuals, but also to ensure that everyone is able to enjoy the rights and freedoms we have come to associate with life in modern, liberal democratic states.

We need to include people in discussions of surveillance – the impact is a disenfranchised public, the security state is empowered when we don't know about it

Trohnus 2010 (Havard, prof at Norwegian university of science and technology, security cynicism: travelers experience of security in encountering airport security, http://www.cs.uu.nl/groups/OI/downloads/Weeghel%20paper.pdf, LB)

Democracy is, somewhat simplified put, a political system where people participate in influencing the decisions that affect them (Ringen, 2007). With its focus on participatory design (PD), the Scandinavian tradition of computing research has focused on participation to achieve greater working life democracy (Bjerknes and Bratteteig, 1995). It is fruitful to draw upon this body of research to outline some societal implications of ICT use in airport security, as well as to discuss possible ways of addressing security cynicism. Howcroft and Wilson (2003) argue that 'pseudo participation' has become a problem for realizing PD's democratic potential. Pseudo participation is the situation where users are excluded from key decisionmaking processes through tokenistic participation. Participation is symbolic, serving the purpose of legitimizing decisions that have already been made (Robey and Markus, 1984). Users are likely to reveal such managerial insincerity. As disillusionment from pseudo participation settles within the organization, users are less likely to engage with future design processes (Howcroft and Wilson, 2003). Over time, pseudo participation may breed a form of organizational apathy, the sentiment that they have no real influence. Like end-users' disillusionment with pseudo participation, security cynicism breeds a form of apathy.

This apathy may become a democratic problem. Like pseudo participation, the result of security cynicism is that people are less likely to engage with political issues when they experience having no real influence on the decision-making process. The danger is therefore that people become apathetic to important issues related to ICT use in airport security because they have no real influence on the decisions being made. ICT use in airport security raises issues about privacy and of how to handle sensitive passenger data used for screening. While important in themselves, these are related to issues such as social exclusion and increased surveillance (Lyon, 2006). A societal implication is therefore that security cynicism may contribute towards a lack of broader popular engagement with technology-related issues that are relevant for society at large. This is problematic, as these issues are far too important to be left in the hands of a limited group of technological experts. Having outlined a possible societal implication of ICT use in airport security, we need to ask ourselves how to amend the situation? It is not so that domestic and international aviation authorities are unaware that travelers lack confidence in airport security measures. On the contrary. The representatives of domestic aviation authorities we have spoken with acknowledge the problem. They typically ascribe this to travelers' lack of knowledge about how secure airports really are. Based on our own experience from a guided tour of airport security facilities, we acknowledge that we as ordinary travelers have limited knowledge of the extent of airport security.

Deliberation

Solves elitism

Deliberation solves elitism

Druckman 2003 (james, framing and deliberation: how citizens conversations limit elite influence, amjps, vol 47 no4, LB)

We derive our hypotheses from two distinct, albeit related, research programs: psychologically oriented scholarship on interpersonal conversations, and framing and theoretical work on deliberation. We begin with the former by drawing on three empirical findings. First, we build on research demonstrating that framing effects can occur via interpersonal discussions (Gamson 1992; Simon and Xenos 2000; Walsh 2001, 2003). For example, Walsh (2001, 2003) shows that people embedded in discussion networks (e.g., in voluntary associations) base various policy attitudes on their social characteristics (e.g., race, income) to a greater extent than those not in the networks. The critical point is that the frames or considerations on which people base their political opinions need not come from elites, but can in fact come from conversations with others. Second, research on interpersonal communication shows that the composition of the discussion group affects the group's impact; of particular importance is the extent to which the group includes people with opposing views (i.e., a cross-cutting group) (see, e.g., Mutz and Martin 2001; Mutz 2002a, 2002b). For example, Mutz (2002a) finds that exposure to different viewpoints in cross-cutting groups causes individuals to have greater awareness of rationales for alternative perspectives (also see Huckfeldt, Morehouse, and Osborn n.d.).4 This can result in changed attitudes or in the strengthening of existing attitudes depending on how one cognitively responds to the contrary information (Sieck and Yates 1997; Petty and Wegener 1998, 332-3). In contrast, relatively homogenous groups lead to group polarization where "an initial tendency of individual group members toward a given direction is enhanced following group discussion" (Isenberg 1986, 1141; also see Paese, Bieser, and Tubbs 1993; Mendelberg 2002, 159). Third, as mentioned, how people treat contrary information they receive from relatively cross-cutting groups 3Iti s beyond ours concept explore their internal dynamics of discussions such as the impact of gender. 4We generalize Mutz's(2002a)work on the composition of discussants to groups. 730 FRAMING AND DELIBERATION depends on how they cognitively respond. Sniderman and Theriault (n.d.) provide insight into how people respond in the context of framing effects. Sniderman and Theriault exposed survey respondents either to one of two frames (e.g., a free-speech or public-safety frame for a hate-group rally) or to both frames. They find a classic framing effect for participants exposed to just one frame (e.g., the free-speech frame causes increased support for the rally). However, they also find that the elite framing effect disappears among participants exposed to both frames; these individuals return to their original (unframed) opinions. This implies that relatively crosscutting conversations, that provide people with rationales for both frames, will result in the muting of the initial elite frame. Similarly, Vinokur and Burnstein (1978) find that when two equal-sized groups with conflicting opinions interact, the groups' opinions converge toward one another (i.e., their initial conflicting opinions disappear; also see Berelson, Lazarsfeld, and McPhee 1954, 120; Cohen 1997; Huckfeldt, Morehouse, and Osborn n.d.). This is depolarization. In sum, the frames on which people base their political opinions not only come from elites but also from interpersonal conversations. When these conversations include mostly common perspectives, we expect polarization-a strengthening of the initial elite frames and thus more extreme opinions. Alternatively, relatively cross-cutting conversations that include a wider variety of views will provide individuals with an understanding of alternative frames resulting in a vitiation of the initial frames, rendering them ineffectual (i.e., depolarization).

K2 conviction

Deliberation solves elitism and creates stronger convictions and opinions

Druckman 2003 (james, framing and deliberation: how citizens conversations limit elite influence, amjps, vol 47 no4, LB)

Finally, what do our results reveal about deliberation and democracy? As discussed, theorists often emphasize the salubrious effects of cross-cutting deliberation (e.g., Mill 1859, 53). Deliberation is said, for example, to increase engagement, tolerance, and justification for individuals' opinions (Mendelberg 2002, 153). Ultimately, opinions formed via deliberation with conflicting perspectives should better capture the "will of the people" by ensuring quality opinions that approximate truth, reasonableness, and rationality (Mill 1859, 23; Dewey 1927, 208; Kinder and Herzog 1993, 349; Benhabib 1996, 71; Bohman 1998, 401; Fishkin 1999, 283; Dryzek 2000, 55; Mendelberg 2002, 180; however, also see, e.g., Sanders 1997). While our deliberative setting may not have been ideal, our mixed discussion results could be construed as showing that deliberation enhances opinion quality it eliminates elite framing influence that some see as akin to manipulation (Zaller 1992,45; Farr 1993; Parenti 1999; Entman and Herbst 2001, 207). In our case, then, deliberation enhances opinion quality if opinions affected by elite frames are indeed of lower quality than unaffected opinions (i.e., since the mixed discussion opinions resemble unaffected control-group opinions). However, we have no basis for assuming relatively higher quality of unaffected opinions, especially since they seem so easily moved by elite frames (Kuklinski et al. 2000, 811). On the flip side, one could argue that deliberation has negative consequences with the framed opinions possessing higher quality (Druckman 2001c); yet, this begs the question of why these opinions also do not last (i.e., our longevity analysis; although is stability even desirable?). A deliberative theorist might argue that the appropriate standard would have been the opinions of participants who deliberated without prior exposure to elite frames. While we agree future work should include this condition, we also recognize the circularity of arguing that deliberative processes enhance opinion quality where opinion quality is defined as the product of deliberation (Bohman 1998).29 In sum, our results accentuate the importance of developing an independent standard by which to evaluate the quality or truthfulness of opinions. While this is certainly challenging, it also is necessary if we are to assess the democratic consequences of elite influence and deliberation.

K2 skills

Having a deliberative model to promote problem solving and conflict mediation is key to generate real social change

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In the last twenty years, democratic theory has undergone a deliberative revolution.-' In what John Dryzek terms the "deliberative turn," many democratic theorists and practitioners have shifted their models of democratic legitimacy to account for "the ability or opportunity to participate in effective deliberation on the part of those subject to collective decisions." This deliberative turn or revolution has been motivated in large part by the need to create complements or alternatives to purely aggregative models of democracy, which reduce democratic decision-making to registering privately formed preferences through majoritarian voting procedures." One of the core commitments of deliberative democratic theory is what might be called the public justification tenet. It states that in order for a political decision to be democratic and legitimate, the views and interests expressed in it must withstand the test of deliberation, wherein each participant publicly justifies his position and preferences to his fellow deliberators." In other words, through the process of discussing and contesting each other's claims, deliberators face the prospect of arriving at qualitatively improved or enlightened collective choices. As a corollary to this tenet, citizens of a deliberative democracy must be capable of changing their own and other citizens' preferences about the issues under discussion; meaning that when subject to the test of public justification the outcomes one prefers are presumed to be negotiable and open to transformation. Even if preferences do not submit to the transformative effects of deliberation, participants may still be more sympathetic to accepting the decision if they feel their voice has been heard. Also, deliberation may constitute a search for right solutions to shared problems (sometimes referred to as its epistemic function) promoting creative inquiry, problem solving and conflict mediation

At: falsifiability

Deliberative benefits are empirical and have proven benefits

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What I am concerned to highlight is not so much democratic theory's deliberative turn as the tum within DDT towards greater emphasis on the application and institutionalization of deliberative theories. As mentioned, Simone Chambers insists that "Deliberative democratic theory has moved beyond the 'theoretical statement' stage and into the 'working theory' stage."" She is not alone. James Bohman similarly claims that DDT "has 'come of age' as a complete theory of democracy rather than simply an ideal of legitimacy."" To clarify, DDT has entered a "working theory stage" or "come of age" in at least two respects: (i_) More deliberative theorists are concerned with the practical implications of their theories, including how to test and verify their feasibility and (ii) many deliberative theorists are exploring how their theories might be institutionalized, for instance, in deliberative forums that involve the public in policymaking and promote civic education. First, deliberative theorists have partnered with empirical researchers to determine how deliberation affects judgment, consensus formation, preference change (and polarization) as well as information gathering. '3 Second, National Issues Forums, citizen assemblies, deliberative polls, consensus conferences, planning cells. citizen juries, study circles and Twenty-First Century Town Meetings are just some of the institutional experiments in deliberative decision-making to emerge through the efforts of scholars and practitioners in the last decade and a half." Another pressing issue that some deliberative democrats confront is how DDT might contribute to the creation of a civic-minded culture-a move that typically requires shifting from a purely theoretical research agenda to one that is more empirically or institutionally oriented." If we, as educators, are to take seriously this turn within DDT (its entrance into "working theory stage" or its "coming of age"), then we ought to teach more than just the theory of deliberative democracy. Indeed, we might take up the challenge of teaching how DDT translates, empirically- and institutionally-speaking, into deliberative practice. The question then becomes: What is the best way to tackle this pedagogical challenge'?

Decisionmaking Skills

Portability

Decisionmaking skills are key to success in all facets of life, no matter what we become as adults – they're the most valuable form of education from debate

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After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition. Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions. Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations. We all make many decisions every day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car, what major to select, what to have for dinner, what candidate to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration? Is the defendant guilty as accused? The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIME magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of "great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs, online networking, YouTube, Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs? The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates. Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized. The executive order establishing California's requirement states: Instruction in critical thinking is designed to achieve an understanding of the relationship of language to logic, which would lead to the ability to analyze, criticize, and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambiguous statements of knowledge or belief. The minimal competence to be expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish

fact from judgment, belief from knowledge, and skills in elementary inductive and deductive processes, including an understanding of the formal and informal fallacies of language and thought. Competency in critical thinking is a prerequisite to participating effectively in human affairs, pursuing higher education, and succeeding in the highly competitive world of business and the professions. Michael Scriven and Richard Paul for the National Council for Excellence in Critical Thinking Instruction argued that the effective critical thinker: ■ raises vital questions and problems, formulating them clearly and precisely; ■ gathers and assesses relevant information, using abstract ideas to interpret it effectively; comes to well-reasoned conclusions and solutions, testing them against relevant criteria and standards; ■ thinks open-mindedly within alternative systems of thought, recognizing and assessing, as need be, their assumptions, implications, and practical consequences; and ■ communicates effectively with others in figuring out solutions to complex problems. They also observed that critical thinking "entails effective communication and problem solving abilities and a commitment to overcome our native egocentrism and sociocentrism."1 Debate as a classroom exercise and as a mode of thinking and behaving uniquely promotes development of each of these skill sets. Since classical times, debate has been one of the best methods of learning and applying the principles of critical thinking. Contemporary research confirms the value of debate. One study concluded: The impact of public communication training on the critical thinking ability of the participants is demonstrably positive. This summary of existing research reaffirms what many ex-debaters and others in forensics, public speaking, mock trial, or argumentation would support: participation improves the thinking of those involved.2 In particular, debate education improves the ability to think critically. In a comprehensive review of the relevant research, Kent Colbert concluded, "The debate–critical thinking literature provides presumptive proof favoring a positive debate–critical thinking relationship."3 Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others. Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job offer, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for our product, or a vote for our favored political candidate. Some people make decisions by flipping a coin. Others act on a whim or respond unconsciously to "hidden persuaders." If the problem is trivial—such as whether to go to a concert or a film—the particular method used is unimportant. For more crucial matters, however, mature adults require a reasoned means of decision making. Decisions should be justified by good reasons based on accurate evidence and valid reasoning.

Steinberg and Freeley

A limited, predictable scope of discussion is key to foster focused deliberation and decisionmaking skills – this doesn't preclude creativity but clearly identifies a controversy to make debates more effective

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Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a fact or value or policy, there is no need for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, **debate cannot produce effective decisions without clear identification of a question** or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. **Vague understanding results in unfocused deliberation and poor decisions**, frustration, and emotional distress, as evidenced by the **failure of the United States Congress to make progress on the immigration debate during the summer of 2007**. Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or, worse, "It's too complicated a

problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime" or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose. Although we now have a general subject, we have not yet stated a problem. It is still **too broad, too loosely worded to promote well-organized argument**. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treaty with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

The decisionmaking skills we gain from debate are key to protecting free speech about societal problems and avoiding failures in judgment that can result in momentous consequences – empirics prove

Steinberg & Freeley, 8 – Professor, Department of Communications, John Carroll University AND Lecturer, School of Communication, University of Miami (Austin J. and David L., "Argumentation and Debate," 8-11, http://staff.uny.ac.id/sites/default/files/pendidikan/Rachmat%20Nurcahyo,%20SS,%20M.A./__Argumentation_and_Debate__Critical_Thinking_for_Reasoned_Decision_Making.pdf)//SY

We need debate both to maintain freedom of speech and to provide a methodology for investigation of and judgment about contemporary problems. As Chaim Perelman, the Belgian philosopher-rhetorician whose works in rhetoric and argumentation are influential in argumentation and debate, pointed out: If we assume it to be possible without recourse to violence to reach agreement on all the problems implied in the employment of the idea of justice we are granting the possibility of formulating an ideal of man and society, valid for all beings endowed with reason and accepted by what we have called elsewhere the universal audience.14 I think that the only discursive methods available to us stem from techniques that are not demonstrative—that is, conclusive and rational in the narrow sense of the term—but from argumentative techniques which are not conclusive but which may tend to demonstrate the reasonable character of the conceptions put forward. It is this recourse to the rational and reasonable for the realization of the ideal of universal communion that characterizes the age-long endeavor of all philosophies in their aspiration for a city of man in which violence may progressively give way to wisdom.15 Here we have touched on the long-standing concern of philosophers and political leaders with debate as an instrument for dealing with society's problems. We can now understand why debate is pervasive. Individuals benefit from knowing the principles of argumentation and debate and from being able to apply these principles in making decisions and influencing the decisions of others. Society benefits if debate is encouraged, because free and open debate protects the rights of individuals and offers the larger society a way of reaching optimal decisions. II. INDIVIDUAL DECISIONS Whenever an individual controls the dimensions of a problem, he or she can solve the problem through a personal decision. For example, if the problem is whether to go to the basketball game tonight, if tickets are not too expensive and if transportation is available, the decision can be made individually. But if a friend's car is needed to get to the game, then that person's decision to furnish the transportation must be obtained. Complex problems, too, are subject to individual decision making. American business offers many examples of small companies that grew into major corporations while still under the individual control of the founder. Some computer companies that began in the 1970s as one-person operations burgeoned into multimillion-dollar corporations with the original inventor still making all the major decisions. And some of the multibillion-dollar leveraged buyouts of the 1980s were put together by daring—some would say greedy—financiers who made the day-to-day and even hour-to-hour decisions individually. When President George H. W. Bush launched Operation Desert Storm, when President Bill Clinton sent troops into Somalia and Haiti and authorized Operation Desert Fox, and when President George W. Bush authorized Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom in Iraq, they each used different methods of decision making, but in each case the ultimate decision was an individual one. In fact, many government decisions can be made only by the president. As Walter Lippmann pointed out, debate is the only satisfactory way the great issues can be decided: A president, whoever he is, has to find a way of understanding the novel and changing issues which he must, under the Constitution, decide. Broadly speaking … the president has two ways of making up his mind. The one is to turn to his subordinates—to his chiefs of staff and his cabinet officers and undersecretaries and the like—and to direct them to argue out the issues and to bring him an agreed decision.… The other way is to sit like a judge at a hearing where the issues to be decided are debated. After he has heard the debate, after he has examined the evidence, after he has heard the debaters cross-examine one another, after he has questioned them himself, he makes his decision.… It is a much harder method in that it subjects the president to the stress of feeling the full impact of conflicting views, and then to the strain of making his decision, fully aware of how momentous it is. But **there is no other satisfactory way by which momentous and complex**

issues can be decided.16 John F. Kennedy used Cabinet sessions and National Security Council meetings to provide debate to illuminate diverse points of view, expose errors, and challenge assumptions before he reached decisions.17 As he gained experience in office, he placed greater emphasis on debate. One historian points out: "One reason for the difference between the Bay of Pigs and the missile crisis was that [the Bay of Pigs] **fiasco instructed Kennedy in the importance of uninhibited debate in advance of major decision."**18 All presidents, to varying degrees, encourage debate among their advisors. We may never be called on to render the final decision on great issues of national policy, but we are constantly concerned with decisions important to ourselves for which debate can be applied in similar ways. That is, this debate may take place in our minds as we weigh the pros and cons of the problem, or we may arrange for others to debate the problem for us. Because we all are increasingly involved in the decisions of the campus, community, and society in general, it is in our intelligent self-interest to reach these decisions through reasoned debate.

Decisionmaking skills we get from policy debate are key to effective participation in democracy and leadership skills in all areas

Steinberg & Freeley, 8 – Professor, Department of Communications, John Carroll University AND Lecturer, School of Communication, University of Miami (Austin J. and David L., "Argumentation and Debate," 28-29, http://staff.uny.ac.id/sites/default/files/pendidikan/Rachmat%20Nurcahyo,%20SS,%20M.A./__Argumentation_and_Debate__Critical_Thinking_for_Reasoned_Decision_Making.pdf)//SY

1. Debate Provides Preparation for Effective Participation in a Democratic Society. Debate is an inherent condition of a democratic society. Our Constitution provides for freedom of speech. Our legislatures, our courts, and most of our private organizations conduct their business through the medium of debate. Because debate is so widespread at decision-making levels, a **citizen's ability to vote intelligently or to use his or her right of free speech effectively is limited without knowledge of debate**. As we know from history, freedoms unused or used ineffectively are soon lost. Citizens educated in debate can hope to be empowered to participate in the shaping of their world. 2. Debate Offers Preparation for Leadership. The ultimate position of leadership is the presidency of the United States. Historian Arthur M. Schlesinger, Jr., cites two indispensable requirements that an effective president must meet. The first is "to point the republic in one or another direction. The second is to explain to the electorate why the direction the president proposes is right for the nation. Ronald Reagan understood, as Jimmy Carter never did, that politics is ultimately an educational process. Where Carter gave the impression of regarding presidential speeches as disagreeable duties, to be rushed through as perfunctorily as possible, Reagan knew that the speech is a vital tool of presidential leadership. His best speeches had a structure and an argument. They were well written and superbly delivered. They were potent vehicles for his charm, histrionic skills, and genius for simplification."8 It is interesting to note that Schlesinger's second requirement echoes the definition of argumentation given on page 5. Although few of you will become president, many will aspire to positions of leadership. And an indispensable requirement of leadership—not only in politics but in almost all areas of human endeavor—is that the leader explains why the direction proposed is right.

Fairness

Effective Exchange

Having a point of contestation is necessary in establishing respect and creating a more effective exchange

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

Galloway (2007) also advances an argument concerning the privileging of the resolution as a basis for debating. Galloway (2007) cites three pedagogical advantages to seeing the resolution and the first affirmative constructive as an invitation to dialogue. "First, all teams have equal access to the resolution. Second, teams spend the entire year preparing approaches for and against the resolution. Finally, the resolution represents a community consensus of worthwhile and equitably debatable topics rooted in a collective history and experience of debate" (p. 13). An important starting point for conversation, the resolution helps frame political conversations humanely. It preserves basic means for equality of access to base research and argumentation. Having a year-long stable resolution invites depth of argument and continuously rewards adaptive research once various topics have surfaced through practice or at debate tournaments. As referenced above, the resolution provides a basis for research and discussion. Using the resolution as a starting point, students will debate the same resolution dozens or hundreds of times each year on both the affirmative and negative. This practice, called switch-side debate, establishes the expectation that a student will defend and answer multiple sides of similar arguments throughout a debate season. As a result, this practice increases one's intellectual flexibility and understanding of multiple sides of hundreds of issues. Galloway (2007), Harrigan (2008), and Mitchell (2010) add to this discussion. Galloway (2007) theorizes the benefits to communication through switch-side debate. In part due to the rules requiring both sides be heard for equal amounts of time combined with the etiquette of listening, flowing, and answering all of an opponent's argument, debate forces structured dialogue. In such, demands for fairness surface. Galloway advances how demanding dialogical fairness "…takes the form of a demand for equality of voice. Far from being a banal request for links to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon months of preparation, research, and critical thinking not be silenced" (Galloway, 2007, p. 6). Underlying strategic calls for fairness, fairness of equitable debatable ground in switch-side debate demands recognizing a basic humanity in all persons involved. Viewing the first affirmative speech as the invitation to the rest of the debate, Galloway (2007) continues to articulate the academic benefits to switching sides. Theorizing the benefits of taking multiple sides of an issue, even sides of an issue someone does not agree with, Galloway concludes how debate encourages critical thought, meaningful exchange of ideas, and a better defense of one's own thought since ideas need defending against opposing argumentation

Galloway

Fair ground for discussion is key to inclusion and meaningful dialogue – affs that reject the topic exclude negative teams from challenging oppression through their own arguments

Galloway, 7 – Professor, Communication Studies, Samford University (Ryan, "Dinner and Conversation at the Argumentative Table: Reconceptualizing Debate as an Argumentative Dialogue," Contemporary Argumentation and Debate, Vol. 28, 11-13, http://www.cedadebate.org/files/2007CAD.pdf)//SY

A second reason to reject the topic has to do with its exclusivity. Many teams argue that because topicality and other fairness constraints prevent particular speech acts, debaters are denied a meaningful voice in the debate process. Advocates argue that because the negative excludes a particular affirmative performance that they have also precluded the affirmative team. The problem with this line of reasoning is that it views exclusion as a **unitary act of definitional power**. However, a dialogical perspective allows us to see power flowing both ways. A large range of affirmative cases necessitates fewer negative strategies that are relevant to the range of such cases. If the affirmative can present any case it desires, the **benefits of the research, preparation, and in-depth thinking** that go into the creation of negative strategies are diminished, if not eviscerated entirely. The affirmative case is obliged to invite a negative response. In addition, even when the negative strategy is not entirely excluded, any strategy that diminishes argumentative depth and quality diminishes the quality of in-round dialogue. An affirmative speech act that flagrantly violates debate fairness norms and claims that the benefits of the affirmative act supersede the need for such guidelines has the potential of excluding a meaningful negative response, and undermines the pedagogical benefits of the in-round dialogue. The "germ of a response" (Bakhtin, 1990) is stunted. While affirmative teams often accuse the negative of using a juridical rule to exclude them, the affirmative also **relies upon an unstated rule to exclude the negative response**. This unstated but understood rule is that the negative speech act must serve to negate the affirmative act. Thus, affirmative teams often exclude an entire range of negative arguments, including arguments **designed to challenge the hegemony, domination, and oppression inherent in topical approaches to the resolution**. Becoming more than just a ritualistic tag-line of "fairness, education, time skew, voting issue," fairness exists in the implicit right to be heard in a meaningful way. Ground is just that—a ground to stand on, a ground to speak from, a **ground by which to meaningfully contribute to an ongoing conversation**. Conversely, in a dialogical exchange, debaters come to realize the positions other than their own have value, and that reasonable minds can disagree on controversial issues. This respect encourages debaters to modify and adapt their own positions on critical issues without the threat of being labeled a hypocrite. The conceptualization of debate as a dialogue allows challenges to take place from a wide variety of perspectives. By offering a stable referent the affirmative must uphold, the negative can choose to engage the affirmative on the widest possible array of "counterwords," enhancing the pedagogical process produced by debate. Additionally, debate benefits activism by exposing the participants to a wide range of points of view on topics of public importance. A debater starting their career in the fall of 2005 would have debated about China, landmark Supreme Court decisions, Middle East policy, and agricultural policy. It is unsurprising that many debaters contend that debate is one of the most educationally valuable experiences of their lives.

At: case outweighs

Fairness outweighs education

Dowling 81 (ralph, debate as a game, educational tool and argument: an evaluation of game theory and rules, http://files.eric.ed.gov/fulltext/ED210759.pdf, LB)

In conceptualizing debate as an educational game Charles Willard concluded that "academic debate is a 'game' in the most rigorous sense of that term.'" His raticnale for this conclusion included the observed adversary quest for favorable decision outcomes from a neutral judge within an artificial context defined by a myriad of rules and traditions. These rules and traditions purportedly exist to maximize the educational value of the game, which Willard aptly described as the teaching of research, rhetorical criticism, resource evaluation, issue analysis, and oral delivery skills. While none of these points are objectionable, I find Willard guilty of an error of omission in failing to consider the traditional function of rules in games all games. Debate's rules may well function to protect the value of academic debate as an educational tool, but we must not ignore the rules which function so as to preserve debate as a game. If we are to accept the game analogy we would be negligent not to consider all of the ramifications of our decision. The traditional function of game rules is to provide the fairness that players demand and to define acts of "cheating" that are so antithetical to the process or goals of the game that the normal means of determining a "winner" become meaningless. This fairness function also requires the formulation of a decision rule to define the proper course of action once "cheating" has been detected. In academic debate the fairness function is performed by such rules as time limitations, speaker order, uniform resolutions, critic neutrality, and rules or traditions regarding evidence integrity. Many of these rules also serve to enhance the educational value of debate, but their complementary function as game rules must not be tolerated. These two functions of rules--fairness and protection of the educational value of the game--shall be central considerations in 'my analysis.

at: fair for whom?

Debate may be unfair on an individual level but the model of debate we endorse should not be

Kelley 2013 (Tadgh, consultant in mechanics, economics, user interface, market, platform, and production, "Choose Fairness Over Balance [Game Design]." *'What Games Are'* N.p., 25 Jan. 2013. Web. 04 July 2015. http://www.whatgamesare.com/2013/01/choose-fairness-over-balance-game-design.html, LB)

That sense of campaign matters (and above that again is the level of the epic, but that's for another discussion) because players like to feel that they are building something. This is one of the reasons why, for example, turn-based games are problematic. You can play Letterpress and it's fun. But there's no real campaign, only scenarios. There's nothing to invest in emotionally over the long term, nothing to build toward, and so the play experience becomes repetitive. In some games (Quake 3, for example) this matters less because the player feels as though he is training a physical skill, but more often the sense of repetition quickly leads to the feeling of maximum mastery. Then you just stop playing. Individual scenarios in most popular sports are imbalanced. When two players face each other across a tennis court they are of unequal skill, experience, equipment and training opportunities. One might be a five-time world champion and the other a 16-year old straight out of an academy. Both will have different positions on the ATP rankings, and so seeding will have stacked their tournament placings. They are blatantly mismatched, and yet every individual match of Tennis feels relatively fair. Why? Because the rules of the sport are robust enough to act as a great leveller. It is possible that the new player will beat the champion through pure talent, that the toll of injuries or temper or some other factors on the day will lead to an upset. The same is true of racing, ball sports and athletics. Also of collectible card games like Magic: The Gathering and first person shooters with career modes. Secondly because both players and audience are aware that tennis is really a campaign rather than a scenario, that it's about the overall winning of the Grand Slam and attaining the number one position. Judged against those goals even managing to play well against the champion and ultimately lose is seen as a form of success. Waiting to see what might happen on the day, seeing the neophyte steal even a set from the veteran translates to a sense of progress. It says maybe not today, but one day. The trick seems to be to remember that these games are not really about one match (a scenario), but instead about many matches in aggregate (a campaign). Handled well that becomes aspirational rather than impossible, so even though the player may lose this time, he thinks he eventually will. As long as he managed to score a goal, give the opponent a bloody nose, score a head shot against the Quake 3 champion and so on, the game feels fair. Better players become heroes to the lesser ones. Maybe not today, but one day... It only works if the rules of the game are such that campaign advantage only counts for so much. It's important in soccer that, even with more money than Croesus, Chelsea is still capable of losing a match to a middling team on a good day. This sense that there is always a chance to fell the giant, and that that chance is neither miniscule nor dependent on luck, seems to be what makes multiplayer gaming compelling. For a game to feel fair, the weak player needs to believe that there is a plausible path to victory.

Debate is a game, so procedural fairness has to come first-- we can’t resolve structural inequalities, but we can level the playing field while the game is being played

Rodriguez, 2006- media theory professor at the City University of Hong Kong with a PhD from NYU (Hector Rodriguez, December 2006, “The Playful and the Serious: An approximation to Huizinga's Homo Ludens,” published in Game Studies, vol. 6 issue 1, fg)

There is a core feature of playing that offers a huge potential for serious game designers. According to Huizinga, the consciousness of play as a separate and self-contained sphere is often reinforced by the pervasive tendency to enclose the players within a spatiotemporal frame, the so-called "magic circle", which isolates their game from the more serious tasks of daily living. The separation often consists in a literal physical precinct: a chessboard, ring, arena, field, stadium, stage, altar, etc. There are also sharp temporal boundaries, a clear beginning and an end, which clearly mark the game off as a temporary interruption of ordinary life. The game unfolds within a temporarily closed world. Moreover, the existence of the magic circle is closely related to the existence of artificial rules or conventions that hold only within this enclosure.[4] Higher cultural forms also unfold within a magic circle. The temple or sacred area, for instance, provides a self-contained enclosure for the performance of religious ceremonies in accordance with strictly codified regulations. Many other cultural practices, such as initiation rites, require the demarcation of a special place characterized by temporary norms of behaviour that hold only for the duration of the ceremony. The boundaries of the playing field mark off the arena wherein the special rules of the game hold absolutely. These rules often generate ideal conditions. **Playful competition** often **requires**, for instance, **that all players be given an equal chance at the outset.** Two chess players always receive the same amount of pieces in the beginning of the game, to avoid favouring one player at the expense of another. **While perfect equality may be difficult to achieve in practice, competitive games establish artificial conditions designed to neutralize potential sources of unfairness from the outset.** Thus questions of ethics lie at the heart of many forms of play. Huizinga himself asserts that gaming often has an ethical import, and so tends to acquire at least a touch of seriousness. To play is in many instances to test the player's strength, intelligence, effort, persistence, manual dexterity, spatial reasoning and so forth. The idea of fair play also suggests an element of moral evaluation at the heart of many games. Huizinga clearly recognizes the presence of this ethical element, which strongly implies that the demarcation of play from obligation is not absolute. The institution of the magic circle is a core element in the ideal of an ordered life ruled by agreed-upon conventions, which lies at the heart of human society.

Portable skills

Solves Oppression

Absent holding the line, we'll only create more oppressive policies

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

Given the obvious importance of critical thinking and decision-making, the attention they have received in our educational system is not surprising. Despite this attention, critical thinking levels are disappointingly low in the United States. Recent studies show students score low on tests of critical thinking ability (Brannigan, 2009; Krueger, 2009) and, more specifically, students demonstrate an inability to understand and evaluate arguments (Shellenbarger, 2009; Viadero, 2009). Even "experts" are susceptible to erroneous decisions due to lapses in critical thinking (Gilovich, 1991). In addition to lacking certain critical thinking skills, people also allow certain obstacles to interfere with their critical thinking ability. For example, Elder and Paul (2007) note that most people not taught to think analytically. Instead, they are conditioned to make certain responses, rather than think freely and reflexively, and are often motivated by fear or other emotions (Paul & Elder, 2006a). Additionally, due to cognitive dissonance, people have a hard time accepting that they have made a bad decision because it conflicts with their view of themselves as intelligent (Tavris & Aronson, 2007). This is consistent with Elder and Paul's (2004) observation that people are susceptible to what they call egocentric thinking, privileging their own perceptions and intuitions over those of others. Unfortunately, people are unaware of these egocentric assumptions unless they are trained to recognize them, and this creates blind spots for otherwise skilled thinkers. As a result, people have a natural tendency to ignore their own mistakes, which not only lead to policy failures and exacerbate them, but also can hinder opportunities to correct those mistakes (Tavris & Aronson, 2007).

UQ – Critical Thinking

critical thinking is low right now – creating better policy decisionmaking is necessary

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

While most critical thinking scholars would not be surprised at the claim that most people lack information processing skills, recent research has demonstrated that this is true specifically with regard to processing political/policy information and making voting decisions (Gershman, 2008; Lau & Redlawsk, 2006; Steigerwald, 2007). For example, Lau and Redlawsk (2006) measured people's ability to vote "correctly" by allowing them to select their views on a number of issues and then subjecting them to a mock campaign involving simulated fictional candidates. The researchers found that only 70% voted correctly (which they regarded as a high percentage, and a positive outcome) if the choice was limited to two candidates. If more than two candidates were involved, the numbers were barely above random chance. A seemingly positive development in recent years is the push to make more information available to voters on the assumption that more knowledge about the candidates allows voters to make a better decision. Unfortunately, researchers have also found that voters are so bad at processing political information that they actually did better at picking the "correct" candidate with less data or based on party affiliation alone (Lau & Redlawsk, 2006; Steigerwald, 2007). Furthermore, this study allowed people to determine the "correct" positions themselves, but many scholars question whether people understand the issues enough to know what their interests really are and/or which policies best uphold those interests (Gershman, 2008). This study also supposes that people vote on the basis of issues to begin with, but research indicates that they do not.

Understanding politics is necessary in generating new political thought and connecting students to a policy world

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35. http://scholarworks.gvsu.edu/theses/35, LB)

A lack of political learning opportunities reveals how difficult it may be for students to discover or find themselves in politics. As a result, many students are separated and isolated from connections to political worlds and policy analysis. Studies demonstrate how students entering college do not have a firm grasp on political education. Colby (2008) cites an overall decline in political learning despite more students attending college. Moreover, Galston (2001) advances how despite overall advancements in education since the 1950s, political knowledge levels remain stagnant. "If we compare generations rather than cohorts—that is, if we compare today's young adults not with today's older adults but with the young adults of the past—we find evidence of diminished civic attachment" (Galston, 2001, p. 219). Specific measures regarding willingness to talk about the news, caring about current events, voting, watching the news or reading the paper, and other traditional forms of political involvement have declined with each generation (Galston, 2001, p. 220-221). The most recent National Assessment of Educational Progress Report documents one consequence to this rote approach to government. Even after a historic presidential election in

2008, students are less involved in political learning and demonstrate less proficiency in 2010 than even in 2006 (National Center, 2011, p. 34). Moreover, "…individuals emerge from the educational system with a lower level of knowledge about current political figures and alignments than 30 or 40 years ago. And individuals of all ages are less able to answer questions about current politics than their counterparts with similar education backgrounds in the past" (Delli Carpinin and Keeter, 1991, p. 607). Schools seem to focus on teaching facts as the end goal of a political education rather than how facts are necessary to understand the fluidity and complexity of current events. Together, the prospects for enduring and thoughtful political engagement are dim in light of these facts.

At: I don't need your skills

Critical thinking generated through engagement is key to all parts of life

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

Some might argue that not everyone needs to be able to deal with complex issues—that it is the role of policy makers and their advisers; ordinary citizens do not have to be able to evaluate the same kinds of complex public policy questions. There are a number of problems with this objection. First, even though it is true that not everyone will become a leader or policy decision maker, in a democratic system, everyone still has to vote for the people who will become those decision-makers or who will appoint those decision-makers. The voting process works much better if people know enough about the issues to evaluate the candidates (even though it is unrealistic to expect them to have the same level of expertise as those candidates). Second, we have to provide an opportunity for the people who will become leaders and policymakers to develop their decision-making skills, and since we don't know ahead of time who these people will be we need to make these opportunities as widely available as possible. The more people we have with these skills, the more options we will have when it comes time to choose our leaders and decision-makers. Third, reaching as many students as possible also helps avoid dangers that could develop because of disparities in critical thinking ability. For example, Paul and Willsen (1995) have argued that reaching a large segment of the public is necessary to prevent an ideological elite from dominating and oppressing the rest of the population: Critical thinking is ancient, but until now its practice was for the elite minority, for the few. But the few, in possession of superior power of disciplined thought, used it as one might only expect, to advance the interests of the few. We can never expect the few to become the long-term benevolent caretakers of the many. The many must become privy to the superior intellectual abilities, discipline, and traits of the traditional privileged few. Progressively, the power and accessibility of critical thinking will become more and more apparent to more and more people, particularly to those who have had limited access to the educational opportunities available to the fortunate few. (p. 16) Fourth, decision-making skills are useful to everyone, even if we limit decision-making to the context of making policy decisions. While we normally think of policymaking as referring to national or international policies, the term really just means "a course of action" or "a plan." Everyone has to make decisions about what they're going to do and decisions about what college to attend or which apartment to rent involves comparing advantages and disadvantages just as certainly as decisions about national and international policy do.

At: Not real world/process cp is dumb

Understanding the process of policy is uniquely important in understanding political systems – means we link turn the reasons why people won't engage you

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

As a result, the depth of knowledge spans questions not only of what, if anything, should be done in response to a policy question, but also questions of who, when, where, and why. This opens the door to evaluating intricacies of government branch, committee, agency, and even specific persons who may yield different cost-benefit outcomes to conducting policy action. Consider the following responses: I think debate helped me understand how Congress works and policies actually happen which is different than what government classes teach you. Process counterplans are huge - reading and understanding how delegation works means you understand that it is not just congress passes a bill and the president signs. You understand that policies can happen in different methods. Executive orders, congress, and courts counterplans have all helped me understand that policies don't just happen the way we learn in government. There are huge chunks of processes that you don't learn about in government that you do learn about in debate. Similarly, Debate has certainly aided [my political knowledge]. The nature of policy-making requires you to be knowledgeable of the political process because process does effect the outcome. Solvency questions, agent counterplans, and politics are tied to process questions. When addressing the overall higher level of awareness of agency interaction and ability to identify pros and cons of various committee, agency, or branch activity, most respondents traced this knowledge to the politics research spanning from their affirmative cases, solvency debates, counterplan ideas, and political disadvantages. One of the recurring topics concerns congressional vs. executive vs. court action and how all of that works. To be good at debate you really do need to have a good grasp of that. There is really something to be said for high school debate - because without debate I wouldn't have gone to the library to read a book about how the Supreme Court works, read it, and be interested in it. Maybe I would've been a lawyer anyway and I would've learned some of that but I can't imagine at 16 or 17 I would've had that desire and have gone to the law library at a local campus to track down a law review that might be important for a case. That aspect of debate in unparalleled - the competitive drive pushes you to find new materials. Similarly, I think [my political knowledge] comes from the politics research that we have to do. You read a lot of names name-dropped in articles. You know who has influence in different parts of congress. You know how different leaders would feel about different policies and how much clout they have. This comes from links and internal links. Overall, competitive debaters must have a depth of political knowledge on hand to respond to and formulate numerous arguments. It appears debaters then internalize both the information itself and the motivation to learn more. This aids the PEP value of intellectual pluralism as debaters seek not only an oversimplified 'both' sides of an issue, but multiple angles of many arguments. Debaters uniquely approach arguments from a multitude of perspectives – often challenging traditional conventions of argument. With knowledge of multiple perspectives, debaters often acknowledge their relative dismay with television news and traditional outlets of news media as superficial outlets for information. I've definitely discovered more depth on the issues. Television news is almost worthless even when they are doing a story in depth because it is only a 3 minute high level summary of something. I didn't realize until debate that most newspapers and television stories are just an overview and often the issue is much more complicated than the average person ever gets to see - which is fine - but if you really do want to go learn about an issue you need to look at it from as many sides and try to gather everything you can. All respondents attributed a vast amount of or some of their initial motivation to seek political knowledge directly to their debate experience (with one exception who was motivated not only by personal interest and by competitive success in debate but also by a fear of being caught and shamed on national television by Jay Leno's Jaywalking crew!).

At: “why is the politics da good?”

The politics da is super educational 10/10

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

One argument consistent throughout debater responses highlights the importance or even the frustration with a negative disadvantage known broadly as ‘politics.’ As an affirmative presents their plan, the negative has the right to introduce a series of arguments highlighting disadvantages to the affirmative’s proposal. This happens within the structure of a disadvantage itself – as it contains a statement of what negative consequences may occur should the plan be enacted. These bridges, or links, function to reveal the political chain reaction of the plan. The politics disadvantage may start as broadly as asking if the executive or the legislative branch may take credit or blame for a specific policy and how that may impact its own political agenda. As one debater referenced, he was keen on debating specific legislative and executive agendas because the politics disadvantage offered a way to introduce politically relevant and contentious topics including the Law of the Sea Treaty, Equal Pay Act, Affordable Health Care, nuclear arms reduction treaties, and much more. If a plan was implemented, the negative may argue it created a political backlash or drained a president’s political capital making him less able to advocate for a specific agenda item. Knowledge of the political docket, political horse-trading, and how policies may be framed for political gain requires debaters to know not only the merits of specific agenda items but also to identify where the president and key members of Congress stand on specific issues. Knowing the process, committee members, and their stances on political issues is a natural process for the debater. Almost every debater identified this process as self-motivating. Many knew that whether they initiated this debate or instead just had to answer the disadvantage, they had internalized the need to research this political knowledge.

Roleplaying Good

dmaking

Roleplaying in political education teaches students decisionmaking skills and the importance of concrete proposals

Ambrosio, 4 – Assistant Professor, Political Science, North Dakota State University (Thomas, "Bringing Ethnic Conflict into the Classroom: A Student-Centered Simulation of Multiethnic Politics," PS: Political Science and Politics, Vol. 37, No. 2, 285, http://www.jstor.org/stable/pdf/4488820.pdf)//SY

The importance of simulations for student learning has come out of the movement to employ active and cooperative learning techniques in the classroom. Johnson, Johnson, and Smith (1991) have characterized cooperative learning as having five basic elements: * positive interdependence-"exists when students perceive that they are linked with groupmates in a way so that they cannot succeed unless their groupmates do (and vice versa) and/or that they must coordinate their efforts with the efforts of their groupmates to complete a task;" * face-to-face promotive interaction- "individuals encouraging and facilitating each other's efforts to achieve, complete tasks, and produce in order to reach the group's goals;" * individual accountability/personal responsibility--"the performance of each individual student is assessed, the results are given back to the individual and the group, and the student is held responsible for by groupmates for contributing his or her fair share to the group's success;" * collaborative skills-"In order to coordinate efforts to achieve mutual goals, students must (1) get to know and trust each other, (2) communicate accurately and unambiguously, (3) accept and support each other, and (4) resolve conflicts constructively;" * group processing-"reflecting on a group session to (a) describe what member actions were helpful and unhelpful and (b) make decisions about what actions to continue or change." In order to fulfill these objectives, Rossetti and Nembhard (1998) argued, students need to utilize "the four main active learning modes": reading, reflecting, writing, and talking/listening. Simulations are ideally suited for active learning: students must digest a body of information (class readings, background for the simulation itself, outside research), determine how they (or the role they are playing) would react to the circumstances of the simulation, produce some sort of position paper, interact extensively with other students, and begin the process over again as the simulation continues. Active learning through simulations is also becoming an integral part of the political science classroom, with an increasing number of faculty conducting and writing about these exercises.3 Stephen Shellman (2001), for example, based his simulation of a German election and subsequent coalition-formation activities upon the "experimental learning" model of education which stresses the importance of concrete experience, reflexive observation, abstract conceptualization, and active experimentation of learning. In-class simulations are well suited for this type of learning since students learn through active participation in the exercise by appling their knowledge to unforeseen circumstances while interacting with other learners.

Debate should be an academic exercise where the aff plays the role of the federal government—this creates a competitive space to imagine new ideas and translate them into pragmatic action—Devil's advocate challenges the status quo by its nature

ANDREWS 2006

(Peter, Consulting Faculty Member at the IBM Executive Business Institute in Palisades, New York, Executive Technology Report, August, www-935.ibm.com/services/us/bcs/pdf/g510-6313-etr-unlearn-to-innovate.pdf)

High stakes innovation requires abandoning conventional wisdom, even actively unlearning things we "know" are true. As science fiction writer Arthur C. Clarke said, "The only way of discovering the limits of the possible is to venture a little way past them into the impossible." 1 Venturing into the impossible carries many risks: discouragement, failure, loss of reputation and even ridicule. The trials of innovators – those who had the courage to be disruptive – are the stuff of legends. But their contributions have changed our

world. Not everyone aspires to innovations that are high impact. Small but profitable innovations are welcome and essential contributors to the growth and well-being of corporations and societies. But, even if your goal is modest, a look at unlearning can be of value since taking even a few steps at unlearning can lead to fresh ideas. In an article, William Starbuck of New York University said, "learning often cannot occur until after there has been unlearning. Unlearning is a process that shows people they should no longer rely on their current beliefs and methods." But, how do we unlearn? Five steps seem to be essential. We need to: 1) Create space for thinking 2) Play with ideas 3) Dare to believe that the impossible ideas might be true 4) Adapt the ideas to useful contexts 5) Take action, despite objections of experts and authorities. Create space for thinking A classic Far Side cartoon shows a student raising his hand, asking to be excused because his brain is full. In these days of information overload, most of us have the same problem. We have been exposed to huge numbers of ideas, often at a rate that makes analysis and selection difficult. How do we put these aside? One technique is to list what we "know" about a subject. Then challenge each one. What happens if you exaggerate the statement? What are the drawbacks? Does it become absurd? What does the world look like if the opposite is true? Conventional wisdom at many levels – from the humors theory of disease to the inevitability of slavery, to the spoke and hub design of airlines – has been successfully challenged. The unthinkable has become thinkable, and then the world has changed. The purpose of questioning is both to clear away clutter and create doubt. Starbuck focuses on this and suggests that we stop thinking of things – theories, products and processes – as finished. He says we should "start from the premises that current beliefs and methods are 'not good enough' or 'merely experimental'." 3 This is an emancipating concept, but there is still work to do. What can be put into the empty space that was created? This is where popular tricks for generating ideas can be valuable. Play with ideas The classic technique for idea generation is a freewheeling, nonjudgmental brainstorming session. And, bringing in people with different knowledge and perspectives can help push the limits. To push even further, the process can be made competitive, using Red Team approaches (Red Teams assume the role of the outsider to challenge assumptions, look for unexpected alternatives and find the vulnerabilities of a new idea or approach).

Roleplaying good—democracy and peace

RAWLS 1999

(John Rawls, professor at Harvard, The Law of Peoples, p. 56-57)

How is the ideal of public reason realized by citizens who are not government officials? In a representative govemment, citizens vote for representatives-chief executives, legislators, and the like—not for particular laws (except at a state or local level where they may vote directly on referenda questions, which are not usually fundamental questions). To answer this question, we say that, ideally, citizens are to think of themselves as if they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact. When firm and widespread, the disposition of citizens to view themselves as ideal legislators and to repudiate government officials and candidates for public office who violate public reason, forms part of the political and social basis of liberal democracy and is vital for its enduring strength and vigor. Thus in domestic society citizens fulfill their duty of civility and support the idea of public reason, while doing what they can to hold government officials to it. This duty, like other political rights and duties, is an intrinsically moral duty. I emphasize that it is not a legal duty, for in that case it would be incompatible with freedom of speech. Similarly, the ideal of the public reason of free and equal peoples is realized, or satisfied, whenever chief executives and legislators, and other government officials, as well as candidates for public office, act from and follow the principles of the Law of Peoples and explain to other peoples their reasons for pursuing or revising a people's foreign policy and affairs of state that involve other societies. As for private citizens, we say, as before, that ideally citizens are to think of themselves as if they were executives and legislators and ask themselves what foreign policy supported by what considerations they would think it most reasonable to advance. Once again, when firm and widespread, the disposition of citizens to view themselves as ideal executives and legislators, and to repudiate government officials and candidates for public office who violate the public reason of free and equal peoples, is part of the political and social basis of peace and understanding among peoples.

Empathy

Roleplaying encourages empathy for others and helps students understand institutional processes

Shapiro & Leopold, 12 – Assistant Professor, Writing and Linguistics, Middlebury College AND Associate Professor, Middlebury Institute of International Studies (Shawna and Lisa, "A Critical Role for Role-Playing Pedagogy," TESL Canada, Vol. 29, No. 2, Spring, 122, http://www.teslcanadajournal.ca/tesl/index.php/tesl/article/viewFile/1104/923)//SY

Across the college curriculum, role-play is being used to facilitate a deeper and more critical understanding of course material. It has been used in humanities-focused disciplines such as history to help students "debate a complex, multi-layered historical scenario" (O'Brien & Spears, 2011, p. 59). In religion and philosophy, it "encourage[s] empathy towards other viewpoints" (Porter, 2008, p. 230). Faculty in political science have discovered that role-play simulations "have the power to recreate complex, dynamic political processes in the classroom, allowing students to examine the motivations, behavioural constraints, resources, and interactions among institutional actors" (Smith & Boyer, 1996, p. 690). A similar rationale underlies role-playing pedagogy in other social sciences such as psychology (Poorman, 2002), sociology (Simpson & Elias, 2011), and economics (Bernard & Yianniaka, 2010). Role-play is also used to facilitate understanding of difficult concepts in mathematics (Rosa & Lerman, 2011), chemistry (Grafton, 2011), and other natural sciences.3 In professional fields such as nursing, role-play makes students to think more deeply about the needs and experiences of patients (Jenkins & Turick-Gibson, 1999). This is just a sampling of the growing body of scholarship about the cognitive benefits of role-play. However, few publications have explored these benefits with adult language-learners, particularly in an EAP setting. One of the few recent studies on role-play and second-language-learning focused on adult immigrant learners in a Greek-language class. The literature review in the article explained that role-play helps students "communicate, express their feelings, enrich their vocabulary and appraise their existing knowledge" (Magos & Politi, 2008, p. 101). It also emphasizes that role-play offers a more pleasant language-learning experience, creating a "safe environment where learners are relaxed, creative and inventive" (pp. 101-102). All these are valid reasons for using role-play in this particular context, but they may not be sufficient to persuade teachers of EAP.

Role playing overcomes polarization and teaches students political jargon necessary to form critical opinions

SCHAAP 2005

(Andrew, University of Melbourne, Politics, Vol 25 Iss 1, February)

While every subject has its jargon, the object of study in political theory is the jargon itself. Perhaps because of its abstract nature, political theory often polarises politics students: it either alienates or inspires them. Role playing offers one valuable technique to overcome this divide by demonstrating in practice why we cannot do without theories of politics. By participating in this role play, students experienced at first hand how arguments made from within five traditions of political philosophy come into conflict in relation to the issue of human rights. Even self-avowed pragmatists have their own theories – only they are implicitly assumed rather than explicitly articulated. In role playing the pragmatists' self-deception is exposed: they are forced to declare their (imagined) hands and hold their (assigned) theories open to scrutiny. Once drawn into the game, in this way, they are on their way to becoming political theorists.

Role playing is the most effective means of understanding conflicting roles of government actors

GONZALES 2008

(Angelo, Ph.D. Candidate, Travers Department of Political Science, University of California at Berkeley, "Teaching American Political Institutions Using Role Playing Simulations," Feb 22, http://www.allacademic.com//meta/p_mla_apa_research_citation/2/4/5/6/3/pages245631/p245631-1.php)

The observation that organizational actors can play multiple roles in political institutions is important from a pedagogical standpoint, because these roles provide the basis upon which teachers can design effective role-playing simulations. First, roles provide the essential structure for simulations, in conjunction with one's learning objectives. If one's goal is to teach students about the importance of parties in Congress, then one's simulation should include important roles for party leaders. To that end, a House floor debate or a Rules Committee deliberation might make the most sense, but a Senate Committee on Energy and Natural Resources hearing on western water might not be as effective. Second, with adequate preparation time, roles help ensure that students are not just acting on their personal beliefs and preconceptions. In preparing for a role, students are forced to look at the individual whose part they are playing from different perspectives, considering the ways in which their multiple positions within the organization might conflict with each other. And even in situations where students haven't prepared well, there are numerous opportunities in interacting with other simulation actors for students to learn about the ways in which multiple roles can come into play in a particular institution. Finally, roles can liberate shy students to take a more active role in simulations than they might otherwise do in more traditional class settings. I'll never forget one particularly shy student who came out of her shell when asked to play a lawyer in a Supreme Court simulation I designed. Something about the act of playing a particular role helped her shed her fears of speaking in class, and from that day forward, she no longer had any qualms about participating actively in discussions. In sum, when designed properly, role-playing simulations can be an effective pedagogical technique for teaching students about the dynamic interaction between political actors and the internal rules and processes of political institutions. The role-playing aspect forces students to get into the heads of political actors and to consider why these actors make the decisions they do, given the structure of institutional incentives and constraints in which they operate. The simulation aspect forces students to engage in an actual decision-making process and to consider why the process works or fails to work as it does. Short of actually working in a political institution, role-playing simulations provide the best means by which students can learn about the complex inner workings of these organizations that are so central to the American political system.

Political knowledge

Roleplaying policymakers helps students understand abstract concepts and learn the specific details of the political process

Shaw, 4 – Professor and Chair, Political Science Department, Wichita State Department (Carolyn, "Using Role-Play Scenarios in the IR Classroom: An Examination of Exercises on Peacekeeping Operations and Foreign Policy Decision Making," International Studies Perspectives, Vol. 5, 1-2, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.471.8236&rep=rep1&type=pdf)//SY

Instructors in university classrooms today face a challenging teaching environment as they work to impart an understanding of the international system and its many complex issues to students. In many instances, an introductory college course in international relations (IR) may be the students' first exposure to international politics, not having had the opportunity to cover the topic in high school. The challenge of conveying abstract theoretical IR concepts is great when the students may not even have basic geographical knowledge, let alone more substantive knowledge of relations between states. In such a setting, it is critical to be able to actively engage the students and provide hands-on activities to make some of the abstract concepts come to life. A variety of active learning techniques have been introduced in college classrooms in recent years in an effort to convey these concepts effectively in an alternative fashion to the traditional lecture format. These alternative methods include collaborative learning, case teaching, simulations and other ''student-centered'' approaches (Boyer et al., 2000:4). Although studies increasingly indicate the effectiveness of these techniques for the retention of materials (Stice, 1987; Hertel and Millis, 2002:4–9), it is important to carefully consider the design and implementation of such active learning exercises and to continue to assess their effectiveness in the classroom. This paper discusses the potential benefits to using role-play scenarios in the classroom, the steps taken to design two different exercises, and an assessment of these exercises used in an introduction to international relations course. The first exercise is on the complexities of ''peacekeeping'' operations,1 focusing on the interactions between the diplomats, the military peacekeepers, and the nongovernmental organizations (NGOs). The context is a three-way civil war set in the fictional, developing country of Zodora. The second exercise examines the challenges of foreign policy decision making in a crisis. The context is a fabricated escalation of the situation in Colombia with the government requesting greater American aid to defeat the increasingly threatening Revolutionary Armed Forces of Colombia (FARC) rebel forces. Students represent a variety of decision makers, including the U.S. President, Secretary of Defense, Secretary of State, Secretary of Commerce, the Drug Enforcement Agency (DEA), the Central Intelligence Agency (CIA), and Senate leaders. Through discussion of my own experiences in planning and using role play exercises in the classroom, I hope to provide useful information to others as to what has worked well and what has not, and to reaffirm the value of these exercises as effective teaching techniques. I hope that others might find the exercises that I have developed useful in their classrooms as well. Learning Objectives The incorporation of active learning exercises into the international relations classroom allows instructors to achieve several different educational objectives that are beneficial to the students. Although different instructors will have different goals for including role-play scenarios in their courses, some common goals often include providing an alternative presentation of course materials, promoting student interaction and input, promoting student curiosity and interest, and simply having fun. Before creating and incorporating a role-play scenario in class, it is important for instructors to **identify what specific objectives they want to achieve** by using the exercise (Kille, 2002). General objectives are discussed in this section, and the specific learning objectives for my two scenarios are discussed in the exercise design section that follows. Alternative Presentation of Course Materials The use of role-playing in the classroom provides an alternative method for presenting course materials in contrast to lecturing. Although some materials can be conveyed well through an oral presentation, many concepts in international relations only become less abstract when the student can apply them directly or experience them personally (Preston, 2000). ''To the extent that [students] engage in constructing new knowledge or reconstructing given information, rather than simply memorizing it, they gain a deeper understanding'' (King, 1994:16). Merryfield and Remy (1995:8) similarly note that ''students master content **not only by being exposed to information through readings** and lectures...but also by engaging in a reflective process in which they make the information their own by evaluating and using it.'' Since class trips abroad are beyond the scope of most courses, simulations can be used to place students in a unique

international context or position which they would otherwise be unable to experience, and give them the opportunity to gain a deeper understanding of the material. One challenge that instructors face is the trade-off in terms of coverage of material and the time it takes to conduct an active learning exercise. Such exercises usually take more time than covering the same materials in lecture format (Boyer et al., 2000:4). The key to using role-playing effectively without sacrificing too much content is to plan the exercise carefully to provide interactive examples of the course materials. Frequently this can be done in coordination with a preparatory lecture. The concepts can be introduced prior to the exercise, and then participation in the exercise provides the students with concrete examples of more abstract theories and ideas presented in the lecture. For example, when learning about the bureaucratic politics model of foreign policy decision making, students are often frustrated that the government actors involved cannot simply ''reach a consensual agreement and do what's best for our country.'' By actually taking on the roles of the different agencies involved in foreign policy making, students begin to understand the underlying conflicts between these actors and the challenge of clearly defining what is in our ''national interest.''

At: Our Education Good

Deep versus shallow—even if other approaches provide education, role playing provides the best education—switch-side debate fosters deep-holistic learning

SCHAAP 2005

(Andrew, University of Melbourne, Politics, Vol 25 Iss 1, February)

According to an influential theory of teaching in higher education, people tend to approach learning either in a 'deep-holistic' or 'surface-atomistic' way (Ramsden, 1992, pp. 43ff.). Students who adopt a deep-holistic approach to learning seek to discover the meaning of an idea, text or concept by relating new information to previous experience and the broader context within which it is encountered. By contrast, students who adopt a surface-atomistic approach tend to simply reproduce information, accumulating particular facts or details without discovering and constructing relations between them. Ramsden (1992, pp. 53ff.) reports on research that shows that deep-holistic approaches to learning are related to higher-quality outcomes and greater enjoyment while surface-atomistic approaches are dissatisfying and associated with poorer grades. Ramsden (1992, pp. 96–102) identifies six key principles of teaching in higher education to promote a deep-holistic approach to learning. Effective teaching requires: engaging student interest; demonstrating concern and respect for students and student learning; providing appropriate feedback and assessment so that students can monitor their own learning; presenting students with clear goals and an intellectual challenge; giving students independence and control over their own learning; and modifying one's own teaching practice in response to student learning outcomes. In sum, effective teaching encourages students to relate to the subject material in a purposeful way. Teaching methods that promote deep-holistic approaches to learning 'involve students in actively finding knowledge, interpreting results, and testing hypotheses against reality (often in a spirit of co-operation as well as individual effort) as a route to understanding and the secure retention of factual knowledge' (Ramsden, 1992, p. 152). According to Ramsden there is no best teaching method. Nevertheless, some methods naturally encourage a deep-holistic approach to learning better than others. The traditional university lecture tends to be modelled on an implicit theory of teaching as transmitting information to students rather than one of making learning possible. While lectures can be engaging, stimulating and can involve students as active learners, this is often difficult to achieve and more often they encourage surface-atomistic approaches to learning: students struggle to remember various isolated details and the lecturer appears as a remote authority rather than participating in a community of learning with his or her students. Consequently, Ramsden (1992, p. 167) insists that the best way to improve the effectiveness of teaching in higher education is to make lecturing 'less like a lecture (passive, rigid, routine knowledge transmission) and more like an active communication between teacher and students'. In contrast to lecturing, role playing naturally tends to promote a deep-holistic approach to learning because it requires students to interact and collaborate in order to complete an assigned task. The context of the role play requires students to adopt different perspectives and think reflexively about the information they represent to the group. Some benefits of role playing identified by historian James Levy (1997, pp. 14–18) are that it: helps overcome students' inhibitions to contribute because they feel that they do not know enough; stimulates student discussion and debate outside of the classroom; provides many teachable moments by revealing gaps in students' understanding that the instructor can address; encourages students to grapple with sophisticated issues that they might otherwise have failed to appreciate; and often challenges the teacher's own views.

Education provided by switch-side debate makes future proposals more effective—because the lasting purpose of debate is to make us better decision-makers, this outweighs their arguments

MATTHEWS and METCALFE 2007

(David B. Matthews Defence Systems Analysis Division Defence Science and Technology Organisation and Mike Metcalfe School of Management University of South Australia, "On the Implementation of 'Concept-Led' and 'Participative' Planning in the Development of the Defence Logistics Transformation Plan," Defence Science and Technology Organisation, Australian Department of Defense Land Operations Division, September, http://dspace.dsto.defence.gov.au/dspace/bitstream/1947/9000/1/DSTO-TR-2022%20PR.pdf)

The concept-led approach developed by the authors has been embedded within a modified action learning cycle reminiscent of Popper's (1969; 1972) hypothetico-deductivist model of inquiry. Accordingly, following the development of conjectures (in our case, action statements) inquiry should be characterised by 'ingenious and severe attempts to refute them' (Popper, 1969). It is only through

surviving such attempted refutations that action statements gain credibility. Unfortunately, within the context of organisational planning, it is rarely feasible to 'test' an action statement empirically (in the sense of implementing the action and observing its results). Not only is direct experimentation with organisations a risky (and potentially ethically fraught) affair, but any implementation of proposals would irreversibly change the organisation. Accordingly, testing is usually conducted along one of two lines, similar to those discussed in Chapter 4. These are by simulation, modelling and analysis within a modelcentric approach or by red-teaming, debate and argumentation within a discursive approach. Unsurprisingly, the authors recommend a general discursive framework for the testing of action statements. Such an approach is reminiscent of a judicial inquiry (as opposed to an empirical test). Action statements are tested through interrogation by those who have proposed alternative statements developed from different foundational 'concepts' (akin to cross-examination). The benefits of a discursive approach include avoiding certain epistemic fallacies associated with over reliance on models and enabling participants to engage in a learning process via the attempted refutation of confederate action statements. In particular, participation in learning processes of this sort inevitably aids participants in the refinement of action statements in subsequent iterations of the action learning cycle. Simulation, modelling and analysis may be provided as tools to support this learning process. However, as opposed to the model-centric approach, within the discursive approach such techniques are not seen as definitive. Rather, they represent simply another perspective on the possible implications of particular actions. The above approach takes its cues from Churchman's (1979) argument for systematically seeking different 'rationalities' for testing the pre-suppositions in our own thinking as well as Ackoff's (1979a,b) call for replacing the problem-solving orientation of Operations Research with one that focusses on planning and system design. In the words of Ulrich (1994): 'What the systems designer [planner] needs beyond even new analytical techniques is a dialectic framework that would enable him to enter into a discourse with these other rationalities and to learn to understand them as what they are: mirrors of his own failure to live up to the systems idea.' That is, what the planner ultimately needs is a discursive framework for testing his/her action statements against those developed from different role-specific concerns, foundational presuppositions and/or concepts, whether through red-teaming, structured argumentative processes or group decision and negotiation processes. The overall aim is to develop a more critical understanding of the possible implications of action statements by uncovering potentially deleterious effects that would have remained hidden by the uncritical implementation of plans founded on a single perspective. Accordingly, the whole process should be an exercise in applied dialectics.

At: Access

Access—role playing reaches the most students with different learning styles GONZALES 2008

(Angelo, Ph.D. Candidate, Travers Department of Political Science, University of California at Berkeley, "Teaching American Political Institutions Using Role Playing Simulations," Feb 22, http://www.allacademic.com//meta/p_mla_apa_research_citation/2/4/5/6/3/pages245631/p245631-1.php)

Role-playing simulations, in particular, are an excellent teaching technique from both a pedagogical and a substantive political science perspective. On the pedagogical side, role- playing simulations are a great way to reach students with all types of learning styles. The very nature of role-playing engages the strengths of tactile-kinesthetic learners, and, when designed correctly, such simulations can reach both auditory and visual learners, as well. Additionally, as other researchers have demonstrated, role-playing simulations can actually enhance students' understanding and retention of course material, especially when designed around a well-defined and limited set of learning objectives (Baranowski 2006; Frederking 2005; Lay and Smarick 2006). From a political science (American politics) perspective, role-playing simulations provide a useful way for students to learn about both the process of the American political system and the dynamics of American political institutions (Baranowski 2006; Ciliotta-Rubery and Levy 2000; Endersby and Webber 1995; Lay and Smarick 2006; Smith and Boyer 1996). As Smith and Boyer (1996, 690) argue, –Simulations have the power to recreate complex, dynamic political processes in the classroom, allowing students to examine the motivations, behavioral constraints, resources and interactions among institutional actors.

At: Spectatorship

We solve the spectator phenomenon

JOYNER 1999

Christopher C. Joyner is a Professor of International Law in the Government Department at Georgetown University, Spring, 1999 [5 ILSA J Int'l & Comp L 377]

Use of the debate can be an effective pedagogical tool for education in the social sciences. Debates, like other role-playing simulations, help students understand different perspectives on a policy issue by adopting a perspective as their own. But, unlike other simulation games, debates do not require that a student participate directly in order to realize the benefit of the game. Instead of developing policy alternatives and experiencing the consequences of different choices in a traditional role-playing game, debates present the alternatives and consequences in a formal, rhetorical fashion before a judgmental audience. Having the class audience serve as jury helps each student develop a well-thought-out opinion on the issue by providing contrasting facts and views and enabling audience members to pose challenges to each debating team. These debates ask undergraduate students to examine the international legal implications of various United States foreign policy actions. Their chief tasks are to assess the aims of the policy in question, determine their relevance to United States national interests, ascertain what legal principles are involved, and conclude how the United States policy in question squares with relevant principles of international law. Debate questions are formulated as resolutions, along the lines of: "Resolved: The United States should deny most-favored-nation status to China on human rights grounds;" or "Resolved: The United States should resort to military force to ensure inspection of Iraq's possible nuclear, chemical and biological weapons facilities;" or "Resolved: The United States' invasion of Grenada in 1983 was a lawful use of force;" or "Resolved: The United States should kill Saddam Hussein." In addressing both sides of these legal propositions, the student debaters must consult the vast literature of international law, especially the nearly 100 professional law-school-sponsored international law journals now being published in the United States. This literature furnishes an incredibly rich body of legal analysis that often treats topics affecting United States foreign policy, as well as other more esoteric international legal subjects. Although most of these journals are accessible in good law schools, they are largely unknown to the political science community specializing in international relations, much less to the average undergraduate. By assessing the role of international law in United States foreign policy-making, students realize that United States actions do not always measure up to international legal expectations; that at times, international legal strictures get compromised for the sake of perceived national interests, and that concepts and principles of international law, like domestic law, can be interpreted and twisted in order to justify United States policy in various international circumstances. In this way, the debate format gives students the benefits ascribed to simulations and other action learning techniques, in that it makes them become actively engaged with their subjects, and not be mere passive consumers. Rather than spectators, students become legal advocates, observing, reacting to, and structuring political and legal perceptions to fit the merits of their case. The debate exercises carry several specific educational objectives. First, students on each team must work together to refine a cogent argument that compellingly asserts their legal position on a foreign policy issue confronting the United States. In this way, they gain greater insight into the real-world legal dilemmas faced by policy makers. Second, as they work with other members of their team, they realize the complexities of applying and implementing international law, and the difficulty of bridging the gaps between United States policy and international legal principles, either by reworking the former or creatively reinterpreting the latter. Finally, research for the debates forces students to become familiarized with contemporary issues on the United States foreign policy agenda and the role that international law plays in formulating and executing these policies. 8 The debate thus becomes an excellent vehicle for pushing students beyond stale arguments over principles into the real world of policy analysis, political critique, and legal defense. A debate exercise is particularly suited to an examination of United States foreign policy, which in political science courses is usually studied from a theoretical, often heavily realpolitik perspective. In such courses, international legal considerations are usually given short shrift, if discussed at all. As a result, students may come to believe that international law plays no role in United States foreign policy-making. In fact, serious consideration is usually paid by government officials to international law in the formulation of United States policy, albeit sometimes ex post facto as a justification for policy, rather than as a bona fide prior constraint on consideration of policy options. In addition, lawyers are prominent advisers at many levels of the foreign-policy-making process. Students should appreciate the relevance of international law for past and current US actions, such as the invasion of Grenada or the refusal of the United States to sign the law of the sea treaty and landmines convention, as well as for [*387] hypothetical (though subject to public discussion) United States policy options such as hunting down and arresting war criminals in Bosnia, withdrawing from the United Nations, or assassinating Saddam Hussein.

State debate

Engaging law good

Legal policy education is necessary to prevent war and violence

BERES 2003

(Louis Rene, Prof. of International Law at Purdue, Journal and Courier, June 5)

The truth is often disturbing. Our impressive American victories against terrorism and rogue states, although proper and indispensable, are inevitably limited. The words of the great Irish poet Yeats reveal, prophetically, where our entire planet is now clearly heading. Watching violence escalate and expand in parts of Europe and Russia, in Northern Ireland, in Africa, in Southwest Asia, in Latin America, and of course in the Middle East, we discover with certainty that "... the centre cannot hold/Mere anarchy is loosed upon the world/The blood-dimmed tide is loosed/and everywhere The Ceremony of innocence is drowned." Our response, even after Operation Iraqi Freedom, lacks conviction. Still pretending that "things will get better," we Americans proceed diligently with our day-to-day affairs, content that, somehow, the worst can never really happen. Although it is true that we must go on with our normal lives, it is also true that "normal" has now become a quaint and delusionary state. We want to be sure that a "new" normal falls within the boundaries of human tolerance, but we can't nurture such a response without an informed appreciation of what is still possible. For us, other rude awakenings are unavoidable, some of which could easily overshadow the horrors of Sept. 11. There can be little doubt that, within a few short years, expanding tribalism will produce several new genocides and proliferating nuclear weapons will generate one or more regional nuclear wars. Paralyzed by fear and restrained by impotence, various governments will try, desperately, to deflect our attention, but it will be a vain effort. Caught up in a vast chaos from which no real escape is possible, we will learn too late that there is no durable safety in arms, no ultimate rescue by authority, no genuine remedy in science or technology. What shall we do? For a start, we must all begin to look carefully behind the news. Rejecting superficial analyses of day-to-day events in favor of penetrating assessments of world affairs, we must learn quickly to distinguish what is truly important from what is merely entertainment. With such learning, we Americans could prepare for growing worldwide anarchy not as immobilized objects of false contentment, but as authentic citizens of an endangered planet. Nowhere is it written that we people of Earth are forever, that humankind must thwart the long-prevailing trend among all planetary life-forms (more than 99 percent) of ending in extinction. Aware of this, we may yet survive, at least for a while, but only if our collective suppression of purposeful fear is augmented by a complementary wisdom; that is, that our personal mortality is undeniable and that the harms done by one tribal state or terror group against "others" will never confer immortality. This is, admittedly, a difficult concept to understand, but the longer we humans are shielded from such difficult concepts the shorter will be our time remaining. We must also look closely at higher education in the United States, not from the shortsighted stance of improving test scores, but from the urgent perspective of confronting extraordinary threats to human survival. For the moment, some college students are exposed to an occasional course in what is fashionably described as "global awareness," but such exposure usually sidesteps the overriding issues: We now face a deteriorating world system that cannot be mended through sensitivity alone; our leaders are dangerously unprepared to deal with catastrophic deterioration; our schools are altogether incapable of transmitting the indispensable visions of planetary restructuring. To institute productive student confrontations with survival imperatives, colleges and universities must soon take great risks, detaching themselves from a time-dishonored preoccupation with "facts" in favor of grappling with true life-or-death questions. In raising these questions, it will not be enough to send some students to study in Paris or Madrid or Amsterdam ("study abroad" is not what is meant by serious global awareness). Rather, all students must be made aware - as a primary objective of the curriculum - of where we are heading, as a species, and where our limited survival alternatives may yet be discovered. There are, of course, many particular ways in which colleges and universities could operationalize real global awareness, but one way, long-neglected, would be best. I refer to the study of international law. For a country that celebrates the rule of law at all levels, and which explicitly makes international law part of the law of the United States - the "supreme law of the land" according to the Constitution and certain Supreme Court decisions - this should be easy enough to understand. Anarchy, after all, is the absence of law, and knowledge of international law is necessarily prior to adequate measures of world order reform. Before international law can be taken seriously, and before "the blood-dimmed tide" can be halted, America's future leaders must at least have some informed acquaintance with pertinent rules and procedures. Otherwise we shall surely witness the birth of a fully ungovernable world order, an unheralded and sinister arrival in which only a shadowy legion of gravediggers would wield the forceps.

Scholars must engage the law

Desch 2014 (Michael, Professor and Chair of the Department of Political Science at the University of Notre Dame, what do policymakers want from us?, ISQ, https://www3.nd.edu/~carnrank/PDFs/What%20Do%20Policymakers%20Want%20from%20Us_MC.pdf, LB)

But our most important findings concern what role policymakers think scholars ought to play in the policy process. Most recommended that scholars serve as "informal advisers" and as "creators of new knowledge." There were two surprises for us here: First, policymakers ranked the educational and training role of scholars for future policymakers third behind these other two roles. They also confessed that they derived relatively little of their professional skills from their formal educations. The main contribution of scholars, in their view, was research. Second, and again somewhat surprisingly, they expressed a preference for scholars to produce "arguments" (what we would call theories) over the generation of specific "evidence" (what we think of as facts). In other words, despite their jaundiced view of cuttingedge tools and rarefied theory, the thing policymakers most want from scholars are frameworks for making sense of the world they have to operate in. Given these findings, we offer the following recommendations for scholars who aspire to influence policymakers. While scholars may want to participate in policymaking, they should do so not because of the superior contribution they can make to policymaking directly but rather because doing so will enrich their scholarship. Indeed, the most important roles for scholars to play are as both teachers and researchers, but our results suggest that both areas need careful rethinking. On the former, the findings of our survey should lead to some introspection about how we train students for careers in government service. We suspect that the focus on social science techniques and methods that dominates so much graduate, and increasingly undergraduate, training in political science is not useful across the board to policymakers. On the other hand, a purely descriptive, fact-based approach is not want policymakers seem to want from scholars either.

Engaging the state through the instruments of representative democracy is the only way to establish ecological democracy and only the state system allows us to confront international environmental problems

ECKERSLEY 2004 (Robyn, Professor and Head of Political Science in the School of Social and Political Sciences, University of Melbourne, The Green State: Rethinking Democracy and Sovereignty)

A serious question, however, remains: How far can we expect green states to proliferate in world where there is a growing disparity in wealth and capacity within and especially between states? As Andrew Hurrell has argued, "many of the most serious obstacles to sustainability have to do with the domestic weaknesses of particular states and state structures." 7 It is no accident that the processes of ecological modernization have been spearheaded in the developed world. Moreover, while most of the richer states are active shapers of economic globalization, there are many more developing states that are more often aggrieved victims of these processes. These problems are not just the legacy of colonialism but also the result of an international, neoliberal economic order that systematically disadvantages the developing world vis-à-vis the developed world. There is always reason to hope but little reason to expect that those states sponsoring technical forms of ecological modernization will be detained by the fact that a majority of states are not even in a position to sponsor such a green competitive strategy for their local industries.

This state of affairs is unacceptable and represents the most serious chal- lenge to global sustainability. However, both hope and expectations can be raised to the extent to which the economically privileged states pursue deeper, more reflexive strategies of ecological modernization, which in turn presupposes a move toward ecological democracy, since they would necessarily become more preoccupied with both global environmental and economic justice. There are, of course, no encouraging signs that the most powerful states—above all, the United States under the second Bush administration—are moving in this direction. Yet the degree of global interdependence is now such that even superpowers need the cooperation of other states in the longer run. This is the so-called paradox of American power outlined by Joseph Nye, which he argues must lead away from the assertion of "hard power" and toward the practice of "soft power" (including a greater preparedness to act multilaterally).8 However, this can only be the beginning. Without the deepening of democracy within the most privileged states (and especially the United States), the prospects of structural reform to the international economy, an end to the displacement of environmental problems and the beginning of concerted (as distinct from tokenistic) environmental capacity building in the developing world seem remote. As Robert Paehkle puts it, "Irony of ironies, the route to global governance lies in making the wealthy nations more democratic."9

Although I have argued that green public spheres are a condition precedent for the emergence of green democratic states, such states will not materialize or proliferate without political leadership, whether from green parties, social democratic parties, or other social actors. This applies most obviously to elected governments that actively seek to pursue a green agenda, such as the Swedish Social Democratic Party under the leadership of Göran Persson, which embarked in 1996 on "a new and noble mission" to make Sweden an ecologically sustainable society.10 However, it also applies to other actors in the social, economic, and educational spheres who seek to activate and enhance the state's and society's environmental capacity. Leadership ought not to mean an overweening executive aggressively rushing through a program of reform and ignoring oppositional movements or community know-how and experience. In any event, the constitutional design of the green democratic state should protect citizens from overzealous governments or officials (green or otherwise) while facilitating discursive consensus formation and adaptive policy learning. This includes leaving plenty of room for community initiatives in civil society as well. Nonetheless, in the context of the current order, visionary political leadership is essential for environmental capacity building (including constitutional reform) and the kind of diplomacy that leads to cooperative solutions to common problems. The welfare state took more than fifty years to emerge; indeed, after another fifty years it is still holding out against the forces of economic globalization, albeit in a weakened form. There are lessons here for those persuaded by the idea of the green democratic state. As James Meadowcroft makes clear in his discussion of the "ecostate," it will be a protracted and conflict-ridden struggle, the green movement will face difficult odds and there are no guarantees.11 However, if the multifarious green movement is able to maintain critical and vibrant domestic and transnational green public spheres and social movements with a vigorous electoral arm in all tiers of government, working through the party system to influence and ultimately capture conventional political power, then the green democratic state might become a real possibility.

The state is the only actor that can address ecological destruction and large-scale inequalities—even if other actors are also important, we cannot succeed without the state

ECKERSLEY 2004 (Robyn, Professor and Head of Political Science in the School of Social and Political Sciences, University of Melbourne, The Green State: Rethinking Democracy and Sovereignty)

Of course, it would be unhelpful to become singularly fixated on the redesign of the state at the expense of other institutions of governance. States are not the only institutions that limit, condition, shape, and direct political power, and it is necessary to keep in view the broader spectrum of formal and informal institutions of governance (e.g., local, national, regional, and international) that are implicated in global environmental change. Nonetheless, while the state constitutes only one modality of political power, it is an especially significant one because of its historical claims to exclusive rule over territory and peoples—as expressed in the principle of state sovereignty. As Gianfranco Poggi explains, the political power concentrated in the state "is a momentous, pervasive, critical phenomenon. Together with other forms of social power, it constitutes an indispensable medium for constructing and shaping larger social realities, for establishing, shaping and maintaining all broader and more durable collectivities."12 States play, in varying degrees, significant roles in structuring life chances, in distributing wealth, privilege, information, and risks, in upholding civil and political rights, and in securing private property rights and providing the legal/regulatory framework for capitalism. Every one of these dimensions of state activity has, for good or ill, a significant bearing on the global environmental crisis. Given that the green

political project is one that demands far-reaching changes to both economies and societies, it is difficult to imagine how such changes might occur on the kind of scale that is needed without the active support of states. While it is often observed that states are too big to deal with local ecological problems and too small to deal with global ones, the state nonetheless holds, as Lennart Lundqvist puts it, "a unique position in the constitutive hierarchy from individuals through villages, regions and nations all the way to global organizations. The state is inclusive of lower political and administrative levels, and exclusive in speaking for its whole territory and population in relation to the outside world."13 In short, it seems to me inconceivable to advance ecological emancipation without also engaging with and seeking to transform state power.

Only debates about state policy can confront social injustice, nuclear war, and environmental destruction

ECKERSLEY 2004 (Robyn, Professor and Head of Political Science in the School of Social and Political Sciences, University of Melbourne, The Green State: Rethinking Democracy and Sovereignty)

While acknowledging the basis for this antipathy toward the nationstate, and the limitations of state-centric analyses of global ecological degradation, I seek to draw attention to the positive role that states have played, and might increasingly play, in global and domestic politics. Writing more than twenty years ago, Hedley Bull (a proto-constructivist and leading writer in the English school) outlined the state's positive role in world affairs, and his arguments continue to provide a powerful challenge to those who somehow seek to "get beyond the state," as if such a move would provide a more lasting solution to the threat of armed conflict or nuclear war, social and economic injustice, or environmental degradation.10 As Bull argued, given that the state is here to stay whether we like it or not, then the call to get "beyond the state is a counsel of despair, at all events if it means that we have to begin by abolishing or subverting the state, rather than that there is a need to build upon it."11 In any event, rejecting the "statist frame" of world politics ought not prohibit an inquiry into the emancipatory potential of the state as a crucial "node" in any future network of global ecological governance. This is especially so, given that one can expect states to persist as major sites of social and political power for at least the foreseeable future and that any green transformations of the present political order will, short of revolution, necessarily be state-dependent. Thus, like it or not, those concerned about ecological destruction must contend with existing institutions and, where possible, seek to "rebuild the ship while still at sea." And if states are so implicated in ecological destruction, then an inquiry into the potential for their transformation or even their modest reform into something that is at least more conducive to ecological sustainability would seem to be compelling.

Ideal State Alt

We should engage in politics oriented around government action guided by the imagination of a transformed state. This is the best hope for social justice and ecological democracy.

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It was the bourgeoisie who in the eighteenth and nineteenth centuries served as the vanguard for the creation of the liberal democratic state while the labor movement was in the forefront of the social forces that created the social democratic state (or welfare state) in the twentieth century. If a more democratic and outward-looking state—the green democratic state—is ever to emerge in the new millennium, then the environment movement and the broader green movement will most likely be its harbingers. This is unlikely to occur without a protracted struggle. In view of the intensification of economic globalization and the ascendancy of neoliberal economic policy, the challenges are considerable. This inquiry seeks to confront these challenges and to develop a normative theory of the transnational, green democratic state out of this critical encounter. In developing and defending new regulatory ideals of the green democratic state, and the practice of what might be called "ecologically responsible statehood," this book seeks to connect the moral and practical concerns of the green movement with contemporary debates about the state, democracy, law, justice, and difference. In particular, I seek to outline the constitutional structures of a green democratic state that might be more amenable to protecting nature than the liberal democratic state while maintaining legitimacy in the face of cultural diversity and increasing transboundary and sometimes global ecological problems. I hope to show how a rethinking of the principles of ecological democracy might ultimately serve to cast the state in a new role: that of an ecological steward and facilitator of transboundary democracy rather than a selfish actor jealously protecting its territory and ignoring or discounting the needs of foreign lands. Such a normative ideal poses a fundamental challenge to traditional notions of the nation, of national sovereignty, and the organization of democracy in terms of an enclosed territorial space and polity. It requires new democratic procedures, new decision rules, new forms of political representation and participation, and a more fluid set of relationships and understandings among states and peoples.

My project, then, is clearly to re-invent states rather than to reject or circumvent them. In this respect my inquiry swims against the strong current of scepticism by pluralists, pragmatists, and realists toward "attempts to invest the state with normative qualities, or higher responsibilities to safeguard the public interest, or articulate and uphold a framework of moral rules, or a distinctive sphere of justice."2 Although historical and critical sociological inquiries into state formation and state practices continue apace, it has become increasingly unfashionable to defend normative theories of the state. Yet these two different approaches cannot be wholly dissociated. As Andrew Vincent reminds us, historical and sociological description and explanation are unavoidably saturated with normative preconceptions, even if they are not always made explicit.3 And if the traditional repertoire of normative preconceptions about the purposes of the state and the state system is inadequate when it comes to representing ecological interests and concerns, then I believe it has become necessary to invent a new one.

However, any attempt to develop a green theory about the proper role and purpose of the state in relation to domestic and global societies and their environments must take, as its starting point, the current structures of state governance, and the ways in which such structures are implicated in either producing and/or ameliorating ecological problems. This recognition of the important linkages between historical/sociological explanation and normative theory has been one of the hallmarks of Marxist-inspired critical social theory. Accordingly it has sought to avoid the inherent conservatism of purely positivistic sociological explanation, on the one hand, while avoiding merely wishful utopian dreaming, on the other.4 Throughout this inquiry, I build on both the method and normative orientation of critical theory. Specifically, I look for emancipatory opportunities that are immanent in contemporary processes and developments and suggest how they might be goaded and sharpened in ways that might bring about deeper political and structural transformations toward a more ecologically responsive system of governance at the national and international levels. This requires "disciplined imagination," that is, drawing out a normative vision that has some points of engagement with emerging understandings and practices. Nonetheless, the role of imagination—thinking what "could be otherwise"—should not be discounted. As Vincent also points out, "We should also realise that to innovate in State theory is potentially to change the character of our social existence."5

Ecological democracy would expand its scope of concern to include every potentially affected being—this accounts for differential impacts on different groups and allows representation for all of them

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Now, at first, there may appear to be nothing new or ecological about this formulation of democracy, as it resonates with those deliberative and cosmopolitan ideals of democracy that seek to incorporate into risk assessment the entire universe of those potentially affected (notably, Jürgen Habermas's ideal communication community and David Held's cosmopolitan democracy).1 However, what makes this formulation both new and ecological is the accompanying argument that the opportunity to participate or otherwise be represented in the making of riskgenerating decisions should literally be extended to all those potentially affected, regardless of social class, geographic location, nationality, generation, or species. This ecological extension of the familiar idea of a democracy of the affected is intended to be inclusive and ecumenical, incorporating the concerns of environmental justice advocates, risk society sociologists, and ecocentric green theorists. Indeed, ecological democracy may be best understood not so much as a democracy of the affected but rather as a democracy for the affected, since the class of beings entitled to have their interests considered in democratic deliberation and decision making (whether young children, the infirm, the yet to be born, or nonhuman species) will invariably be wider than the class of actual deliberators and decision makers.2 As an ideal ecological democracy must necessarily always contain this representative dimension, which poses a direct challenge to Habermas's procedural account of normative validity, which runs as follows: "According to the discourse principle, just those norms deserve to be valid that could meet with the approval of those potentially affected, insofar as the latter participate in rational discourses."3 In relation to all those subjects lacking communicative competence, my ecological formulation replaces the words insofar as with as if. Habermas's procedural account of moral validity rests on the moral principle that ideally persons should not be bound by norms to which they have not given their free and informed consent—a principle that rests on the bedrock Kantian ideal that all individuals ought to be respected as ends in themselves. My ecological account rests on the post-Kantian and postliberal ideal of respect for differently situated others as ends in themselves, and is suitably adjusted to reflect this wider moral constituency. Of course, many nonhuman others are not capable of giving approval or consent to proposed norms; however, proceeding as if they were is one mechanism that enables human agents to consider the well-being of nonhuman interests in ways that go beyond their service to humans. Unlike Habermas's formulation, the critical ecological formulation acknowledges the very important role of representation in the democratic process. Indeed, this will be the primary basis of my critique of Habermas. And unlike liberalism, my critique also seeks to avoid a purely instrumental posture toward others (whether human or nonhuman) in its extension of the moral principle of "live and let live" to all inhabitants in the wider ecological community, which is understood as an unbounded continuum in space and time. This reconceptualization of the demos as no longer fixed in terms of people and territory provides a challenge to traditional conceptions of democracy that have presupposed some form of fixed enclosure, in terms of territory and/or people. The ambit claim argues that in relation to the making of any decision entailing potential risk, the relevant moral community must be understood as the affected community or community at risk, tied together not by common passports, nationality, blood line, ethnicity, or religion but by the potential to be harmed by the particular proposal, and not necessarily all in the same way or to the same degree.4 For example, for a proposal to build a large dam, the community at risk might be all ecological communities in the relevant watershed regardless of the location of state territorial boundaries. For a proposal to build a nuclear reactor, the spatial community at risk might be half a hemisphere, spanning continents and oceans. Temporally this community at risk would extend almost indefinitely into the future, encompassing countless generations. For a proposal to release genetically modified organisms into the environment, the relevant communities at risk might be variable and not contiguous in space or contemporaneous in time. In each case the affected community would typically include both present and future human populations and the ecosystems in which they are embedded. Moreover the boundaries of such communities would rarely be determinate or fixed but instead have more of the character of spatialtemporal zones with nebulous and/or fading edges.

Alternatives to the state won't be better—only ecological democracy allows control over coercive power

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Yet such an anti-statist posture cannot withstand critical scrutiny from a critical ecological perspective. The problem seems to be that while states have been associated with violence, insecurity,

bureaucratic domination, injustice, and ecological degradation, there is no reason to assume that any alternatives we might imagine or develop will necessarily be free of, or less burdened by, such problems. As Hedley Bull warns, violence, insecurity, injustice, and ecological degradation pre-date the state system, and we cannot rule out the possibility that they are likely to survive the demise of the state system, regardless of what new political structures may arise.19 Now it could be plausibly argued that these problems might be lessened under a more democratic and possibly decentralized global political architecture (as bioregionalists and other green decentralists have argued). However, there is no basis upon which to assume that they will be lessened any more than under a more deeply democratized state system. Given the seriousness and urgency of many ecological problems (e.g., global warming), building on the state governance structures that already exist seems to be a more fruitful path to take than any attempt to move beyond or around states in the quest for environmental sustainability.20 Moreover, as a matter of principle, it can be argued that environmental benefits are public goods that ought best be managed by democratically organized public power, and not by private power.21 Such an approach is consistent with critical theory's concern to work creatively with current historical practices and associated understandings rather than fashion utopias that have no purchase on such practices and understandings. In short, there is more mileage to be gained by enlisting and creatively developing the existing norms, rules, and practices of state governance in ways that make state power more democratically and ecologically accountable than designing a new architecture of global governance de novo (a daunting and despairing proposition).

Skeptics should take heart from the fact that the organized coercive power of democratic states is not a totally untamed power, insofar as such power must be exercised according to the rule of law and principles of democratic oversight. This is not to deny that state power can sometimes be seriously abused (e.g., by the police or national intelligence agencies). Rather, it is merely to argue that such powers are not unlimited and beyond democratic control and redress. The focus of critical ecological attention should therefore be on how effective this control and redress has been, and how it might be strengthened.

Our alternative does not erase difference—only practicing public democratic debate and retaining state power allows the use of coercion to protect, rather than harm, difference

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What seems to emerge from this empirical turn in deliberative democracy is that what I have singled out as the core ideals of the deliberative model—free or unconstrained dialogue, inclusive/enlarged thinking and social learning—sometimes have to be actively cultivated or even imposed rather than assumed to exist before deliberation, or assumed always to arise in the course of deliberation.35 When one considers those fora where something approximating genuine deliberation tends to take place (Quakers meetings; university tutorials—at their best; reading groups; well-facilitated public meeting in the town hall; citizens juries; deliberative opinion polls, academic conferences, and consensus conferences), it is because of a preexisting, deep-seated mutual understanding that engenders the necessary mutual respect (the Quaker meetings), a shared culture of critical discourse (the reading group or tutorial), and/or because the forum and its procedures and protocols are carefully contrived and managed as a deliberative microcosm to facilitate free dialogue (e.g., the consensus conference). Critical explorations of the group dynamics of conventional juries provides a sobering reminder that small sized groups do not necessarily lead to unconstrained deliberation.36 This suggests that if deliberative democracy is to be understood as a "school for social learning," then both citizens and their political representatives sometimes need to be actively schooled in deliberative democracy before it is likely to take hold and flourish beyond the kinds of enclaves that I have listed. So, in addressing the question of how to "unrig" the antiecological biases of liberal democracy, let us accept that the

idealized and demanding conditions of deliberative democracy are aspirational, and therefore can only ever be approximated (rather than fully realized) in everyday politics; alternative decision rules other than consensus may need to be applied to foreclose what might otherwise be interminable debate or to respect cultural difference, and, as Young argues, cultural and social differences should be considered a resource for public reason, rather than as divisions that public reason must somehow transcend.37

Now when we turn to these practical challenges we find that the problems raised by Vogel in relation to "speaking for nature" merely represent an extreme version of a more general and enduring problem concerning the unavoidable epistemological and motivational hazards associated with all forms of political representation.38 That is, there are many reasons why political representatives may find it difficult or impossible to understand or imagine the perspectives of all differently situated others in order to formulate norms that may be acceptable to those others. This may arise because of lack of personal experience of the other, lack of information, or misinformation, or scientific uncertainty. Or it may arise because representatives lack the necessary motivation to treat the lifeworld and interests of differently situated others on an equal par with their own. More generally, as feminist difference theorists have pointed out, all political arguments, however well intended, cannot be entirely detached from the experience, cultural and class background, and material interests of their proponents.

These epistemological and motivational deficits associated with political engagement and political representation cannot be eliminated from political life. However, they can be minimized and/or held in check by a range of institutional devices that make it difficult for parties to act corruptly, deviously, or even just self-interestedly while also encouraging long-range, inclusive deliberation. Without offering an exhaustive response to the challenging question of institutional reform, I will suggest a number of such devices (some familiar, some less familiar) that might help to bring into fuller view the community at risk. Now I have already noted that it is neither possible nor practicable for all affected parties literally to deliberate together en masse. Indeed, ecological democracy must necessarily contain a representative element if it is to function as a democracy for the affected, including future generations and nonhuman species.39 Accordingly the question of political representation emerges as a crucial issue in both the theory and practice of ecological democracy.

The first and most significant step is to support mechanisms that ensure that political representation is as diverse as possible. In short, deliberative democracy must be representative in a double, reflexive sense. It must encourage enlarged thinking, and it must also provide for enlarged, as in diverse, representation on the understanding that it is dangerous always to "trust" in the political imagination of the chosen or privileged few (Burkean, Madisonian, green, or otherwise). While it is impossible to orchestrate a meeting of the entire community at risk, we can at least devise forms of political representation (along with appropriate procedures and decision rules) that serve to widen and deepen the horizons of those who are actually engaged in the making of risk-generating decisions. In particular, risk-generating and riskdisplacing decisions are less likely to survive policy-making communities and legislative chambers that are inclusive in terms of class, gender, race, region, and so on, and especially so when the deliberators are obliged to consider the effects of their decisions on social and ecological communities both within and beyond the formal demos. Such procedures would, in effect, serve to redraw the boundaries of the demos to accommodate the relevant affected community in every potentially risk generating decision. (Such procedures also offer an alternative to the multiplication of regional and international governance structures advocated by cosmopolitan democrats that introduce their own democratic deficits.)

Diverse representation guards against self-interested collusion and also facilitates enlarged thinking by minimizing the problem of a narrow band of elites "second-guessing" (benignly or otherwise) the concerns and interests of differently situated others, especially minority groups. In the language of Anne Phillips, the "politics of ideas" must be supplemented with a "politics of presence."40 This argument is also broadly consistent with Iris Marion Young's neo-Habermasian conception of communicative democracy, which criticizes both the liberal and civic republican ideal of impartiality and relies instead on group representation as a strategy of displacement in relation to entrenched ways of framing and responding to political problems by political elites. Diverse representation provides one means of confronting, displacing and ultimately stretching the political imagination of representatives, thereby going some way toward

correcting the exclusionary implications of the knowledge and motivational deficits associated with all forms political representation. From the point of view of environmental justice advocates, ensuring the presence of racial minorities or disadvantaged groups in legislative assemblies and environmental policy making communities (e.g., via balanced tickets and proportional representation electoral systems) will go some way toward preventing the unfair displacement of ecological and social costs onto those minority communities. The adoption of multimember electoral systems would also increase the likelihood of green parties gaining a formal presence in parliaments.

Ecological democracy changes the values of decisionmaking—the interests of exploited groups will always get priority over those of the privileged

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This chapter has sought to build on the work of Habermas and neoHabermasians such as Young and Dryzek by exploring how the democratic constitutional state might be transformed in ways that maintain an optimal relationship (understood as a productive tension) among civil society, the public sphere, and the state. In general, this requires the further democratization of the state, civil society, and the economy so that the system imperatives of the state and the economy are more firmly constrained by the needs of the lifeworld. The green democratic state should seek to uphold the ideal of an inclusive and outward-looking democracy that seeks to facilitate the reaching of provisional (and therefore revisable) common understandings that are tolerant of difference. However, it will invariably be the case that not all interests or conceptions of the common good, and not all particularistic standpoints can be equally accommodated. In cases of intractable conflict, the discursive norms and procedures upheld by the green democratic state ought to favor the interests of the dominated over the interests of the dominators, provided that any intervention leads to less rather than more domination.

The project of building the green state of the kind I have defended can never be finalized. It must be understood as an ongoing process of finding ways of extending recognition, representation, and participation to promote environmental protection and environmental justice. Moreover such a project must also entail exploring to what extent the territorially and legally delimited green democratic state might be able to serve as a vehicle for environmental protection and justice at home and abroad. To this end, the following chapter seeks to negotiate some of the enduring tensions between the bounded nature of state democratic governance and the unbounded nature of green morality.

State solves Cap

The state is the best promise to restrain capitalism and strive toward ecological and social justice

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In contrast to Weber, my approach to the state is explicitly normative and explicitly concerned with the purpose of states, and the democratic basis of their legitimacy. It focuses on the limitations of liberal normative theories of the state (and associated ideals of a just constitutional arrangement), and it proposes instead an alternative green theory that seeks to redress the deficiencies in liberal theory. Nor is my account as bleak as Weber's. The fact that states possess a monopoly of control over the means of coercion is a most serious matter, but it does not necessarily imply that they must have frequent recourse to that power. In any event, whether the use of the state's coercive powers is to be deplored or welcomed turns on the purposes for which that power is exercised, the manner in which it is exercised, and whether it is managed in public, transparent, and accountable ways—a judgment that must be made against a background of changing problems, practices, and understandings. The coercive arm of the state can be used to "bust" political demonstrations and invade privacy. It can also be used to prevent human rights abuses, curb the excesses of corporate power, and protect the environment.

In short, although the political autonomy of states is widely believed to be in decline, there are still few social institution that can match the same degree of capacity and potential legitimacy that states have to redirect societies and economies along more ecologically sustainable lines to address ecological problems such as global warming and pollution, the buildup of toxic and nuclear wastes and the rapid erosion of the earth's biodiversity. States—particularly when they act collectively—have the capacity to curb the socially and ecologically harmful consequences of capitalism. They are also more amenable to democratization than corporations, notwithstanding the ascendancy of the neoliberal state in the increasingly competitive global economy. There are therefore many good reasons why green political theorists need to think not only critically but also constructively about the state and the state system. While the state is certainly not "healthy" at the present historical juncture, in this book I nonetheless join Poggi by offering "a timid two cheers for the old beast," at least as a potentially more significant ally in the green cause.17

Green democracy would allow a postcapitalist state—all of capitalism's advantages without the dangers

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To the extent that stronger forms of ecological modernization may take hold, we should expect to see more reflexive (and hence more democratic) states that might also assume the role of ecological trustee and quell the growing public anxiety about ecological risks. Would a fullfledged green democratic state still be a capitalist state? On the one hand, the green state would still be dependent on the wealth produced by private capital accumulation to fund, via taxation, its programs and in this sense would still be a capitalist state. On the other, securing private capital accumulation would no longer be the defining feature or primary raison d'être of the state. The state would be more reflexive and market activity would be disciplined, and in some cases curtailed, by social and ecological norms. The purpose and character of the state would be enlarged and therefore be different. In this respect the green democratic state may be understood as a postcapitalist state. In the next chapters I explore what institutional reflexivity might entail in terms of a postliberal ecological understanding of democracy.

Of course, the capacity to pursue ecological modernization varies from state to state. Whether as strategic environmental policy or as the basis for far-reaching societal transformation, ecological modernization is a luxury that only a few privileged Western states are currently in a position to pursue in any systematic way. This is not an acceptable situation in the long run, and it can only be defensible in the short run if those states that currently pursue ecological modernization deploy their "green wealth" to further environmental and social justice goals that may not be so easily harmonized with national economic pressures. There should be positive spin-offs for global society to the extent that the privileged green states are able develop greater institutional reflexivity of a kind that is more sensitive to global environmental protection and global environmental justice. We would also expect such states to be in the best (relative) position to act as good international citizens, whether unilaterally (by offering more reflexive environmental and economic policy discourses and more ecologically reflexive domestic institutions for emulation by other states) or multilaterally (in setting the pace in difficult multilateral environmental negotiations).

State Not So Bad—Cap

Even if the state is illegitimate we should still seek reform not rejection—the alternative is worse oppression by capitalism

CHOMSKY 1997 (Noam, Interview with David Barsamian, Z Magazine, March)

I don't know if you recall that in a previous interview with you I made some comment about how, in the current circumstances, devolution from the federal government to the state level is disastrous. The federal government has all sorts of rotten things about it and is fundamentally illegitimate, but weakening federal power and moving things to the state level is just a disaster. At the state level even middle-sized businesses can control what happens. At the federal level only the big guys can push it around. That means, that if you take, say, aid for hungry children, to the extent that it exists, if it's distributed through the federal system, you can resist business pressure to some extent. It can actually get to poor children. If you move it to the state level in block grants, it will end up in the hands of Raytheon and Fidelity—exactly what's happening here in Massachusetts. They have enough coercive power to force the fiscal structure of the state to accommodate to their needs, with things as simple as the threat of moving across the border. These are realities. But people here tend to be so doctrinaire. Obviously there are exceptions, but the tendencies here, both in elite circles and on the left, are such rigidity and doctrinaire inability to focus on complex issues that the left ends up removing itself from authentic social struggle and is caught up in its doctrinaire sectarianism. That's very much less true there. I think that's parallel to the fact that it's less true among elite circles. So just as you can talk openly there about the fact that Brazil and Argentina don't really have a debt, that it's a social construct, not an economic fact—they may not agree, but at least they understand what you're talking about—whereas here I think it would be extremely hard to get the point across. Again, I don't want to overdraw the lines. There are plenty of exceptions. But the differences are noticeable, and I think the differences have to do with power. The more power and privilege you have, the less it's necessary to think, because you can do what you want anyway. When power and privilege decline, willingness to think becomes part of survival.

I know when excerpts from that interview we did were published in The Progressive, you got raked over the coals for this position.

Exactly. When I talked to the anarchist group in Buenos Aires, we discussed this. Everybody basically had the same recognition. There's an interesting slogan that's used. We didn't mention this, but quite apart from the Workers Party and the urban unions, there's also a very lively rural workers organization. Millions of workers have become organized into rural unions which are very rarely discussed. One of the slogans that they use which is relevant here, is that we should "expand the floor of the cage." We know we're in a cage. We know we're trapped. We're going to expand the floor, meaning we will extend to the limits what the cage will allow. And we intend to destroy the cage. But not by attacking the cage when we're vulnerable, so they'll murder us. That's completely correct. You have to protect the cage when it's under attack from even worse predators from outside, like private power. And you have to expand the floor of the cage, recognizing that it's a cage. These are all preliminaries to dismantling it. Unless people are willing to tolerate that level of complexity, they're going to be of no use to people who are suffering and who need help, or, for that matter, to themselves.

State power is necessary for effective political resistance–it's critical to check worse corporate power

CHOMSKY 1998 (Noam, "On Human Nature," Interview with Kate Soper, *Red Pepper*, August)

QUESTION: Your ultimate political goal is anarchistic, the erosion of state institutions and any form of authoritarian control. But you have also recognised the need to defend some forms of state regulation as protection against a wholly unregulated market. Can you say more on how you view this two-edged process of possible political transformation?

CHOMSKY: I'm not in favour of people being in cages. On the other hand I think people ought to be in cages if there's a sabre-toothed tiger wandering around outside and if they go out of the cage the sabre-toothed tiger will kill them. So sometimes there's a justification for cages. That doesn't mean cages are good things. State power is a good example of a necessary cage. There are sabre-toothed tigers outside; they are called

transnational corporations which are among the most tyrannical totalitarian institutions that human society has devised. And there is a cage, namely the state, which to some extent is under popular control. The cage is protecting people from predatory tyrannies so there is a temporary need to maintain the cage, and even to extend the cage.

Total rejection is a bad idea–the state must be used to check the private tyrannies of corporate control, even if the result is a more powerful government

CHOMSKY 1996 (Noam, quoted by Tom Lane, December 23, http://www.totse.com/en/politics/anarchism/161594.html)

Prospects for freedom and justice are limitless. The steps we should take depend on what we are trying to achieve. There are, and can be, no general answers. The questions are wrongly put. I am reminded of a nice slogan of the rural workers' movement in Brazil (from which I have just returned): they say that they must expand the floor of the cage, until the point when they can break the bars. At times, that even requires defense of the cage against even worse predators outside: defense of illegitimate state power against predatory private tyranny in the United States today, for example, a point that should be obvious to any person committed to justice and freedom -- anyone, for example, who thinks that children should have food to eat -- but that seems difficult for many people who regard themselves as libertarians and anarchists to comprehend. That is one of the self-destructive and irrational impulses of decent people who consider themselves to be on the left, in my opinion, separating them in practice from the lives and legitimate aspirations of suffering people.

Policy Discussions Good

Understanding the pragmatic details of government policymaking is key to addressing societal problems like racism, poverty, and militarism – critical approaches are interesting but unproductive in the real world

McClean, 1 – Adjunct Assistant Professor, Department of Philosophy, Molloy College (David, "The Cultural Left and the Limits of Social Hope," Annual Conference of the Society for the Advancement of American Philosophy, 3-6, http://www.american-philosophy.org/archives/past_conference_programs/pc2001/Discussion%20papers/david_mcclean.htm)//SY

Or we might take Foucault who, at best, has provided us with what may reasonably be described as a very long and eccentric footnote to Nietzsche (I have once been accused, by a Foucaltian true believer, of "gelding" Foucault with other similar remarks). Foucault, who has provided the Left of the late 1960s through the present with such notions as "governmentality," "Limit," "archeology," "discourse" "power" and "ethics," creating or redefining their meanings, has made it overabundantly clear that all of our moralities and practices are the successors of previous ones which derive from certain configurations of savoir and connaisance arising from or created by, respectively, the discourses of the various scientific schools. But I have not yet found in anything Foucault wrote or said how such observations may be translated into a political movement or hammered into a political document or theory (let alone public policies) that can be justified or founded on more than an arbitrary aesthetic experimentalism. In fact, Foucault would have shuddered if any one ever did, since he thought that anything as grand as a movement went far beyond what he thought appropriate. This leads me to mildly rehabilitate Habermas, for at least he has been useful in exposing Foucault's shortcomings in this regard, just as he has been useful in exposing the shortcomings of others enamored with the abstractions of various Marxian-Freudian social critiques. Yet for some reason, at least partially explicated in Richard Rorty's Achieving Our Country, a book that I think is long overdue, leftist critics continue to cite and refer to the eccentric and often a priori ruminations of people like those just mentioned, and a litany of others including Derrida, Deleuze, Lyotard, Jameson, and Lacan, who are to me hugely more irrelevant than Habermas in their narrative attempts to suggest policy prescriptions (when they actually do suggest them) aimed at curing the ills of homelessness, poverty, market greed, national belligerence and racism. I would like to suggest that it is time for American social critics who are enamored with this group, those who actually want to be relevant, to recognize that they have a disease, and a disease regarding which I myself must remember to stay faithful to my own twelve step program of recovery. The disease is the need for elaborate theoretical "remedies" wrapped in neological and **multi-syllabic jargon**. These elaborate theoretical remedies are more "interesting," to be sure, than the pragmatically settled questions about what shape democracy should take in various contexts, or whether private property should be protected by the state, or regarding our basic human nature (described, if not defined (heaven forbid!), in such statements as "We don't like to starve" and "We like to speak our minds without fear of death" and "We like to keep our children safe from poverty"). As Rorty puts it, "When one of today's academic leftists says that some topic has been 'inadequately theorized,' you can be pretty certain that he or she is going to drag in either philosophy of language, or Lacanian psychoanalysis, or some neo-Marxist version of economic determinism. . . . These futile attempts to philosophize one's way into political relevance are a symptom of what happens when a Left retreats from activism and adopts a spectatorial approach to the problems of its country. Disengagement from practice produces theoretical hallucinations"(italics mine).(1) Or as John Dewey put it in his The Need for a Recovery of Philosophy, "I believe that philosophy in America will be lost between chewing a historical cud long since reduced to woody fiber, or an apologetics for lost causes, ... or a scholastic, schematic formalism, unless it can somehow bring to consciousness America's own needs and its own implicit principle of successful action." Those who suffer or have suffered from this disease Rorty refers to as the Cultural Left, which left is juxtaposed to the Political Left that Rorty prefers and prefers for good reason. Another attribute of the Cultural Left is that its members fancy themselves pure culture critics who view the successes of America and the West, rather than some of the barbarous methods for achieving those successes, as mostly evil, and who view anything like national pride as equally evil even when that pride is tempered with the knowledge and admission of the nation's shortcomings. In other words, the Cultural Left, in this country, too often dismiss American society as beyond reform and redemption. And Rorty correctly argues that this is a disastrous conclusion,

i.e. disastrous for the Cultural Left. I think it may also be disastrous for our social hopes, as I will explain. Leftist American culture critics might put their considerable talents to better use if they bury some of their cynicism about America's social and political prospects and help forge public and political possibilities in a spirit of determination to, indeed, achieve our country - the country of Jefferson and King; the country of John Dewey and Malcom X; the country of Franklin Roosevelt and Bayard Rustin, and of the later George Wallace and the later Barry Goldwater. To invoke the words of King, and with reference to the American society, the time is always ripe to seize the opportunity to help create the "beloved community," one woven with the thread of agape into a conceptually single yet diverse tapestry that shoots for nothing less than a true intra-American cosmopolitan ethos, one wherein both same sex unions and faith-based initiatives will be able to be part of the same social reality, one wherein business interests and the university are not seen as belonging to two separate galaxies but as part of the same answer to the threat of social and ethical nihilism. We who fancy ourselves philosophers would do well to create from within ourselves and from within our ranks a new kind of public intellectual who has both a hungry theoretical mind and who is yet capable of seeing the need to move past high theory to other important questions that are less bedazzling and "interesting" but more important to the prospect of our flourishing - questions such as "How is it possible to develop a citizenry that cherishes a certain hexis, one which prizes the character of the Samaritan on the road to Jericho almost more than any other?" or "How can we square the political dogma that undergirds the fantasy of a missile defense system with the need to treat America as but one member in a community of nations under a "law of peoples?" The new public philosopher might seek to understand labor law and military and trade theory and doctrine as much as theories of surplus value; the logic of international markets and trade agreements as much as critiques of commodification, and the politics of complexity as much as the politics of power (all of which can still be done from our arm chairs.) This means going down deep into the guts of our quotidian social institutions, into the grimy pragmatic details where intellectuals are loathe to dwell but where the officers and bureaucrats of those institutions take difficult and often unpleasant, imperfect decisions that affect other peoples' lives, and it means **making honest attempts to truly understand how those institutions actually function** in the actual world before howling for their overthrow commences. This might help **keep us from being slapped down in debates by true policy pros** who actually know what they are talking about but who lack awareness of the dogmatic assumptions from which they proceed, and who have not yet found a good reason to listen to jargon-riddled lectures from philosophers and culture critics with their snobish disrespect for the so-called "managerial class."

Their arguments can be included in our framework, but debate over government policy is still critical–theoretical critique debates with no policy relevance distance the academy from government and hinder education **JENTLESON 2002**

(Bruce, Director of the Terry Sanford Institute of Public Policy and Professor of Public Policy and Political Science at Duke University, International Security 26.4)

So, a Washington foreign policy colleague asked, which of your models and theories should I turn to now? What do you academics have to say about September 11? You are supposed to be the scholars and students of international affairs—Why did it happen? What should be done? Notwithstanding the surly tone, the questions are not unfair. They do not pertain just to political scientists and international relations scholars; they can be asked of others as well. It falls to each discipline to address these questions as they most pertain to its role. To be sure, political science and international relations have produced and continue to produce scholarly work that does bring important policy insights. Still it is hard to deny that contemporary political science and international relations as a discipline put limited value on policy relevance—too little, in my view, and the discipline suffers for it. 1 The problem is not just the gap between theory and policy but its chasmlike widening in recent years and the limited valuation of efforts, in Alexander George's phrase, at "bridging the gap." 2 The [End Page 169] events of September 11 drive home the need to bring policy relevance back in to the discipline, to seek greater praxis between theory and practice. This is not to say that scholars should take up the agendas of think tanks, journalists, activists, or fast fax operations. The academy's agenda is and should be principally a more scholarly one. But theory can be valued without policy relevance being so undervalued. Dichotomization along the

lines of "we" do theory and "they" do policy consigns international relations scholars almost exclusively to an intradisciplinary dialogue and purpose, with conversations and knowledge building that while highly intellectual are excessively insular and disconnected from the empirical realities that are the discipline's raison d'être. This stunts the contributions that universities, one of society's most essential institutions, can make in dealing with the profound problems and challenges society faces. It also is counterproductive to the academy's own interests. Research and scholarship are bettered by pushing analysis and logic beyond just offering up a few paragraphs on implications for policy at the end of a forty-page article, as if a "ritualistic addendum." 3 Teaching is enhanced when students' interest in "real world" issues is engaged in ways that reinforce the argument that theory really is relevant, and CNN is not enough. There also are gains to be made for the scholarly community's standing as perceived by those outside the academic world, constituencies and colleagues whose opinions too often are self-servingly denigrated and defensively disregarded. It thus is both for the health of the discipline and to fulfill its broader societal responsibilities that greater praxis is to be pursued.

Discussions of public policy in debate undermines dogmatism and alienation – this helps solve inequality and exploitation

Mitchell, 2k – Associate Professor and Chair, Department of Communication, University of Pittsburgh (Gordon, "Simulated public argument as a pedagogical play on words," Argumentation and Advocacy, Vol. 36, No. 3, Winter, http://search.proquest.com/docview/203263325?pq-origsite=gscholar)//SY

When we assume the posture of the other in dramatic performance, we tap into who we are as persons, since our interpretation of others is deeply colored by our own senses of selfhood. By encouraging experimentation in identity construction, role-play "helps **students discover divergent viewpoints and overcome stereotypes** as they examine subjects from multiple perspectives. . ." (Moore, p. 190). Kincheloe points to the importance of this sort of reflexive critical awareness as an essential feature of educational practice in postmodern times. "Applying the notion of the postmodern analysis of the self, we come to see that hyperreality invites a heteroglossia of being," Kincheloe explains; "Drawing upon a multiplicity of voices, individuals live out a variety of possibilities, refusing to suppress particular voices. As men and women appropriate the various forms of expression, they are empowered to uncover new dimensions of existence that were previously hidden" (1993, p. 96). This process is particularly crucial in the public argument context, since a key guarantor of inequality and exploitation in contemporary society is the widespread and uncritical acceptance by citizens of politically inert self-identities. The problems of political alienation, apathy and withdrawal have received lavish treatment as perennial topics of scholarly analysis (see e.g. Fishkin 1997; Grossberg 1992; Hart 1998; Loeb 1994). Unfortunately, comparatively less energy has been devoted to the development of pedagogical strategies for countering this alarming political trend. However, some scholars have taken up the task of theorizing emancipatory and critical pedagogues, and argumentation scholars interested in expanding the learning potential of debate would do well to note their work (see e.g. Apple 1995, 1988, 1979; Britzman 1991; Giroux 1997, 1988, 1987; Greene 1978; McLaren 1993, 1989; Simon 1992; Weis and Fine 1993). In this area of educational scholarship, the curriculum theory of cun-ere, a method of teaching pioneered by Pinar and Grumet (1976), speaks directly to many of the issues already discussed in this essay. As the Latin root of the word "curriculum," currere translates roughly as the investigation of public life (see Kincheloe 1993, p. 146). According to Pinar, "the method of currere is one way to work to liberate one from the web of political, cultural, and economic influences that are perhaps buried from conscious view but nonetheless comprise the living web that is a person's biographic situation" (Pinar 1994, p. 108). The objectives of role-play pedagogy resonate with -the currere method. **By opening discursive spaces for students to explore their identities as public actors**, simulated public arguments provide occasions for students to survey and appraise submerged aspects of their political identities. Since many aspects of cultural and political life work currently to reinforce political passivity, critical argumentation pedagogies that highlight this component of students' self-identities carry **significant emancipatory potential.**

Policy discussions in debate are crucial to the development of advocacy skills and inspire effective real-world activism – empirics prove

Mitchell, 98 – Associate Professor and Chair, Department of Communication, University of Pittsburgh (Gordon, "Pedagogical possibilities for argumentative agency in academic debate," Argumentation and Advocacy, Vol. 35, No. 2, http://dl2af5jf3e.search.serialssolutions.com.proxy.lib.umich.edu/?rft.title=Argumentation+and+Advocacy&sid=sersol%3ARefinerQuery&citationsubmit=Look+Up&url_ver=Z39.88-2004&l=DL2AF5JF3E&rfr_id=info%3Asid%2Fsersol%3ARefinerQuery&SS_LibHash=DL2AF5JF3E&SS_ReferentFormat=JournalFormat&rft.genre=article&rft_val_fmt=info%3Aofi%2Ffmt%3Akev%3Amtx%3Ajournal&rft.atitle=Pedagogical+possibilities+for+argumentative+agency+in+academic+debate)//SY

It is possible to go beyond thinking of debate as a remedial tool to redress educational inequities and to start seeing debate as a political activity that has the potential to empower students and teachers to change the underlying conditions that cause inequities among schools and communities in the first place. In this task, the **public advocacy skills learned by debaters can be extremely efficacious**. The ability to present ideas forcefully and persuasively in public is powerful tool, one that becomes even more dynamic when coupled with the research and critical thinking acumen that comes with intensive debate preparation. A crucial element of this transformative pedagogy is public advocacy, **making debate practice directly relevant to actors who are studied during research**, and making the topics researched relevant to the lives of students and teachers. On this point, Jurgen Habermas has served as an impressive exemplar, giving concrete expression to his theories of discourse ethics and communicative action in numerous direct interventions into the German public sphere (see Habermas 1994; 1997; Holub 1991). These interventions have taken the form of newspaper articles, speeches and public appearances on such topics as the historical interpretation of National Socialism, the process of German reunification, treatment of immigrant populations in Germany, and the political role of the student movement. Habermas presented his most comprehensive comments on this latter issue at a June, 1968 meeting of the Union of German Students. At this meeting, he suggested that students have the capacity to roll back "colonization of the lifeworld" and protect the public sphere by promoting wide-open public discussing of pressing political issues. By doing this, Habermas suggested that the students could directly complicate institutional moves to cover for legitimation deficits by fencing off public scrutiny and tamping down critical protest. The student movement is of central importance, according to Habermas, because it calls into question the legitimacy of capitalist society at its weakest points. It unmasks the ideological obfuscations, critiques the attempts at diversion and opens discussion on fundamental issues of economics and politics. It does not accept the pretext that only experts can decide on matters of economic and political concern. Instead it removes the aura of expertise from state decision-making and subjects policy in general to public discussion (Holub 1991, p. 88). Motivated by the publication of Habermas' doctoral dissertation, The Structural Transformation of the Public Sphere, German students arranged mass protests in early 1968 against the Springer publishing house, producer of the Bildzeitung, a mass circulation newspaper trading in sensationalism and hard-line conservatism. At Habermas's urging, the students were energized to initiate this resistance, choosing to target Springer based on the Frankfurt school's sustained critique of the mass media as arch-enemy of unfettered public argumentation. As Holub describes, "[a] press such as Springer's has the double function of excluding the public from real issue-oriented discussions and of mobilizing the public against those who, like the protesters, try to engender public debate" (1991, p. 88). This anti-Springer campaign is one example of student movement mobilization undertaken in name of Habermas' suggested project of "repoliticizing," or re-activating public spheres of deliberation (see Habermas 1970). Alain Touraine, a sociologist who has worked closely with the student movements in France and Chile, argues that the unique cultural position students inhabit affords them uncanny political maneuverability: "Students can now play an important role because the sharp rise in their numbers and the increased duration of studies have resulted in the constitution of student collectivities with their own space, capable of opposing the resistance of their own culture and of their personal concerns to the space of the large organizations that seek to imposes themselves even more directly upon them" (1988, p. 120). The skills honed during preparation for and participation in academic debate can be utilized as powerful tools in this regard. Using sophisticated research, critical thinking, and concise argument presentation, argumentation scholars can become formidable actors in the public realm, advocating on behalf of a particular issue, agenda, or viewpoint. **For competitive academic debaters, this sort of advocacy**

can become an important extension of a long research project culminating in a strong personal judgment regarding a given policy issue and a **concrete plan to intervene politically** in pursuit of those beliefs. For example, on the 1992~93 intercollegiate policy debate topic dealing with U.S. development assistance policy, the University of Texas team ran an extraordinarily successful affirmative case that called for the United States to terminate its support for the Flood Action Plan, a disaster-management program proposed to equip the people of Bangladesh to deal with the consequences of flooding. During the course of their research, Texas debaters developed close working links with the International Rivers Network, a Berkeley-based social movement devoted to stopping the Flood Action Plan. These links not only created a fruitful research channel of primary information to the Texas team; they helped Texas debaters organize sympathetic members of the debate community to support efforts by the International Rivers Network to block the Flood Action Plan. The University of Texas team capped off an extraordinary year of contest round success arguing for a ban on the Flood Action Plan with an activist project in which team members supplemented contest round advocacy with other modes of political organizing. Specifically, Texas debaters circulated a petition calling for suspension of the Flood Action Plan, organized channels of debater input to "pressure points" such as the World Bank and U.S. Congress, and solicited capital donations for the International Rivers Network. In a letter circulated publicly to multiple audiences inside and outside the debate community, Texas assistant coach Ryan Goodman linked the arguments of the debate community to wider public audiences by explaining the enormous competitive success of the ban Flood Action Plan affirmative on the intercollegiate tournament circuit. The debate activity, Goodman wrote, "brings a unique aspect to the marketplace of ideas. Ideas most often gain success not through politics, the persons who support them, or through forcing out other voices through sheer economic power, but rather on their own merit" (1993). To emphasize the point that this competitive success should be treated as an important factor in public policy-making, Goodman compared the level of rigor and intensity of debate research and preparation over the course of a year to the work involved in completion of masters' thesis. A recent article in the Chronicle of Higher Education estimated that the level and extent of research required of the average college debater for each topic is equivalent to the amount of research required for a Master's Thesis. If you multiplied the number of active college debaters (approximately 1,000) by that many research hours the mass work effort spent on exploring, comprehending, and formulating positions around relevant public policy issues is obviously astounding (Goodman 1993). An additional example of a public advocacy project undertaken by debaters took place under the 1995-96 college debate topic calling for increased U.S. security assistance to the Middle East. At the National Debate Tournament in 1996, a University of Pittsburgh team advocated a plan mandating that unrecognized Arab villages in Israel receive municipal services such as electricity, sewage treatment and water. After the plan was defended successfully in contest round competition, interested coaches and debaters joined together to organize activities on the final day of the tournament. These activities included circulation of informational material regarding the plight of unrecognized Arab villages in Israel, video displays of the conditions in unrecognized Arab villages such as Ein Hud, and compilation of 65 signatures supporting a petition which stated the following: "Noting that many Arab villages in Israel currently do not receive basic municipal services such as sewage treatment, electricity, and water, we call on the government of Israel to recognize such villages and provide these essential services." Following the conclusion of the tournament, this petition was forwarded to Association of Forty, the Arab Association for Human Rights, and the Galilee Society, social movements mobilizing for Arab village recognition in Israel. A more recent example of public advocacy work in debate took place at the National High School Institute, a summer debate workshop hosted by Northwestern University in 1998. At this workshop, a group of high school students researched an affirmative case calling for an end to the U.S. ballistic missile defense (BMD) program. Following up on a week of intensive traditional debate research that yielded a highly successful affirmative case, the students generated a short text designed as a vehicle to take the arguments of the affirmative to wider public audiences. This text was published as an online E-print on the noted Federation of American Scientists website (see Cherub Study Group 1998). In this process of translating debate arguments into a public text, care was taken to shear prose of unnecessary debate jargon, metaphors were employed liberally to render the arguments in more accessible terms, and references to popular culture were included as devices to ground the ban-BMD argument in everyday knowledge.

Endorsing topical action doesn't preclude critical discussions but targets them to be more effective and maintain a predictable stasis point

Strait & Wallace, 8 – Lecturer, Communication, University of Southern California AND BA, George Washington University (Laurance Paul and Brett, "Academic Debate as a Decision Making Game Inculcating the Virtue of Practical Wisdom," Contemporary Argumentation and Debate, Vol. 29, 28-30 http://www.cedadebate.org/files/2008CAD.pdf)//SY

The affirmative does not get to choose simply any frame of interpretation for its (topical) plan. This is an important point that Korcok's analysis ignores, because it leaves open the possibility that an actor besides the USFG could be the decision-maker. This is not to say that Korcok endorses non-topical action, but taking into account the fact that the affirmative's actor has to be topical allows us to narrow down the range of possible decision-makers and to make a conclusive answer about what question the affirmative is attempting to answer in order to win the debate. Obviously, in a policy debate, the Congress, the executive, and the judiciary all are possible decision-makers that are examples of the resolution. But in the context of framework debates, the resolution gives us only one question to answer. Every year, the resolution contains the introductory Resolved, which is followed by a course of action by the USFG. A colon separates the two parts of the resolution from each other, indicating that we as a community in each round have to "express an opinion by resolution or vote" about the normative question of USFG action (Words and Phrases, 1964, p. 478). Individual participants in the debate round are not the agents of the resolution, but the ones coming to an affirmative or negative conclusion about the question of whether it would be good for the United States federal government as a decision-maker to act. Each debate critic and individual debater is clearly separated from the decision-maker by the resolution. Negative interpretations that turn the judge or the debaters into a second decision-maker thus attempt to change the question that the resolution is asking in order to evaluate the opportunity cost of their localized action. Considering the topical agent identified in the plan to be the decision-maker with respect to the debate, rather than the judge or the debaters, has three additional benefits. First, ethical questions relating to intellectually endorsing the affirmative and other areas of literature that are not traditionally discussed in the context of policymaking can still be discussed under this decision-making framework, but in a more productive manner. A negative strategy that includes a counterplan that uses different assumptions to solve the affirmative and says the affirmative's approach is morally bankrupt is a reason why the affirmative should be ethically rejected. Even absent a counterplan, ignoring implications for the judge and excluding her ability to individually endorse alternative moral frameworks forces negative teams to make their criticisms more specific to the plan. If they want to say that the affirmative case is unethical, they should be forced to engage the traditional arguments in the teleology/deontology literature, e.g., 'moral purity has unintended consequences.' This would mean that the negative's alternative for the judge to reject the affirmative's unethical course of action would have to be much more specific and engaging on the question of whether it is possible to predict consequences or embrace moral absolutism in the context of the affirmative's advantages. Second, identifying the topical agent of the plan as the decision-maker prevents debate from being about roleplaying. Many critical teams' objection to policymaking is that the debaters are not the Federal Government and should not pretend otherwise. Since our argument merely is that the judge's range of fiat is constrained by the authority of a single decision-maker, rather than that the judge should be the decision-maker, debaters or judges do not have to accept uncritically the USFG's authority or way of thinking. Finally, identifying the topical agent of the plan as the decision-maker is the only way to limit affirmative or negative frameworks. Just as it is unfair for the negative to change the question of the debate, the affirmative should have a predictable way of proving the resolution is a good idea. O'Donnell (2004) persuasively describes the ideological chasm that has and will continue to tear the debate community apart absent an end to the proliferation of unpredictable frameworks.

Race

Specifically in the context of racial issues, roleplaying / discussions of federal policy helps students understand the political process and institutional domination

Ambrosio, 4 – Assistant Professor, Political Science, North Dakota State University (Thomas, "Bringing Ethnic Conflict into the Classroom: A Student-Centered Simulation of Multiethnic Politics," PS: Political Science and Politics, Vol. 37, No. 2, 287, http://www.jstor.org/stable/pdf/4488820.pdf)//SY

This is not to say that ethnic/racial relations in the United States are perfect, but the fact remains that ethnic politics in the U.S., with its recent emphasis on diversity and multiculturalism, are largely 'accommodative' in nature, rather than 'conflictual.' The issues involved are usually not based upon inherent differences of opinion, mutually exclusive positions, and zero-sum gain calculations. The debate is mostly over how and not whether we should accommodate ethnic differences. Older Americans may have memories of the latter debates in American politics (e.g., the debate over segregation), but the average student has grown up in a community and studies on a college campus that formally and officially celebrates diversity. Thus, it is necessary to overcome students' natural inclination to believe that all ethnic/racial differences can be handled through negotiations, mutual respect, and a desire to simply "get along." While certainly not assuming automatic conflict between ethnic groups or precluding any possibility for interethnic peace, it is necessary to ensure that students do not simply export the American model overseas because to do so often makes ethnic conflicts incomprehensible.7 In short, I wanted to present to the students the difficulties of policy decisions in multiethnic situations-something that approximates the real world. Often, as my students found, they were selecting between a series of bad options, rather than between good and bad. Not only does this give them a better understanding of the problems facing multiethnic states, but it also provides them with insights into the dilemmas facing U.S. policymakers who attempt to navigate through ethnic conflicts. Moreover, this type of simulation, also aims to **broaden students' understanding of the content and study of what comprises "politics." At the high school and college levels**, the study of politics tends to focus on institutions and the creation of laws. While this simulation is obviously about the creation of institutions, it includes a number of additional elements of "politics" including: the consequences of history in contemporary political debates; hierarchical relationships between ethnic groups; and the importance of symbolism in the political process.8

Policy Solutions/Ed Good

solution focus is key – policymakers should work with scholars to create pragmatic reforms

Desch 2014 (Michael, Professor and Chair of the Department of Political Science at the University of Notre Dame, what do policymakers want from us?, ISQ, https://www3.nd.edu/~carnrank/PDFs/What%20Do%20Policymakers%20Want%20from%20Us_MC.pdf, LB)

While policymakers do use theory (what they refer to as background and frameworks) they are skeptical of much of academic social science which they see as jargon-ridden and overly focused on technique, at the expense of substantive findings. Not surprisingly, rank in government is often negatively associated with tolerance for sophisticated methods; more striking, in our view, is that level of education also has that same negative correlation, indicating that it is those most familiar with those theories and techniques who are most skeptical of them. Finally, policymakers believe that the most important contributions scholars can make are not as direct policy participants or trainers of aspiring government employees, but rather as informal advisors or creators of new knowledge. However, severe time constraints limit their ability to use such scholarship in any but its' very briefest presentation. In sum, the short answer to our question is that what the academy is giving policymakers is not what they say they need from us. To be clear, we are not arguing that policymakers never find scholarship based upon the cutting edge research techniques of social science useful. Rather, we are making a more nuanced argument: That policymakers often find contemporary scholarship less-than-helpful when it employs such methods across the board, for their own sake, and without a clear sense of how such scholarship will contribute to policymaking. In addition, policy-makers often find the contributions of qualitative social science research, which is increasingly less well-represented in the discipline's leading journals, of greater utility. Given the predominance of quantitatively-oriented articles and this lack of attention to policy advice, it should not be surprising that a theory/policy gap remains. In the remainder of this paper we, first, describe how we constructed our survey pool and report some basic demographic statistics about our respondents. Next, we highlight the substantive results about what scholarship policymakers find useful and how they use it. We then try to anticipate some of the most important objections to our findings and interpretations. Finally, we conclude with some concrete recommendations as to how to make IR scholarship more useful to policymakers based on policymakers' responses with an eye toward both documenting the gap and providing guidance for those scholars who want to bridge it.

Their framework is suicidal–it cedes the opportunity to influence state policy and gives power to the elite

WALT 1991

(Stephen, Professor at the University of Chicago, *International Studies Quarterly* 35)

A third reason for decline was the Vietnam War. Not only did the debacle in Indochina cast doubt on some of the early work in the field (such as the techniques of "systems analysis" and the application of bargaining theory to international conflict), it also made the study of security affairs unfashionable in many universities. The latter effect was both ironic and unfortunate, because the debate on the war was first and foremost a debate about basic security issues. Was the "domino theory" accurate? Was U.S. credibility really at stake? Would using military force in Indochina in fact make the U.S. more secure? By neglecting the serious study of security affairs, opponents of the war could not effectively challenge the official rationales for U.S. involvement. The persistent belief that opponents of war should not study national security is like trying to find a cure for cancer by refusing to study medicine while allowing research on the disease to be conducted solely by tobacco companies.

Debating state policy allows us to shape institutions and resist domination

STANNARD 2006

(Matt, Department of Communication and Journalism, University of Wyoming, Spring 2006 Faculty Senate Speaker Series Speech, April 18, http://theunderview.blogspot.com/2006/04/deliberation-democracy-and-debate.html)

If Habermas is right, and I obviously believe he is, then academics cannot afford to be insulated from the lives of ordinary working people, but must instead co-participate in some kind of empowerment for all, perhaps by facilitating schools, and I would suggest debate programs, as safe deliberation zones, which can in turn inform liberatory politics. Above all, a commitment to deliberative democracy means removing the stigma from disagreement and confrontation, and teaching all participants to be co-creators not only of the substance of debate, but the rulemaking of the conversational process itself. This debating can take place both inside and outside of schools. A commitment to deliberative democracy means a commitment to privileging the process of deliberation over other processes in shaping political life. In other words, inclusive rather than restrictive voting rights, more candidates on TV and not less, more resources committed to education not fewer, erring on the side of freedom of speech rather than restrictions, and above all, an emphasis on and respect for the conversational process itself as an active, inclusive, organic field of political truth-building. A democratization, in other words, of the building of collective truth. Sometimes this means conducting deliberative polls or favoring the referendum process. Other times it means making the political process more transparent, such as favoring open-door meetings and the like. Now, many people make pretty good arguments as to the imperfections of these policies. The referendum process can be co-opted, bought out; sometimes even openness is antithetical to transparency, since cynical politicians can take advantage of openness for their own publicity, and sometimes people need to deliberate in private. But the great thing about deliberation as a commitment is that these criticisms can become part of the overall process of deliberative democracy. In a world where interested parties have the opportunity to speak and debate in good faith, we can criticize the referendum process, or explain why we can't always have open meetings. We can debate the rules themselves, in other words, debate the process itself. All of this suggests that, if deliberative ethics are an antidote to both authoritarianism and self-centeredness, we need more: More debate teams, more public discussion, more patient deliberation, more argument, more discourse, and more nurturing and promotion of the material entities that sustain them.

We have topic-specific evidence about why debating state policy is good—we can rein in the worst excess of the state and prevent violence

WALT 1991

(Stephen, Professor at the University of Chicago, *International Studies Quarterly* 35)

A second norm is relevance, a belief that even highly abstract lines of inquiry should be guided by the goal of solving real-world problems. Because the value of a given approach may not be apparent at the beginning–game theory is an obvious example–we cannot insist that a new approach be immediately applicable to a specific research puzzle. On the whole, however, the belief that scholarship in security affairs should be linked to real-world issues has prevented the field from degenerating into self-indulgent intellectualizing. And from the Golden Age to the present, security studies has probably had more real-world impact, for good or ill, than most areas of social science. Finally, the renaissance of security studies has been guided by a commitment to democratic discourse. Rather than confining discussion of security issues to an elite group of the best and brightest, scholars in the renaissance have generally welcomed a more fully informed debate. To paraphrase Clemenceau, issues of war and peace are too important to be left solely to insiders with a vested interest in the outcome. The growth of security studies within universities is one sign of broader participation, along with increased availability of information and more accessible publications for interested citizens. Although this view is by no means universal, the renaissance of security studies has been shaped by the belief that a well-informed debate is the best way to avoid the disasters that are likely when national policy is monopolized by a few self-interested parties.

Action through the state doesn't uphold it, but the claim that we should never debate state politics makes change impossible and essentializes the state

KRAUSE AND WILLIAMS 1997

(Keith and Michael, Critical Security Studies, p. xvi)

First, to stand too far outside prevailing discourses is almost certain to result in continued disciplinary exclusion. Second, to move toward alternative conceptions of security and security studies, one must necessarily reopen the question subsumed under the modern conception of sovereignty and the scope of the political. To do this, one must take seriously the prevailing claims about the nature of security. Many of the chapters in this volume thus retain a concern with the centrality of the state as a locus not only of obligation but of effective political action. In the realm of organized violence states also remain the preeminent actors. The task of a critical approach is not to deny the centrality of the state in this realm but, rather, to understand more fully its structures, dynamics, and possibilities for reorientation. From a critical perspective, state action is flexible and capable of reorientation, and analyzing state policy need not therefore be tantamount to embracing the statist assumptions of orthodox conceptions. To exclude a focus on state action from a critical perspective on the grounds that it plays inevitably within the rules of existing conceptions simply reverses the error of essentializing the state. Moreover, it loses the possibility of influencing what remains the most structurally capable actor in contemporary world politics.

They don't get rid of the state—it will exist either way so there's only a chance that more detailed analysis will help reform it—here's more evidence in the context of debate

STANNARD 2006

(Matt, Department of Communication and Journalism, University of Wyoming, Spring 2006 Faculty Senate Speaker Series Speech, April 18, http://theunderview.blogspot.com/2006/04/deliberation-democracy-and-debate.html)

If it is indeed true that debate inevitably produces other-oriented deliberative discourse at the expense of students' confidence in their first-order convictions, this would indeed be a trade-off worth criticizing. In all fairness, Hicks and Greene do not overclaim their critique, and they take care to acknowledge the important ethical and cognitive virtues of deliberative debating. When represented as anything other than a political-ethical concern, however, Hicks and Greene's critique has several problems: First, as my colleague J.P. Lacy recently pointed out, it seems a tremendous causal (or even rhetorical) stretch to go from "debating both sides of an issue creates civic responsibility essential to liberal democracy" to "this civic responsibility upholds the worst forms of American exceptionalism." Second, Hicks and Greene do not make any comparison of the potentially bad power of debate to any alternative. Their implied alternative, however, is a form of forensic speech that privileges personal conviction. The idea that students should be able to preserve their personal convictions at all costs seems far more immediately tyrannical, far more immediately damaging to either liberal or participatory democracy, than the ritualized requirements that students occasionally take the opposite side of what they believe. Third, as I have suggested and will continue to suggest, while a debate project requiring participants to understand and often "speak for" opposing points of view may carry a great deal of liberal baggage, it is at its core a project more ethically deliberative than institutionally liberal. Where Hicks and Greene see debate producing "the liberal citizen-subject," I see debate at least having the potential to produce "the deliberative human being." The fact that some academic debaters are recruited by the CSIS and the CIA does not undermine this thesis. Absent healthy debate programs, these think-tanks and government agencies would still recruit what they saw as the best and brightest students. And absent a debate community that rewards anti-institutional political rhetoric as much as liberal rhetoric, those students would have little-to-no chance of being exposed to truly oppositional ideas. Moreover, if we allow ourselves to believe that it is "culturally imperialist" to help other peoples build institutions of debate and deliberation, we not only ignore living political struggles that occur in every culture, but we fall victim to a dangerous ethnocentrism in holding that "they do not value deliberation like we do." If the argument is that our participation in fostering debate communities abroad greases the wheels of globalization, the correct response, in debate terminology, is that such globalization is non-unique, inevitable, and there is only a risk that collaborating across cultures in public debate and deliberation will foster resistance to domination—just as debate accomplishes wherever it goes. Indeed, Andy Wallace, in a recent article, suggests that Islamic fundamentalism is a byproduct of the colonization of the

lifeworld of the Middle East; if this is true, then one solution would be to foster cross-cultural deliberation among people on both sides of the cultural divide willing to question their own preconceptions of the social good. Hicks and Greene might be correct insofar as elites in various cultures can either forbid or reappropriate deliberation, but for those outside of that institutional power, democratic discussion would have a positively subversive effect.

At: ontology of the state

Viewing the state as monolith in the context of surveillance is disempowering

Barnard 2011 (david, phd in political science and senior research analyst at trilateral research, human security vs national security and the implications for surveillance studies, http://surveillantidentity.blogspot.com/2011/04/human-security-vs-national-security-and.html, LB)

Surveillance studies has engaged with the concept of national security, and the role of both the nation state, and the demands of security have played in the development and functioning of surveillance practices. It is clear that the state is no longer the sole agent of surveillance (if it ever was), and not all state surveillance is motivated by national security concerns (Whitaker, 1999:29). It is not controversial however to identify the state, and its national security concerns as important nodes in many a surveillant assemblage. Nor is this to argue that the state is monolithic and homogeneous, rather that government occurs across a range of actors and institutions, drawn together by shared discourses and mentalities of government (Dean, 2010). This very perspective further serves to deconstruct the concept of a single, cohesive 'national security', and focus our attention on the way that security threats and the privileged responses to those threats are constructed. National security can then be seen as a particular discourse – a mentality structuring the activity of government.

A2: State Coopts

Our conceptions of the state solves cooptation—we change the ambit of state concern to make it responsive to radical democracy

ECKERSLEY 2004 (Robyn, Professor and Head of Political Science in the School of Social and Political Sciences, University of Melbourne, The Green State: Rethinking Democracy and Sovereignty)

While Dryzek rightly alerts all critical theorists to the dangers of state cooptation of social movements, his conclusions must be read in the context of his preoccupation with maintaining the vibrancy of civil society and the public sphere against a rather limited conceptualization of the state as "the administrative state" driven by systemic imperatives. Yet state imperatives are not autonomous from civil society and there is nothing fixed or inevitable about their functions and goals. Rather they are produced and reproduced by the relationships and understandings that are forged, inter alia, between state and civil society actors. So-called state imperatives are, after all, merely reified social relations, practices, and understandings. The point, then (contra Dryzek), is to challenge those relationships, practices, and understandings that are not environmentally inclusive and to work toward making the settings in which they are forged less distorted from the point of view of ecological democracy. To the extent to which this occurs, the zone of policy discretion can be expected to open up (or at least be less "imprisoned"), and we can also expect the goals and functions of states to change. Dryzek himself notes that state imperatives have changed, or rather expanded, over time in response to societal problems and the claims of social movements, and nowadays it is possible to recognize environmental conservation as a new state imperative, at least in the form of ecological modernization.71

However, these must be ultimately understood as political and socially negotiated changes involving political contestation, not autonomous changes in response to objective systemic imperatives. Whereas Dryzek's overriding concern is to maintain a vibrant civil society and public sphere, the concern in this inquiry is broader: How might we enhance state reflexivity or ecological problem-solving capacity? This is the same as asking: How might the communicative context become less distorted and more inclusive? Dryzek's empirical observation that "passively exclusively states" tend to prompt oppositional movements should not be taken as an argument for avoiding engagement with the state, although it does warn of the dangers of unthinking strategies of inclusion. The point, as I see it, is to make the democratic state more responsive to such critical feedback, acknowledging the crucial role played by civil society actors and public spheres in the processes of problem detection. The goal should not be to eliminate the unavoidable and necessary tensions between civil society and the state. Rather, it should be to explore how they might be played out in more creative ways, particularly for those groups that have historically been excluded or marginalized in the processes of policy making.

Stasis

Stasis Good

Stasis is a precondition for argument—this debate is worthless without it

CAPECE 2012 (Aaron, rhetoric blogger, "The Importance of Stasis," Oct 24, http://sites.psu.edu/capecercl24/2012/10/24/the-importance-of-stasis/)

Stasis is one of the most key elements in any argument. Stasis is, by definition, the place where rhetors agree that there is something to be discussed. Today we would liken it to an "issue." So, if stasis is the issue that is being discussed, it is clearly the most essential part of an argument. How can there be a logical discussion if the parties do not recognize that there is an issue that needs to be argued? If stasis is not reached, the argument is pointless because there is no common theme in the arguments. A prime example of the poor establishment of stasis in an argument is the Presidential debates. In these debates the moderator is charged with the duty of establishing a stasis and directing the debate through the questions and issue. The problem here is not, however, that the moderators have not been doing their jobs; it is that the candidates refuse to allow equilibrium to be reached. And, although I do have an idea of who I plan on voting for in the upcoming election, I am not pointing fingers at one candidate or the other. Both are equally guilty. With almost every question they are asked, they begin discussing the topic in question, if in a very vague and round-about way, but they quickly deviate and begin discussing how this issue relates to another issue. They skillfully steer the debate in the directions they want it to go and discuss the topics that they want to discuss. Take the 3rd Presidential debate, for example. This debate was supposed to be centered on foreign policy issues, and while foreign policy was briefly discussed, most of the debate ended up being centered on domestic issue. These debates are held with the goal of giving voters a better idea of the candidates' policies and helping them choose who to vote for, but with debates like this, it is pointless to even hold them because the candidates are rarely arguing the same issues. Sometimes they don't even agree that certain topics are issues that need discussion. If the ancient rhetors that coined the idea of stasis could see the quality of our "debates" they would be mortified at the lack of commonality between the arguments. They would most likely argue, as I am now, that these debates are utterly worthless because the candidates have no common ground at all to argue from.

Radically open democracy still requires common ground for debate—the alternative is broader social engineering which is worse for difference

ECKERSLEY 2004 (Robyn, Professor and Head of Political Science in the School of Social and Political Sciences, University of Melbourne, The Green State: Rethinking Democracy and Sovereignty)

In cases of intractable moral disagreement stemming from deep-seated differences in philosophical, religious, or cultural framewords, pragmatic compromises appear to be the only way in which environmental policy deadlocks can be resolved. Indeed, the new school of environmental pragmatist thought has argued that it is important that environmental democracy be open-ended, that participants be respectful, open-minded, good listeners who are prepared to work creatively with the moral and cultural resources at hand. Sometimes this may mean merely seeking only the minimum necessary common ground for the purposes of instrumental environmental problem solving. In this context the tactful avoidance of deep-seated moral, religious, cultural, and social differences and the searching out of pragmatic solutions to practical problems is more productive than allowing unnecessary and endless heated debate about deepseated environmental values and cultural and philosophical differences. For environmental pragmatists it is important that the procedures of democratic deliberation be radically open in order to leave the clarification of issues, agenda setting, practical problem solving, and adaptive learning and management to real stakeholders who constitute the relevant "community of inquirers" that must live with, and learn from, the consequences of their

decisions. Under these circumstances compromise, incremental change, and even "muddling through" are preferable to holistic social engineering, which is likely to be particularly insensitive to cultural difference.72 In this respect environmental pragmatists follow the Popperian tradition according to which "holistic engineers" are the "enemies" of the open society.

Gotta Have a Plan

Gotta have a plan—failure to have a concrete option we can debate against guarantees that oppression continues and efforts for change backfire

STEVE 2007

(Anonymous member of Black Block and Active Transformation who lives in East Lansing, MI, Date Last Mod. Feb 8, http://www.nadir.org/nadir/initiativ/agp/free/global/a16dcdiscussion.htm)

What follows is not an attempt to discredit our efforts. It was a powerful and inspiring couple of days. I feel it is important to always analyze our actions and be self-critical, and try to move forward, advancing our movement. The State has used Seattle as an excuse to beef up police forces all over the country. In many ways Seattle caught us off-guard, and we will pay the price for it if we don't become better organized. The main weakness of the Black Block in DC was that clear goals were not elaborated in a strategic way and tactical leadership was not developed to coordinate our actions. By leadership I don't mean any sort of authority, but some coordination beside the call of the mob. We were being led around DC by any and everybody. All someone would do is make a call loud enough, and the Black Block would be in motion. We were often lead around by Direct Action Network (DAN - organizers of the civil disobedience) tactical people, for lack of our own. We were therefore used to assist in their strategy, which was doomed from the get go, because we had none of our own. The DAN strategy was the same as it was in Seattle, which the DC police learned how to police. Our only chance at disrupting the IMF/WB meetings was with drawing the police out of their security perimeter, therefore weakening it and allowing civil disobedience people to break through the barriers. This needs to be kept in mind as we approach the party conventions this summer. Philadelphia is especially ripe for this new strategy, since the convention is not happening in the business center. Demonstrations should be planned all over the city to draw police all over the place. On Monday the event culminated in the ultimate anti-climax, an arranged civil disobedience. The civil disobedience folks arranged with police to allow a few people to protest for a couple minutes closer to where the meetings were happening, where they would then be arrested. The CD strategy needed arrests. Our movement should try to avoid this kind of stuff as often as possible. While this is pretty critical of the DAN/CD strategy, it is so in hindsight. This is the same strategy that succeeded in shutting down the WTO ministerial in Seattle. And, while we didn't shut down the IMF/WB meetings, we did shut down 90 blocks of the American government on tax day - so we should be empowered by their fear of us! The root of the lack of strategy problem is a general problem within the North American anarchist movement. We get caught up in tactical thinking without establishing clear goals. We need to elaborate how our actions today fit into a plan that leads to the destruction of the state and capitalism, white supremacy and patriarchy. Moving away from strictly tactical thinking toward political goals and long term strategy needs to be a priority for the anarchist movement. No longer can we justify a moralistic approach to the latest outrage - running around like chickens with their heads cut off. We need to prioritize developing the political unity of our affinity groups and collectives, as well as developing regional federations and starting the process of developing the political principles that they will be based around (which will be easier if we have made some headway in our local groups). The NorthEastern Federation of Anarchist Communists (NEFAC) is a good example of doing this. They have prioritized developing the political principles they are federated around. The strategies that we develop in our collectives and networks will never be blueprints set in stone. They will be documents in motion, constantly being challenged and adapted. But without a specific elaboration of what we are working toward and how we plan to get there, we will always end up making bad decisions. If we just assume everyone is on the same page, we will find out otherwise really quick when shit gets critical. Developing regional anarchist federations and networks is a great step for our movement. We should start getting these things going all over the continent. We should also prioritize developing these across national borders, which NEFAC has also done with northeastern Canada. Some of the errors of Love and Rage were that it tried to cover too much space too soon, and that it was based too much on individual membership, instead of collective membership. We need to keep these in mind as we start to develop these projects. One of the benefits of Love and Rage was that it provided a forum among a lot of people to have a lot of political discussion and try to develop strategy in a collective way. This, along with mutual aid and security, could be the priorities of the regional anarchist federations. These regional federations could also form the basis for tactical leadership at demonstrations. Let me first give one example why we need tactical teams at large demos. In DC the Black Block amorphously made the decision to try to drive a dumpster through one of the police lines. The people in front with the dumpster ended up getting abandoned by the other half of the Black Block who were persuaded by the voice of the moment to move elsewhere. The people up front were in a critical confrontation with police when they were abandoned. This could be avoided if the Black Block had a decision making system that slowed down decision making long enough for the block to stay together. With this in mind we must remember that the chaotic, decentralized nature of our organization is what makes us hard to police. We must maximize the benefits of decentralized leadership, without establishing permanent leaders and targets. Here is a proposal to consider for developing tactical teams for demos. Delegates from each collective in the regional federation where the action is happening would form the tactical team. Delegates

from other regional federations could also be a part of the tactical team. Communications between the tactical team and collectives, affinity groups, runners, etc. could be established via radio. The delegates would be recallable by their collectives if problems arose, and as long as clear goals are elaborated ahead of time with broader participation, the tactical team should be able to make informed decisions. An effort should be made to rotate delegates so that everyone develops the ability. People with less experience should be given the chance to represent their collectives in less critical situations, where they can become more comfortable with it. The reality is that liberal politics will not lead to an end to economic exploitation, racism, and sexism. Anarchism offers a truly radical alternative. Only a radical critique that links the oppressive nature of global capitalism to the police state at home has a chance of diversifying the movement against global capitalism. In order for the most oppressed people here to get involved the movement must offer the possibility of changing their lives for the better. A vision of what "winning" would look like must be elaborated if people are going to take the risk with tremendous social upheaval, which is what we are calling for. We cannot afford to give the old anarchist excuse that "the people will decide after the revolution" how this or that will work. We must have plans and ideas for things as diverse as transportation, schooling, crime prevention, and criminal justice. People don't want to hear simple solutions to complex questions, that only enforces people's opinions of us as naive. We need practical examples of what we are fighting for. People can respond to examples better than unusual theory. While we understand that we will not determine the shape of things to come, when the system critically fails someone needs to be there with anti-authoritarian suggestions for how to run all sorts of things. If we are not prepared for that we can assume others will be prepared to build up the state or a new state.

Their strategy allows vague shifting which conceals weaknesses and results in manipulation that turns their impact

GALLES 2009

(Gary, Professor of Economics at Pepperdine, "Vagueness as a Political Strategy," March 2, http://blog.mises.org/archives/author/gary_galles/)

The problem with such vagueness is that any informed public policy decision has to be based on specific proposals. Absent concrete details, which is where the devil lurks, no one--including those proposing a "reform"--can judge how it would fare or falter in the real world. So when the President wants approval for a proposal which offers too few details for evaluation, we must ask why. Like private sector salesmen, politicians strive to present their wares as attractively as possible. Unlike them, however, a politician's product line consists of claimed consequences of proposals not yet enacted. Further, politicians are unconstrained by truth in advertising laws, which would require that claims be more than misleading half-truths; they have fewer competitors keeping them honest; and they face "customers"--voters-- far more ignorant about the merchandise involved than those spending their own money. These differences from the private sector explain why politicians' "sales pitches" for their proposals are so vague. However, if vague proposals are the best politicians can offer, they are inadequate. If rhetoric is unmatched by specifics, there is no reason to believe a policy change will be an improvement, because no reliable way exists to determine whether it will actually accomplish what is promised. Only the details will determine the actual incentives facing the decision-makers involved, which is the only way to forecast the results, including the myriad of unintended consequences from unnoticed aspects. We must remember that, however laudable, goals and promises and claims of cost-effectiveness that are inconsistent with the incentives created will go unmet. It may be that President Obama knows too little of his "solution" to provide specific plans. If so, he knows too little to deliver on his promises. Achieving intended goals then necessarily depends on blind faith that Obama and a panoply of bureaucrats, legislators, overseers and commissions will somehow adequately grasp the entire situation, know precisely what to do about it, and do it right (and that the result will not be too painful, however serious the problem)--a prospect that, due to the painful lessons of history, attracts few real believers. Alternatively, President Obama may know the details of what he intends, but is not providing them to the public. But if it is necessary to conceal a plan's details to put the best possible public face on it, those details must be adverse. If they made a more persuasive sales pitch, a politician would not hide actual details. They would be trumpeted at every opportunity, proving to a skeptical public he really had the answers, since concealing rather than revealing pays only when better informed citizens would be more inclined to reject a plan. Claiming adherence to elevated principles, but keeping detailed proposals from sight, also has a strategic advantage. It defuses critics. Absent details, any criticism can be parried by saying "that was not in our proposal" or "we have no plans to do that" or other rhetorical devices. It also allows a candidate to incorporate alternatives proposed as part

of his evolving reform, as if it was his idea all along. The new administration has already put vague proposals on prominent display. However, adequate analysis cannot rest upon such flimsy foundations. That requires the nuts and bolts so glaringly absent. In the private sector, people don't spend their own money on such vague promises of unseen products. It is foolhardy to act any differently when political salesmen withhold specifics, because political incentives guarantee that people would object to what is kept hidden. So while vagueness may be good political strategy, it virtually ensures bad policy, if Americans' welfare is the criterion.

Switch Side Debate

Deliberative Democracy

Only our interpretation guarantees that we take positions that we don't agree with to facilitate debate on both sides. This promotes deliberation that's key to prevent extinction

STANNARD 2006

(Matt, Department of Communication and Journalism, University of Wyoming, Spring 2006 Faculty Senate Speaker Series Speech, April 18, http://theunderview.blogspot.com/2006/04/deliberation-democracy-and-debate.html)

The complexity and interdependence of human society, combined with the control of political decisionmaking—and political conversation itself—in the hands of fewer and fewer technological "experts," the gradual exhaustion of material resources and the organized circumvention of newer and more innovative resource development, places humanity, and perhaps all life on earth, in a precarious position. Where we need creativity and openness, we find rigid and closed non-solutions. Where we need masses of people to make concerned investments in their future, we find (understandable) alienation and even open hostility to political processes. The dominant classes manipulate ontology to their advantage: When humanity seeks meaning, the powerful offer up metaphysical hierarchies; when concerned masses come close to exposing the structural roots of systemic oppression, the powerful switch gears and promote localized, relativistic micronarratives that discourage different groups from finding common, perhaps "universal" interests. Apocalyptic scenarios are themselves rhetorical tools, but that doesn't mean they are bereft of material justification. The "flash-boom" of apocalyptic rhetoric isn't out of the question, but it is also no less threatening merely as a metaphor for the slow death of humanity (and all living beings) through environmental degradation, the irradiation of the planet, or the descent into political and ethical barbarism. Indeed, these slow, deliberate scenarios ring more true than the flashpoint of quick Armageddon, but in the end the "fire or ice" question is moot, because the answers to those looming threats are still the same: The complexities of threats to our collective well-being require unifying perspectives based on diverse viewpoints, in the same way that the survival of ecosystems is dependent upon biological diversity. In Habermas's language, we must fight the colonization of the lifeworld in order to survive at all, let alone to survive in a life with meaning. While certainly not the only way, the willingness to facilitate organized democratic deliberation, including encouraging participants to articulate views with which they may personally disagree, is one way to resist this colonization.

Failure To Play Devil's Advocate Undermines Persuasion And There's No Offense Because It Doesn't Cause Role Confusion

LUCKHARDT and BECHTEL 1994

(C. Grant and William, How to do Things with Logic, p 179)

This diagram indicates that first the arguers present their argument(s) for the conclusion in which they believe, here represented as A. Then the arguers formulate the best argument(s) possible for the exact opposite conclusion. If they argue in the first demonstration that, say, the best diagnosis for a patient is cholera, then as a second argumentative step the arguers will present the case for the best diagnosis not being cholera. As a third step, this strategy requires that the arguers then critique this second demonstration as well as possible. If that critique is successful, then the original demonstration stands, and the conclusion that follows is the original one, A. Why, you might wonder, would anyone ever want to engage in what may appear to be logical gymnastics? The answer is that this strategy is useful in two ways. As a method for discovering the truth of a matter, it is often extremely helpful in warding off the intellectual malady called "tunnel vision." This is the tendency we all have to stick to our first view of a matter, failing to recognize contrary evidence as it comes in, and thus failing to revise our view to be consistent with it. In extreme cases of tunnel vision contrary evidence to one's original view may

even be noticed but be treated as confirming the original view. Requiring medical students who believe the patient has cholera to present the best case against this diagnosis will often cause them to rethink the case they had originally made. The conclusion in the end may still be the same as the original diagnosis—cholera—but now it will be a conclusion that has taken other options seriously. The devil's advocate strategy has much to recommend in terms of its persuasiveness. Having demonstrated to your audience that you are aware of a case to be made against A, but that that case must fail, you will be perceived as having been extremely open-minded in your considerations. And you *will* have been open-minded, provided that you do not hedge in your demonstration of –A. You are not being a true devil's advocate if your demonstration of –A is so weak that it is easily criticized in the third step. It is very tempting to hedge your demonstration of –A in this way, but also dangerous, for it invites your audience to point out that there is a better case against A than the one you have presented.

Malcolm X proves that evidence-intensive switch side debate improves social activism

BRANHAM 1995

(Robert, Professor of Rhetoric at Bates College, Argumentation and Advocacy, Winter)

Norfolk had a fine library of several thousand volumes and prisoners were able to check out books of their choice. Malcolm X became a voracious and critical reader, discovering "new evidence to document the Muslim teachings" in books ranging from accounts of the slave trade to Milton's Paradise Lost (X, 1965b, pp. 185-186). Malcolm X's "prison education, including Elijah Muhammad," writes Baraka, "gives him the form with which overtly to combine consciousness with his actual life" (p. 26). As Malcolm X sought new outlets for his heightened political consciousness, he turned to the weekly formal debates sponsored by the inmate team. "My reading had my mind like steam under pressure," he recounted; "Some way, I had to start telling the white man about himself to his face. I decided to do this by putting my name down to debate" (1965b, p. 184). Malcolm X's prison debate experience allowed him to bring his newly acquired historical knowledge and critical ideology to bear on a wide variety of social issues. "Whichever side of the selected subject was assigned to me, I'd track down and study everything I could find on it," wrote Malcolm X. "I'd put myself in my opponent's place and decide how I'd try to win if I had the other side; and then I'd figure out a way to knock down those points" (1965b, p. 184). Preparation for each debate included four or five practice sessions. Debaters conducted individual research and also worked collaboratively in research teams (Bender, 1993). Visiting debaters "could not understand how we had the material to debate with them," recalls Malcolm Jarvis, Malcolm X's debate partner at Norfolk. "They were at the mercy of people with M.A.s and Ph.D.s to teach them," he explains.

Malcolm X proves that debate provides training in persuasion—this is critical to social change

BRANHAM 1995

(Robert, Professor of Rhetoric at Bates College, Argumentation and Advocacy, Winter)

Malcolm X spoke to predominantly white audiences and debated white opponents throughout his prison experience and often during his later public career. These encounters in part evidenced what Gambino has termed his "absolute faith in and reliance on the power of communication" to convince even whites of the truth of his position (p. 17). "The truth is so strong and clear," wrote X in a letter in 1954, "that not even the white man himself will deny it once he knows what we know" (Gambino, p. 17). But his expressed desire to "confront the white man" in debate was perhaps not so much designed to convert his adversaries as it was to assert himself and his sense of self-worth, to apply his learning, and, as in his later public appearances, to appeal to the large audience of fellow African American prisoners. "By defeating the white man in debate," writes Wolfenstein, "he was proving, to himself and to other black prisoners, the superiority of his position" (1981, p. 228). To the "concentric" audience of his fellow inmates, such encounters established his leadership and demonstrated the truth and strength of his beliefs (Branham and Pearce, 1987, p. 245). According to Malcolm Jarvis, interviewed in

Orlando Bagwell's 1994 documentary, Malcolm X: Make It Plain, it was when Malcolm X began debating that his "name and three started spreading amongst the prison population and that's when the population started to grow at the debating classes. Most of the fellows used to come over out of curiosity, just to hear him speak." Malcolm X began proselytizing for the Nation of Islam while at Norfolk (Gambino, p. 14), and his fame as a debater there helped gain the attention and respect that were prerequisites for successful recruitment. By the time Bender arrived at Norfolk in 1950 or 1951, the prison's Muslim population had separated themselves from the debate team and other prison organizations. After refusing to take a required typhoid innoculation, Malcolm X was transferred to Charlestown Prison on 23 March 1950 (Perry, p. 132). Malcolm X had spent less than two years in Norfolk, yet during his time there he had undergone enormous spiritual, political and intellectual transformation. Malcolm X's prison debating experience represented a crucial transition in his practice as a Muslim and in the development of a public style through which he could bring his thoughts before a larger audience. Through his prison proselytizing and the "polemical confrontations" of his debates, writes Wolfenstein, "Malcolm became fully engaged in a Muslim practice grounded in racial self-identification and mediated through self-productive aggressivity" (p. 229). He had acquired proficiency in techniques of verbal confrontation and a confidence in the possibilities of moral suasion that would inform his speaking activities for the remainder of his life. "It was right there in prison," Malcolm X recalls in his autobiography, "that I made up my mind to devote the rest of my life to telling the white man about himself - or die" (pp. 184-185).

And, role playing solves the impact—it reforms the state and allows us to challenge bad policy

DONOVAN AND LARKIN 2006

(Claire and Phil, Australian National University, Politics, Vol 26:1)

We do not suggest that political science should merely fall into line with the government instrumentalism that we have identified, becoming a 'slave social science' (see Donovan, 2005). But, we maintain that political scientists should be able to engage with practical politics on their own terms and should be able to provide research output that is of value to practitioners. It is because of its focus on understanding, explanation, conceptualisation and classification that political science has the potential to contribute more to practical politics, and more successfully. As Brian Barry notes, 'Granting (for the sake of argument) that [students of politics] have some methods that enable us to improve on the deliverances of untutored common sense or political journalism, what good do they do? The answer to that question is: not much. But if we change the question and ask what good they could do, I believe that it is possible to justify a more positive answer' (Barry, 2004, p. 22). A clear understanding of how institutions and individuals interact or how different institutions interact with each other can provide clear and useful insights that practitioners can successfully use, making – or perhaps remaking – a political science that 'directs research efforts to good questions and enables incremental improvements to be made' (ibid., 19). In this sense, political science already has the raw material to make this contribution, but it chooses not to utilise it in this way: no doubt, in part, because academics are motivated to present their findings to other academics and not the practitioners within the institutions they study.

The Advantages Of Role Playing Outweigh Risk Of Role Confusion

ANDREWS 2006

(Peter, Consulting Faculty Member at the IBM Executive Business Institute in Palisades, New York, Executive Technology Report, August, www-935.ibm.com/services/us/bcs/pdf/g510-6313-etr-unlearn-to-innovate.pdf)

Dare to believe that the impossible ideas might be true How does your list of new ideas help with unlearning? It provides alternative views to directly challenge your set beliefs and frameworks. It provides the grains of sand that are the beginnings for pearls of wisdom. But only if you are willing to suspend disbelief. The natural tendency is to sift your ideas based on the ones that have clear, apparent value, that "make the most sense." Often these ideas prove themselves right away. But none of these is likely to help with unlearning or to lead to truly disruptive innovations. Instead of categorizing and prioritizing your long (20 or more) list of ideas, give the ones that are the most intriguing and the most

improbable a chance. See if you can talk yourself into them. If you do this well, you can use your arguments as a wedge to crack open your patterns of thought and action. If you can put together a line of reasoning that can convince others, you'll be forced to reconsider and reformulate your own views. There is a danger to this. For the sake of argument (literally), Mark Twain built a case for Bacon's being the author of Shakespeare's plays. He started out believing the opposite and ended up convincing himself. But ultimately, you need to find a way to trust an alternate reality, at least for awhile. If you don't take crazy ideas seriously, you can't give them a fair chance and make them your own.

At: Hicks and Greene

The risk of cooptation is only an argument for better state-focused, switch-side debate

STANNARD 2006

(Matt, Department of Communication and Journalism, University of Wyoming, Spring 2006 Faculty Senate Speaker Series Speech, April 18, http://theunderview.blogspot.com/2006/04/deliberation-democracy-and-debate.html)

We can read such criticisms in two ways. The first way is as a warning: That we ought to remain cautious of how academic debate will be represented and deployed outside of the academy, in the ruthless political realm, by those who use it to dodge truthful assertions, by underrepresented groups, of instances of material injustice. In this sense, the fear is one of a "legalistic" evasion of substantive injustice by those privileging procedure over substance, a trained style over the primordial truth of marginalized groups. I prefer that interpretation to the second one: That the switch-side, research-driven "game" of debate is politically bankrupt and should give way to several simultaneous zones of speech activism, where speakers can and should only fight for their own beliefs. As Gordon Mitchell of the University of Pittsburgh has pointed out, such balkanized speech will break down into several enclaves of speaking, each with its own political criteria for entry. In such a collection of impassable and unpermeable communities, those power relations, those material power entities, that evade political speech will remain unaccountable, will be given a "free pass" by the speech community, who will be so wrapped up in their own micropolitics, or so busy preaching to themselves and their choirs, that they will never understand or confront the rhetorical tropes used to mobilize both resources and true believers in the service of continued material domination. Habermas's defense of the unfinished Enlightenment is my defense of academic debate: Don't throw the baby out with the bathwater. Instead, seek to expand this method of deliberation to those who will use it to liberate themselves, confront power, and create ethical, nonviolent patterns of problem resolution. If capitalism corrupts debate, well, then I say we save debate.

At: identity arguments

Switch side creates a politics of pluralism and openmindedness – means we have the best internal link to education

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

Over the years, many scholars (e.g. Murphy, 1963) have argued that the predominant switch-side model of debate is unethical and encourages sophistry because it requires students to defend positions that they do not actually believe. This argument, while perhaps intuitive, is not consistent with the observed results of decades of switch-side debate. Both Bellon (2000) and Goodwin (2003) found that students become more open minded through participation in switch side debate. Muir (1993) addresses this argument in more detail, explaining that switch side debate promotes pluralism not relativism, allows students to overcome socialization and peer pressure, and promotes tolerance and empathy without promoting moral irresponsibility.

Switch-side debate makes critical projects more effective through "trial by fire" and breaks down dogmatism

Galloway, 7 – Professor, Communication Studies, Samford University (Ryan, "Dinner and Conversation at the Argumentative Table: Reconceptualizing Debate as an Argumentative Dialogue," Contemporary Argumentation and Debate, Vol. 28, 7-8, http://www.cedadebate.org/files/2007CAD.pdf)//SY

In addition to the basic equity norm, dismissing the idea that debaters defend the affirmative side of the topic encourages advocates to falsely value affirmative speech acts in the absence of a negative response. There may be several detrimental consequences that go unrealized in a debate where the affirmative case and plan are not topical. Without ground, debaters may fall prey to a siren's call, a belief that certain critical ideals and concepts are axiological, existing beyond doubt without scrutiny. Bakhtin contends that in dialogical exchanges "the greater the number and weight" of counter-words, the deeper and more substantial our understanding will be (Bakhtin, 1990). The matching of the word to the counter-word should be embraced by proponents of critical activism in the activity, because these dialogical exchanges allow for improvements and modifications in critical arguments. Muir argues that "debate puts students into greater contact with the real world by forcing them to read a great deal of information" (1993, p. 285). He continues, "[t]he constant consumption of material…is significantly constitutive. The information grounds the issues under discussion, and the process shapes the relationship of the citizen to the public arena" (p. 285). Through the process of comprehensive understanding, debate serves both as a laboratory and a constitutive arena. Ideas find and lose adherents. Ideas that were once considered beneficial are modified, changed, researched again, and sometimes discarded altogether. A central argument for open deliberation is that it encourages a superior consensus to situations where one side is silenced. Christopher Peters contends, "The theory holds that antithesis ultimately produces a better consensus, that the clash of differing, even opposing interests and ideas in the process of decision making…creates decisions that are better for having been subjected to this trial by fire" (1997, p. 336). The combination of a competitive format and the necessity to take points of view that one does not already agree with combines to create a

unique educational experience for all participants. Those that eschew the value of such experience by an axiological position short-circuit the benefits of the educational exchange for themselves, their opponents, as well as the judges and observers of such debates.

Switch-side debate makes debaters more ethical and effective advocates by fighting dogmatism and fostering tolerance

Galloway, 7 – Professor, Communication Studies, Samford University (Ryan, "Dinner and Conversation at the Argumentative Table: Reconceptualizing Debate as an Argumentative Dialogue," Contemporary Argumentation and Debate, Vol. 28, 8-11, http://www.cedadebate.org/files/2007CAD.pdf)//SY

Willingness to argue against what one believes helps the advocate understand the strengths and weaknesses of their own position. It opens the potential for a new synthesis of material that is superior to the first (Dybvig & Iverson, 2000). Serving as a devil's advocate encourages an appreciation for middle ground and nuance (Dell, 1958). Failure to see both sides can lead to high levels of ego involvement and dogmatism (Hicks & Greene, 2000). Survey data confirms these conclusions. Star Muir found that debaters become more tolerant after learning to debate both sides of an issue (Muir, 1993). Such tolerance is predictable since debate is firmly grounded in respect for the other through the creation of a fair dialogue. Ironically, opponents of a debate as dialogue risk falling prey to dogmatism and the requisite failure to respect potential middle grounds. Perceiving the world through the lens of contingency and probability can be beneficial to real-world activism when its goal is creating consensus out of competing interests. The **anti-oppression messages of critical teams would benefit from a thorough investigation of such claims**, and not merely an untested axiological assumption. Answering Criticisms to the Debate as Dialogue Model There are several well-worn answers to the argument that affirmatives should defend the topic. First, requiring debaters to defend the topic would require debaters to say something they do not believe, which is unfair to the debater and unethical as a practice. Second, advocates argue that there is "other ground" available to the negative team, and thus the requirement that the affirmative team defend the topic is ultimately unnecessary. Finally, they argue that the topic process produces topics that are not meaningful or accessible to a diverse set of debaters. Falsely Comparing Debate with Public Speaking The argument that debaters should not argue in favor of ideas that they do not believe treats debate as with a normal public speaking event. This controversy was discussed thoroughly in various speech journals throughout the 1950s and 1960s, with most authors coming to the conclusion that debate is a unique public speaking event, where participants and observers disassociate the debater from their role. Richard Murphy lays out the case that students should not be forced to say something they do not believe, a concept quite similar to modern-day advocates of the notion that affirmatives should not have to defend the topic (1957; 1963). Murphy contends, "The argument against debating both sides is very simple and consistent. Debate…is a form of public speaking. A public statement is a public commitment" (1957, p. 2). Murphy believed students should discuss and research an issue until they understood their position on the issue and then take the stand and defend only that side of the proposition. Murphy's fear was that students risk becoming a "weather vane," having "character only when the wind is not blowing" (1963, p. 246). In contrast, Nicholas Cripe distinguished between speaking and debating (1957, p. 210). Cripe contended that, unlike a public speaker, a debater is "not trying to convince the judges, or his opponents" of the argument but merely to illustrate that their team has done the superior debating (p. 211). Debating in this sense exists with an obligation to give each position its best defense, in much the way an attorney does for a client. Here, the process of defending a position for the purposes of debate is distinct from their advocacy for a cause in a larger sense. As such, they are like Socrates in the Phaedrus, speaking with their heads covered so as not to anger the gods (Murphy 1957, p. 3). Additionally, debate is unlike public speaking since it happens almost always in a private setting. There are several distinctions. First, very few people watch individual contest rounds. The vast majority of such rounds take place with five people in the room—the four debaters, and the lone judge. Even elimination rounds with the largest audiences have no more than approximately one hundred observers, almost all of whom are debaters. Rarely do people outside the community watch debates. Also, debate has developed a set of norms and procedures quite unlike public speaking. While some indict these norms (Warner 2003), the rapid rate of speed and heavy reliance on evidence distinguishes debate from public speaking. Our

activity is more like the closed debating society that Murphy admits can be judged by "pedagogical, rather than ethical, standards" (1957, p. 7). When debates do occur that target the general public (public debates on campus for example), moderators are careful to explain that debaters may be playing devil's advocate. Such statements prevent confusion regarding whether or not a debater speaks in a role or from personal conviction. While speaking from conviction is a political act, speaking in accordance with a role is a pedagogical one (Klopf & McCroskey, 1964, p. 37). However, this does not mean that debaters are victims. The sophistication of modern argument and the range of strategic choices available to modern debaters allow them to choose positions that are consistent with their belief structures. The rise of plan-inclusive counterplans, kritiks, and other strategies allow negative teams to largely align themselves with agreeable affirmative cases while distinguishing away narrow slivers of arguments that allow debaters to rarely argue completely against their convictions. While some contend that this undermines the value of switch-side debate (Ellis, 2008b; Shanahan, 2004), in fact, the notion that debaters employ nuanced answers to debate topics illustrates the complexity of modern debate resolutions. Those who worry that competitive academic debate will cause debaters to lose their convictions, as Greene and Hicks do in their 2005 article, confuse the cart with the horse. Conviction is not a priori to discussion, it flows from it. A. Craig Baird argued, "Sound conviction depends upon a thorough understanding of the controversial problem under consideration (1955, p. 5). Debate encourages rigorous training and scrutiny of arguments before debaters declare themselves an advocate for a given cause. Debate creates an ethical obligation to interrogate ideas from a neutral position so that they may be freely chosen subsequently.

Surveillance Specific

TSE

Creating discussions about surveillance generate equal participation in governance and break down systems of marginal surveillance

Monahan 2010 (torin, surveillance as governance: social inequality and the pursuit of democratic surveillance. In surveillance and democracy, 91-110, http://publicsurveillance.com/papers/Monahan_Surv_Democracy.pdf, LB)

If social equality and equal participation (or representation) in governance processes are necessary conditions for strong democracy, then systems that perpetuate social inequalities are antidemocratic. Whereas social sorting typically works through the differential application of the same technological systems to the governance of different populations, there are other ways that surveillance can produce unequal outcomes. What I refer to as "marginalizing surveillance" entails unequal exposure to different surveillance systems based on one's social address. More often than not, this means that some of the most invasive systems of scrutiny and control are disproportionately applied to the poor, to ethnic minorities, or to women. Mandatory drug testing for minimum-wage service employees or welfare recipients are particularly egregious examples of marginalizing surveillance (Staples, 2000; Campbell, 2006). Another example might be the surveillance of low-level employees with keystroke-tracking software, global positioning systems, or radio-frequency identification badges (EPIC and PI, 2000; Lyon, 2006). Rituals of extreme technological and police surveillance of public-school students, especially in lower-class minority neighborhoods, could be interpreted as another example of marginalizing surveillance (Monahan and Torres, 2010). Those with alternative social addresses, especially the relatively affluent, are largely insulated from the degree and kind of surveillance represented by these cases. Such surveillance does not simply regulate marginalized groups-it actively produces both identities and conditions of marginality. These marginalizing effects might be more pronounced, in the eyes of subjects and objects of surveillance, given the universalist and objective mythology surrounding all technological systems, because discrimination can be masked behind the supposedly impartial functions of "the system." The forms of differential control engendered by social sorting and marginalizing surveillance are both compounded and insulated by the automation of surveillance functions. Automated control depends predominately upon algorithmic surveillance systems, which take empirical phenomena-translated into data-as their raw material, ranging from commercial purchases to mobility flows to crime rates to insurance claims to personal identifiers. Spaces, activltJes, people, and systems are then managed through automated analysis of data and socio-technical intervention (Norris, Moran, and Armstrong, 1998; Thrift and French, 2002; Graham and Wood, 2003). Examples could include real-time management of traffic flows through the identification and prioritization (and/or penalization) of some drivers, or modes of transport, over others; integration of face-recognition software with video surveillance systems so that positive "matches" with faces of suspected terrorists, for instance, generate automatic alerts for security personnel; geodemographic mapping of reported crime incidents by neighborhood to create risk-based response protocols for police; or automatic exclusion of individuals from medical insurance coverage based on their genetic predisposition to acquiring debilitating diseases.

Government is expanding surveillance now due to public apathy about its increase – our discussion is critical

Lyon 2002 (David, directs the Surveillance Studies Centre, is a Professor of Sociology, holds a Queen's Research Chair Surveillance as Social Sorting: Privacy, Risk and Automated Discrimination. London: Routledge, 2002. Print, LB)

It is no accident that interest in privacy has grown by leaps and bounds in the past decade. This shift maps exactly onto the increased levels and pervasiveness of surveillance in commercial as well as in governmental and workplace settings. By the same token, it also relates to increased surveillance of middle-class and male populations. Lower socio-economic groups and women have long been accustomed to the gaze of various surveillants. As well, growth of privacy concerns has to be seen in the context of increasing individualized societies (Bauman 2001), and above all on the individualizing of risk, as social safety nets deteriorate one by one. Information privacy, based almost everywhere on "fair information practices," relates to communicative control, that is, how far data subjects have a say over how their personal data are collected, processed, and used. Such privacy policies are now enshrined in law and in voluntary selfregulation in many countries and contexts. But privacy is both contested, and confined in its scope. Culturally and historically relative, privacy has limited relevance in some contexts. As we shall see in a moment, everyday surveillance is implicated in contemporary modes of social reproduction – it is a vital means of sorting populations for discriminatory treatment – and as such it is unclear that it is appropriate to invoke more privacy as a possible solution. Of course, fair information practices do go some way to addressing the potential inequalities generated, or at least facilitated, by surveillance as social sorting. But this latter process appears to be a social structural one which, however strenuous the claims to privacy as a common or public good (see Regan 1995), seem to call for different or at least additional policy instruments and political initiatives. Another sociological issue is that mapping surveillance is no longer a merely regional matter. Once, sociology could confidently assume that social relations were in some ways isomorphic with territories – and of course, ironically, this assumption is precisely what lies behind the geodemographic clustering activities of database marketers. But the development of different kinds of networking relationships challenges this simple assumption. Social relationships have became more fluid, more liquid (Bauman 2000) and surveillance data, correspondingly, are more networked, and must be seen in terms of flows (Urry 2000). It is not merely where people are when they use cell phones, e-mail, or surf the Internet. It is with whom they are connected and how that interaction may be logged, monitored, or traced that also counts

Surveillance studies require engaging the law

Lyon 2002 (David, directs the Surveillance Studies Centre, is a Professor of Sociology, holds a Queen's Research Chair Surveillance as Social Sorting: Privacy, Risk and Automated Discrimination. London: Routledge, 2002. Print, LB)

Surveillance studies today is marked by an urgent quest for new explanatory concepts and theories. The most fruitful and exciting ones are emerging from transdisciplinary work, involving, among others, sociology, political economy, history, and geography. Within these, the sociology of technology is particularly important, as it is in the interaction of people with machines that surveillance studies increasingly must deal. But this also draws in colleagues from computer and information sciences, who can explicate, for instance, the vital questions of coding. As similar techniques are applied in different areas – say, the use of searchable databases in policing and marketing surveillance – so theoretical resources from one area may be borrowed in another. As with information scientists, colleagues in law and policy studies will also play a role in surveillance studies, not least because the shift beyond "privacy" also has implications for accountability in legal and organizational contexts.

Discussions of surveillance are necessary in fighting the inevitable Orwellian nightmare

Monahan 2010 (torin, surveillance as governance: social inequality and the pursuit of democratic surveillance. In surveillance and democracy, 91-110, http://publicsurveillance.com/papers/Monahan_Surv_Democracy.pdf, LB)

It is now widely recognized that the emergence of information systems and shifts in modes of capital accumulation, especially since the 1970s, have brought about an increasingly globalized information or network society (Harvey, 1990; Castells, 1996; Hardt and Negri, 2000). Information and communication technologies now mediate and govern most domains of life, especially in industrialized countries. What is seldom noted, however, is that information societies are perforce surveillance societies (Giddens, 1990; Lyon, 2001). The orientation of information systems is toward data creation, collection, and analysis for the purposes of intervention and control. Surveillance societies are deeply rooted in organizations and populations, which is Itself a scientific management of the Enlightenment belief scientific and technological power Itera of progress (Porter 1995). The matt of Big Brother, or state-run surveillance operations, however, falls to account for the almost complete integration of information systems, and therefore surveillance functions. David Lyon elucidates: surveillance societies are such in the sense that surveillance is pervasive in every sector of societal life, courtesy of an integrated information infrastructure. Far from state surveillance being predominate, surveillance activities may now be found in work situations and consumer contexts as well ... Moreover, surveillance data is networked between these different sectors, to create degrees of integration of surveillance systems undreamed of in the worst Orwellian nightmare, but with actual social effects that are far more ambiguous and complex. (Lyon, 2001:34-35) Concern for democracy, therefore, must attend to the state but also extend beyond it to question all the modes of information-facilitated control it must look to the extreme and the mundane, from state spying programs to targeted consumer marketing, for instance. Whereas the previous section of this paper stressed non-democratic trends in relation to technologies more generally, this section concentrates on surveillance systems in particular, with specific attention paid to the types of control they exercise and enable. As a starting point, I define surveillance systems as those that enable control of people through the identification, tracking, monitoring, and/or analysis of individuals, data, or systems. Although surveillance hinges upon control, it must be recognized that control is a loaded term that deserves to be unpacked. The term control stands in, usually, as shorthand for "social control," meaning the mechanisms for ordering society through the regulation of individual and group behavior. Manifestations of social control can be informal, such as cultural norms and sanctions for improper behavior, or formal, such as laws and state policing of deviance. Social control is usually perceived unfavorably by critical social scientists because of the negative connotations associated with hard forms of coercion and police discipline, which have been applied in highly particularistic and discriminatory ways. Nonetheless, some form of social control is necessary, and indeed inevitable, in societies, so the question should be about what forms of control are more equitable, just, and democratic. With surveillance, such analysis should begin by identifying the de facto control regimes enforced by surveillance systems, whether intentionally or not, and then move toward recommendations for control systems that are more democratic in their design and effect. Two types of surveillance in particular directly challenge ideals of democratic governance. These are systems of differential control and automated control, the effects of which are most egregious when the systems coexist or are one and the same. Differential control can be witnessed first with the "social sorting" functions of surveillance systems (Lyon, 2003, 2007). Surveillance, in this regard, operates as a mechanism for societal differentiation; it assists with discerning or actively constructing differences among populations and then regulating those populations according to their assigned status (Gandy, 2006; Haggerty and Ericson, 2006). The most obvious example of this might be airport screening systems or "watchlists" for targeting people who are thought to represent a higher risk of being terrorists and then subjecting them to additional searches and interrogation, or simply precluding them from flying altogether.

surveillance bad

Affirming surveillance is anti-ethical to democracy building and upholds marginalization

Monahan 2010 (torin, surveillance as governance: social inequality and the pursuit of democratic surveillance. In surveillance and democracy, 91-110, http://publicsurveillance.com/papers/Monahan_Surv_Democracy.pdf, LB)

This paper has explored some of the democratic pitfalls and potentials of surveillance technologies. As a rule, contemporary surveillance systems are antithetical to democratic ideals both in their design and application. They individualize, objectify, and control people-often through their use of data-in ways that perpetuate social inequalities; they obfuscate social contexts through their lack of transparency; people are largely unaware of the functioning of their systems, or of their rights; and they resist intervention through their closed technical designs and management by technical experts or institutional agents. Especially by shutting down avenues for meaningful participation (or representation) in design processes that affect most people's lives and by aggravating social inequalities, surveillance systems threaten democracy. That said, most large-scale technological systems are anti-democratic in their design and effects, so surveillance technologies should not necessarily be viewed as exceptional in this regard. What is important to note, however, is the pervasiveness of surveillance systems and the intensification of their social-control functions. In theory, social control by technological means is desirable in advanced industrialized societies because it actively reproduces values and norms necessary for social cohesion but which are difficult to achieve in contexts of intense geographical dispersion, cultural diversity, and social stratification. In practice, the surveillance functions of information systems tend to create and sustain conditions of inequality and identities of marginality through their differential application. For instance, surveillance as social sorting does not just discover and act upon differences; it manufactures meaningful differences based on particularistic indicators, such as wealth or skin color, and then excludes or includes populations accordingly, thereby shaping individual experiences and life-chances. David Lyon relates: "When people's life-chances depend upon what category they have been placed in, it is very important to know who designed the categories, who defines their significance and who decides the circumstances under which those categories will be decisive" (Lyon, 2007:186). In spite of the proliferation of social sorting and marginalizing technologies, most decisions about important categories or protocols are made by people far removed from any formal mechanisms of democratic control, ranging from city engineers to computer programmers to corporate managers. What I call "marginalizing surveillance" takes social sorting to a more explicit level of discrimination by selectively targeting those of lower social status, usually the poor, for the most invasive forms of scrutiny and control. The converse of this holds true as well. For instance, whereas the spending habits of people on welfare might be tracked so that punitive measures can be taken for any deviation from the rules, the spending habits of the relatively affluent are tracked so that they can be rewarded for expensive purchases with further discounts or special offers. The automation of surveillance then serves to aggravate social inequalities by encoding into the systems neoliberal values of institutional efficiency and commercial profit, often to the exclusion of the social good. In addition to minimizing opportunities for democratic parti- cipation, or even inquiry into surveillance practices, automated surveillance destabilizes traditionally democratic beliefs in the possibility of achieving social status; instead one's value or risk is assigned in advance based on statistical probabilities. Democratic surveillance implies intentionally harnessing the control func- tions of surveillance for social ends of fairness, justice, and equality. First, more than simply using surveillance systems in different ways, democratic surveillance involves reprogramming socio-technical codes to encourage transparency, openness, participation, and accountability to produce new systems and new configurations of experts and users, subjects and objects. Second, because neither participation nor

transparency is enough (for example, one can willingly participate in one's disempowerment, and exploitation can be made transparent without allowing for change), democratic surveillance requires a set of protocols or criteria against which to measure social value. The shorthand that I offered is that democratic surveillance should lead to the correction of power asymmetries. Because surveillance societies appear to be here to stay, democratic ways of life may depend on tempering the growing hegemony of differential and automated control with alternative, power- equalizing forms of surveillance.

Surveillance makes successful resistance impossible and results in psychological violence – the chilling effect that discourages participation in social causes proves why our framework for deliberating about state surveillance is necessary

Fernandez et al., 8 – Associate Professor, Criminology and Criminal Justice, Northern Arizona University (Luis A., Amory Starr, Randall Amster, Lesley J. Wood, and Manuel J. Caro, "The Impacts of State Surveillance on Political Assembly and Association: A Socio-Legal Analysis," Qualitative Sociology, Vol. 31, September, 252-256, http://www.researchgate.net/profile/Luis_Fernandez32/publication/225348127_The_Impacts_of_State_Surveillance_on_Political_Assembly_and_Association_A_Socio-Legal_Analysis/links/53f4b9d30cf2888a74911568.pdf)//SY

This study examines the effects of state surveillance on social movement activity in the USA in the post-Seattle era. On n30 (30 November 1999), diverse non-violent protesters in Seattle were able to successfully shut down the WTO Ministerial meetings for a full day with creative direct action. Seattle has become a symbol for the joining of US anti-corporate social movements with the global alterglobalization movement. However, the post-Seattle era is more accurately dated to 1998, with a series of ecodefense actions and several direct action protests of global governance meetings in Canada. Although physical violence against protests has been visible during this era in the form of tear-gas, rubber bullets, and violent arrests, other forms of repression have been less visible and not well understood. While social movements scholars have studied "political violence" by social movements themselves (della Porta 1995), most of the scholarship on state political violence (aside from genocide and war) has focused on totalitarian societies. Yet research on state political violence against social movements in democracies has not gone much beyond protest policing (della Porta and Reiter 1998). While we do not intend to diffuse the meaning of "violence," nor to enter into debate about its proper contents, it is apparent that less overt forms of state repression wreak comparable damage to social movements (Fernandez 2008). Our research shows that overt, bodily violence against protesters is part of a dense continuum of state activity (Starr and Fernandez 2008). The density is important because bodily violence is neither clearly the worst thing that can happen to an activist nor is it entirely separable from other forms of repression, over which it looms as an explicit or implicit threat. As anthropologists have documented, **repression is a multimedia assault that arrives in the psyche all at once**. By referencing one another, both bodily violence and other forms of repression have a cumulative force and impact, as documented in studies of state terror (Corradi et al. 1992; Robben 2005; Mahmood 1997).1 One of the most significant scholarly studies on surveillance, which has particular relevance to our project, is David Cunningham's study of memos from the FBI's Counter Intelligence Program (COINTELPRO). From 1956–1971 counterintelligence programs designed to "expose, disrupt, misdirect, discredit, or otherwise neutralize" (2004, p. 6) various political organizations were official FBI policy. However, the "normal" intelligence activities of the agency, before, during and after the official programs, included much of the same activity, and had very similar effects on targets. (p. 185) Histories of surveillance, police action, and incarceration of political prisoners show clearly the violence of the state against political activists. But COINTELPRO was organized to disrupt political organizations associated with several social movements. State surveillance inhabits a shadowy realm of public affairs, often secret and barely legal. As Cunningham points out, its operations are a constant negotiation between popular political moods and elite government interests. Donner (1990) shows how litigation works this terrain and shapes the near future of surveillance. We begin our analysis of the impact of surveillance from

the perspective of the First Amendment. The preponderance of legal discourse about the First Amendment focuses on the protection of individual speech acts. These acts are often viewed as isolated, discrete events. Each has an individual speaker, a space, a speech. But as social movements scholars, we wonder: how did the speaker get there? Were they alone? What were their fears and risks? How did they have the courage to be there? How did they learn about what they spoke about? How much time did they spend in meetings in advance of that speech act? Social movements scholars recognize that most political speech is not isolated, but exists in an institutional and cultural context which supports it. A less litigated aspect of the First Amendment is assembly. Since Seattle, public events like marches and rallies have been subject to increasingly rigid constraints. Civil litigation has focused on protecting access to public space with "time, place, and manner" reasonable to protest groups. This has generally not gone well, with protests confined to "protest pits," surrounded with riot cops, or re-located far from legally assured "sight and sound" of targets. As with speech, these assembly issues have been litigated as isolated, discrete events. Questions from a social movements perspective would include: What resources are required to access and use public space for dissenting assemblies? Are assemblies about different issues treated differentially in their access to public space? How does the restriction of opportunities for dissenting assembly impact the quantity and quality of dissent expressed, and by whom? What are the physical and social conditions of organizing people into that space—who is included and how are they notified? What are the network dynamics of a given assembly? What form does decision making about the format of the assembly take? Who is excluded? Who controls the diversity of individual and group expression? The unit of analysis of such inquiries is a social movement organization (SMO), or even a coalition, or the wider community of individuals and organizations who might participate. The formal or informal organization which coordinates the assembly, the coalition which endorses, advertises, and embodies it, and the pool of potential attendees (members and non-members of organizations) each represent a unit of analysis relevant to understanding the impacts of surveillance. Any one of these could be understood legally as a protected "association," since association rights have both the meaning of a noun (as in, the right to form an organization) and of a verb (to associate, a person's right to join a demonstration they hear about). The meanings and protections of assembly and association have yet to be fully explored in litigation. The right of political association sits somewhere between First Amendment rights to freedom of speech and assembly, the Fourth Amendment right to be free from unreasonable search and seizure, and the Fourteenth Amendment's implicit right to privacy. While not explicitly enumerated in the Constitution, association is recognized as fundamental to the workings of a healthy democracy: "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is… protected by the First and Fourteenth Amendments" (Kusper v. Pontikes, 414 US 51, 56 [1973]). The right of association derives from enumerated rights of speech, assembly, and petition, while simultaneously working to preserve those same rights. Despite its derivative nature, it is clear that "freedom of association is so essential to the First Amendment that in its absence, the First Amendment would lose much of the protective force that it was intended to have" (Kaminsky 2003, p. 2282). The Supreme Court has affirmed, "it is now beyond dispute that freedom of association for the purpose of advancing beliefs and ideas and airing grievances is protected" (Bates v. City of Little Rock, 361 US 516, 523 [1960]). The rights afforded by the Constitution are generally seen as rights of individuals; thus even rights of assembly and equal protection are viewed as applicable to groups but are held by the individuals in a given group. This implies that the rights of the group qua group are rarely recognized as such, although association may stand as an exception: "[T]he right to associate only serves an instrumental role. That is, it can only be invoked when individuals exercise their First Amendment rights through collective action" (Kaminsky 2003, p. 2283, citing Roberts v. United States Jaycees, 468 US 609 [1984]). This suggests that the right of association is group-centric, but this has yet to be established in litigation. From a social movements perspective it is painfully obvious that assemblies simply do not exist without social movements and social movement organizations. Even spontaneous insurrections depend, if not on formal organization, on cultures of resistance, the development of a political "frame," and on social networks as an organizational resource—none of which can be reduced to the acts of individuals nor their aggregates. A number of legal cases have connected the right of association with the right to be free from unwarranted government surveillance. In NAACP v. Alabama, 357 US 449, 462 (1958), the Supreme Court held that compelled disclosure of an advocacy group's membership list would be an impermissible restraint on freedom of association, observing that the "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." The Court recognized that the **chilling effect of surveillance on associational freedom "may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs,"** (357 US at 463; also see Zweibon v. Mitchell, 516 F.2d 594 [D.C. Cir. 1975]), a point echoed by the courts in subsequent decisions: Bates v. City of Little Rock, 361 US 516 (1960) asserted that tapping a political organization's phone would provide its membership list to authorities, which is forbidden. Dombrowski v. Pfister, 380 US 479 (1965) asserted that organizations had been harmed irreparably when subjected to repeated announcements of their subversiveness, which scared off potential members and contributors. Judge Warren wrote in USA v. Robel, 389 US 258, 264 (1967): "It would indeed be ironic if, in the name of national defense, we would sanction the subversion of…those liberties…which makes the defense of the Nation worthwhile" (Also see Christie 1972). The difficulty with much of the litigation to date is problematized in Laird v. Tatum 408 US 1 (1972). In that case, the plaintiff objected to the chilling effect on First Amendment rights by the mere existence of a government surveillance program, but did not allege any

specific harm to himself as a result of the program except that he "could conceivably" become subject to surveillance and therefore have his rights potentially chilled. In the recent case of ACLU v. NSA, F. Supp. 2d 754 (E.D. Mich. 2006) (since vacated by the Sixth Circuit Court of Appeals), District Judge Anna Diggs Taylor rejected the government's invocation of Laird in defense of its warrantless domestic eavesdropping program, noting that the plaintiffs in that case (journalists, scholars, and political organizations) had demonstrated actual and not merely hypothetical harm as the result of unwarranted surveillance. We now know more about surveillance than how victims feel about it; we also know a good deal about its intents. Cunningham explains that intelligence operations can serve two goals, investigation of federal crimes and (the more controversial) precautionary monitoring through information gathering about organizations. Counterintelligence operations may take a preventative goal, to "actively restrict a target's ability to carry out planned actions" or may take the form of provocation for the purpose of entrapment of targets in criminal acts. (2004, p. 6) Some of the "normal intelligence" activities undertaken by the FBI outside of official COINTELPRO which nevertheless have a preventative counterintelligence function are: harassment by surveillance and/or purportedly criminal investigations, pressured recruitment of informants, infiltration, break-ins, and labeling or databasing which harms the group's reputation impacting its ability to communicate with the media, draw new members, and raise funds, "exacerbat[ing] a climate in which seemingly all mainstream institutions opposed the New Left in some way." In addition, infiltrators acting as agent provocateurs is, inexplicably, a part of normal intelligence operations (pp. 180– 214). Can these kinds of operations be understood as violations, not only of individuals' political rights, but against associations themselves? Since associations and social movements work for decades, they have interests separate from their participants. Previous literature shows that knowledge (or fear) of surveillance and infiltration forces organizations to direct their energies toward defensive maintenance and away from the pursuit of broader goals. (Boykoff 2006; Cunningham 2004; Davenport 2005; Flam 1998; Goldstein 1978; Marx 1970, 1974, 1979, 1988) Alternately, activists may respond by turning from overt collective forms of resistance toward more covert, individualistic forms of resistance (Davenport 2006, Johnston 2005, Zwerman et al. 2000) or to the emergence of more militant, even violent, factions (della Porta 1995). Organizations' funding, relationships with other groups, the press, and the public may be affected as well (Marx 1970, 1974, 1979, 1988; US Congress 1976; Theoharis 1978; Churchill and Vander Wall 1988; Davenport 2006; Klatch 2002; Schultz and Schultz 2001). **We need a framework for analyzing the impacts of surveillance on assembly and association**. Understanding assembly as mobilizations made possible by social movements, we use an analytic framework based on social movements literature, which recognizes five constitutive elements. Social movements draw on many different kinds of "resources"— money, time, bodies, space, equipment, membership, allies, publications, etc. (McCarthy and Zald 1977). In some sense, nearly everything that movements use is a resource, but scholars have separated out several of these aspects for distinct analytic attention. They treat separately both the historical–institutional–rhetorical context of "political opportunities" (Eisinger 1973; Meyer and Minkoff 2004) and the conceptual "framing" (Snow et al. 1986) work of movements. Recent scholarship has also identified culture as a sufficiently powerful aspect of movements as to require independent attention (Coutin 1993; Johnston and Klandermans 1995; Polletta 1997). Finally, political sociologists emphasize the psycho-social and ideological dimensions of social movements as a realm of study that they call "political consciousness" (Mansbridge and Morris 2001). We analyze impacts on "social movement organizations" (Zald and Ash 1966) separate from movement resources because organizations correspond to the legal concept of "association."

Threat of surveillance decreases support for social causes, disincentivizes effective resistance, and results in worse state-based violence against dissidents

Starr et al., 7 – Professor, Sociology, Colorado State University (Amory, Luis Fernandez, Randall Amster, and Lesley Wood, "the impact of surveillance on the exercise of political rights: an interdisciplinary analysis 1998-2006," 9/17, 6-7, http://www.trabal.org/texts/assembly091707.pdf)//SY

Our study looks at this process from the other side, seeking to assess the impacts of surveillance activities undertaken by local as well as federal agencies, on the exercise of constitutionally protected rights to assembly and association. Previous literature has shown that knowledge of, or fear of, surveillance and infiltration also forces movements to direct their energies toward defensive maintenance and away from the pursuit of broader goals [Boykoff 2006, 145; Cunningham 2004; Davenport 2005; Marx 1970, 1974, 1979, 1988]. This may mean that an organization may spend more time theorizing about police behavior rather than pursuing movement goals; shifts its tactics; changes the frequency, location and size of meetings; or censors topics of discussion, and forms and modes of communication in order to improve its defense [Davenport 2006; Flam 1998]. According to Howe and Coser [cited in Goldstein 2001: 371], after it became common knowledge that the Communist Party was "crawling with informers" in the 1950s, only the most hardened members continued to participate actively in an organization that implemented "tough policies . . . as a means of protecting" itself. Movements also need to maintain credible relationships with a variety of external organizations. Police may convey their belief that a group is dangerous in a variety of ways, from the heaviness of the police presence at a group's demonstration [Noakes, Klocke and Gillham 2005] to the leaking of information to the press [Marx 1970, 1974, 1979, 1988 ; U.S. Congress 1976, 35; Theoharis 1978, 164; Churchill and Vander Wall 2002, 54, 392]. The defensive isolation that movements often retreat to when they are subject to surveillance and infiltration makes it more difficult for them to maintain sources of funding or access to shared community resources, and to share sensitive or controversial information with the press [Marx 1974; Davenport 2006; US Congress 1976, 183]. These police actions often make other groups and individuals hesitant to associate with that organization. [Davenport 2006; Klatch 2002; Marx 1974, Schultz and Schultz 2001:169] the impact of surveillance on the exercise of assembly rights. Relations with government organizations are also likely to be impaired. [Boykoff 2006: 179; Marx 1989]. From the perspective of the social movement organization, being the target of covert forms of repression may increase its distrust of the government. Mutual police and protester distrust may limit the possibility of police-protester negotiations before demonstrations, thus putting social movement groups at risk for being labeled "bad" protesters by the police and, thus, subject to stricter controls during demonstrations [Noakes, Klocke, and Gillham 2005; della Porta and Reiter 1998]. Several studies have suggested that covert forms of repression can result in challengers substituting violent behavior for non-violent activity [Lichbach 1987, White 1989]. **As surveillance increases the cost of action to social movement actors, it can contribute to the decline of organizations and movements**. Movement decline is associated with exhaustion, and a frequent polarization and increasing distrust between militants and moderates. In movement decline, moderates who are most likely to compromise with authorities are more likely to defect from an organization, and militants who seek continued confrontation are more likely to persist. [Tarrow 1998, 147-8] Repression including surveillance may also turn dissidents underground (away from more public, restricted spaces toward more private "free" spaces), or alternatively away from overt collective forms of resistance toward more covert, individualistic forms of resistance. [Davenport 2006; Johnston 2005] If the militants continue to be targeted by authorities, a dangerous situation may emerge. As della Porta notes, the combination of partial demobilization, factionalization, and selective repression can produce terrorism [della Porta 1995]. For example, in Germany in the 1970s, the state divided militant and moderate protesters by offering the moderates concessions. These attracted the moderates in the movement to legitimate action, but frustrated the radicals who sought greater change. The radicals then struck back with more extreme violence. The state also escalated, and ultimately the militants were suppressed or driven underground. [Goldstone paraphrasing Sabine Katsted-Henke, 1997, 11-12]

Current state surveillance practices act as a barrier to social and political resistance, ideological development, and the spreading of theories

Starr et al., 7 – Professor, Sociology, Colorado State University (Amory, Luis Fernandez, Randall Amster, and Lesley Wood, "the impact of surveillance on the exercise of political rights: an interdisciplinary analysis 1998-2006," 9/17, 22-23, http://www.trabal.org/texts/assembly091707.pdf)//SY

We have seen that current surveillance is an alarming threat to mobilizations, and thus to the exercise of constitutionally protected rights to assembly and association. Our findings about the post-Seattle era are consistent with studies of previous activist eras. Current surveillance is both qualitatively and quantitatively

comparable, with the enhancements of technology and Congressional leniency apparent. In only one qualitative dimension does our data diverge from previous findings, which is that we did not find the customary dualism in which hardcore activists become more militant while others become more moderate. [Lichbach 1987, White 1989, Tarrow 1998, Zwerman & Steinhoff 2005]. Instead we found signs of pervasive pacification. In lieu of going "underground" to continue their actions [Davenport 2006; Johnston 2005], **activists are evading the surveillance net by dropping out of social connections entirely while organizations are abandoning "grey area" activities like civil disobedience** and moving toward doing educational and permitted activities. Nevertheless, many activists have in fact redoubled their efforts to promote social change through nonviolent "grey area" methods, a sentiment reflected by Father Roy Bourgeois of the School of the Americas Watch: **"The spying is an abuse of power and a clear attempt to stifle political opposition, to instill fear**. But we aren't going away" (Cooper & Hodge). In Arizona, a group of nonviolent activists who had been under surveillance by terrorism agencies went to the FBI headquarters and "turned themselves in" as a symbolic act of defiance and as a demonstration of their unwillingness to abandon their efforts (World Prout Assembly). Thus, while there may be a sense of fear among many activists, there is also is a demonstrable spirit of rededication to the myriad causes that social movements undertake. We are interested in the persistent attempt to rationalize surveillance and repression. Scholars of social movements should take note of the implications for consciousness of the state and forms of repression. We observed age and class distinctions here. While some organizations edit and re-edit their press releases, younger activists know you don't have to do anything at all to be targeted. The lack of understanding from the elder progressive community has led to a rationalization of repression, taking the form of blaming young people for their own repression (particularly for "provoking" police actions at protests); limiting support for "Green Scare" defendants; and providing little collective concern for defending people from illegal investigations, and absurd indictments, bonds, and sentences. Rationalization collaborates in the creeping criminalization of dissent and political activity. However, conservative decisions on the part of activists and organizations are highly understandable in light of the costs of surveillance to membership, fundraising, family life, and organizational resources. An organization which was illegally searched spent more than 1500 hours of volunteer time dealing with the fallout for their membership and relations with other organizations. They finally filled a lawsuit for damages, which took 5 years to resolve. Databasing increases information collected, with no opportunity to purge, correct errors, or challenge interpretations. An interviewee notes that even requesting to see your government file is treated as an admission of guilt. It will be the "first entry in new files… i've been doing something that makes me believe that you may have reason to monitor me." Activists who viewed a lot of released files noted that "the redaction was deliberately inept", which has a further counterinsurgent function. There is no mechanism of accountability for false accusations, improper or unwarranted investigations, or erroneous surveillance. Entry of a presumed relationship between two organizations proliferates to everyone with even remote links. Rapid information sharing between jurisdictions, (including internationally) exponentially increases the impact of tags. Cultural changes resulting in the loss of history and process have major implications for social movements and the study of their processes and outcomes. Driven by creeping criminalization (we do not know what will be illegal next year), as part of security culture, organizations do not create archives and do not take meeting notes, and activists often do not keep diaries. Moreover, our interviewees explained that strategic and ideological dialogue is greatly reduced. Not wanting to be implicated or to implicate others, political actions are now planned and undertaken in a bubble of time never to be referred to again, with colleagues who will scatter immediately, never referring to one another or what they learned from the action. In addition, **people are reluctant to discuss their political ideas, reducing the quantity and quality of political discourse and ideological development**. Surveillance of educational events also makes it more **difficult to spread analysis and theory**.

Status quo surveillance mirrors the oppressive infiltration of COINTELPRO and results in police brutality – studies prove

Starr et al., 7 – Professor, Sociology, Colorado State University (Amory, Luis Fernandez, Randall Amster, and Lesley Wood, "the impact of surveillance on the exercise of political rights: an interdisciplinary analysis 1998-2006," 9/17, 8-9, http://www.trabal.org/texts/assembly091707.pdf)//SY

Our first, and major, preliminary finding has to do with the significance of surveillance in the Seattle era. Our instrument allows a close comparison with Appendix A of Cunningham"s 2004 book on cointelpro. Cunningham studied internal FBI

memos, itemizing all the tactics they used. Our instrument is sufficiently comprehensive that we cover in detail much of the same territory. We will be able to compare effects with Cunningham's documentation of intentions. We are not presenting that comparison today. But I can say based on our preliminary analysis of our data that the **nature of intelligence activity in the era we are studying is comparable with the COINTELPRO era**. the impact of surveillance on the exercise of assembly rights. surveillance cannot be disassociated from policing and prosecution The second preliminary remark that we need to make is that our interviewees were not able to disassociate completely their experiences of surveillance from their experiences of policing, most markedly from police violence. "also it's about how cops in the street make people feel ineffective, marginal." Additionally they were not able to separate surveillance from the impacts of prosecutions, specifically from increasing sentences, the banning of political motivations from court proceedings, and grand juries. Morever, interviewees were well aware of the relationships between surveillance and police violence: "The police being so overprepared because of their surveillance increases the risk of violence against us. If they weren''t expecting something, they wouldn't have all that stuff."

Exclusion and lack of diversity are inevitable under the security culture established by state surveillance – fear of infiltration and punishment destroys social movements

Starr et al., 7 – Professor, Sociology, Colorado State University (Amory, Luis Fernandez, Randall Amster, and Lesley Wood, "the impact of surveillance on the exercise of political rights: an interdisciplinary analysis 1998-2006," 9/17, 16-18, http://www.trabal.org/texts/assembly091707.pdf)//SY

Surveillance impacts the culture of protest by reducing the quality and quantity of political discourse: "We're scared to be able to openly and honestly talk about issues in our community, state using that info to crush legitimate movements." A middle-aged man in a peace group told us "my mom is scared to talk to me on the phone...What is she allowed to say and not any more." Another peace group reported that before they found out about the extent of surveillance they were under "we used to be a lot closer. Now we sometimes talk in code, more cryptic, share less information. We're all a bit more reserved in terms of our speech." An activist explains "I don't like even talking about politics with them because I don't want to get either of us confused in each others business. If someone is being watched for something i'm not being watched for, I don't want to talk about politics with those people." Another activist says "People are scared of the implications of just being radical. There's almost **no space that we consider safe…People just stopped expressing those views entirely**." We found three distinct impacts of reduced discourse. The first is elimination of what is called "cross-pollination": "It was nice to be able to tell stories of like I worked with this organization and can I help you build... Here's what we did that you all might be able to do... Now ...you can't help them out, you can't tell them stories of things you've done before. Because if they were a snitch you'd be in a really bad situation." A second aspect of reduced discourse is secretive planning. As mentioned above, organizations are communicating much less and across fewer media. "There isn't that constant discussion, which can be really beneficial. Then you get everybody's opinion if you can talk to everyone." This interviewee went on to explain how discourse is intentionally reduced as a protective measure: "Here, we can only talk about what's going on here. Next week we can't talk about this any more. And we can't talk about something else until it's sure who's going to be part of it...." Another interviewee summed it up: **secretive planning is a disaster in community building**, "we couldn't think creatively." If actions cannot be discussed later on, then the strategy of the movement no longer moves forward. The third aspect of reduced discourse is the lack of debriefing. Secretive planning is just one of many dimensions of what activists call "security culture". Surveillance has in fact caused security culture to replace organizing culture, with devastating impacts. The hallmarks of organizing culture are inclusivity and solidarity. The hallmarks of security culture are **exclusion, wariness, withholding information, and avoiding diversity**. "It's hard to build when you're suspicious." Another activist jokingly described security culture as the "icemaker", which has replaced the "icebreaker". S/he went on: "Like handing out a signup sheet. If people feel like that's going to get in the hands of the government that means that people are not only

afraid to sign up, but afraid of asking for it." A new activist described the experience this way: "What's the opposite of unites? When I'm suspicious or they are, it creates a tension, conscious or not, about who people are and what their intentions are." Our interviewees were very conscious of the effects of the cultural shift. "People perceived us as not inclusive because we were so scared." An activist described their group as showing "paranoia, freakiness, and unwelcomingness that results from the fear..." Another admitted "There's not as many people involved, there's not as many voices in the decision making, there's not as many people from different walks of life." An activist explained, with alarm, that security "was the first thing we talked about, even before our name or what we're going to do." Another interviewee pointed out that security culture has become so common that people are using it for actions that don't need to be protected. "There's confusion over what actions need to be clandestine and what doesn't." We noticed in implementing security in this project that it took a lot of energy simply to distinguish when we needed to be secure and when we didn't. Security culture also involves speaking in code, which, interviewees joked, made communication nearly impossible in some circumstances, particularly when organizers try to communicate with more peripheral people. Interviewees also described the effect it has on themselves as organizers: "I had to learn not to welcome people and not give out information... I'm interested in community building, and then you're taught to be suspicious and not welcome people it's antithetical to your theory of change. Another explains when I see people I don't know I get excited. when I saw the undercovers I was amazed that we had attracted folks that don't fit in, and I was sad when I found out they were undercovers." Another interviewee described how people who fit too well are suspicious as well as people who don't fit in. S/he described someone who has been softly excluded from the group: "It makes me suspicious of people who are potential friends and allies, in ways that don't make me comfortable." Prior research has documented that inducing paranoia is in fact one of the goals of surveillance [Churchill and Vander Wall 2002; Marx 197]. "It's just constant…When someone new shows up, the whole meeting changes." This is a limitation on association rights. A second impact on cultures of protest is breaking the experience of trust. (also see Davenport 2006) After it was revealed that a group's civil disobedience action was infiltrated, "people were tense, held back, uncommunicative. not feeling good about themselves and other people... [There's] something insidious about destroying the trust." An interviewee who learned that a long-term and close friend was an FBI informant describes the effect of the experience: "If this friend of mine could be an informant, then anybody could. I didn't trust any of my friends all of a sudden. the world didn't make sense. if he was an informant, it was so unbelievable that anything could be true. my entire reality was disrupted...I want to get out there and do more, but my body is so impacted by the experience, having all my friendships and alliances thrown into question, that I'm not really doing much any more." Moreover, it disrupted the bonds of friendship and community: "We're lonely in our churches and organizations where we work. so there's an incredible sense of community when we meet [other peace activists]. We're hugging and learning to protect each other and what we're going to do when we go to jail together, protecting each other from brutality, learning what peoples weeknesses are. To know that in the midst of all of that there's someone who's spying on you, essentially. it makes you very sad, and hurt." Another striking impact of surveillance reported by several groups is that they destroy all written records of their work. They do not take notes at meeting. As one interviewee reported: We're afraid to have a piece of paper with anything written on it at the end of any meeting. Many interviewees said that they don't want to be seen taking notes, as it would make them look suspicious. This is the destruction in advance of the history of the movement. The last aspect of impact of surveillance of cultures of resistance is the impact on prefigurative practices. One version of this kind of shift is a church group who described how surveillance caused the congregation to question (and ultimately to largely abandon) their "Christian obligation" to social justice. A more widespread version of this impact is its **disruption of participatory democracy**, one of the hallmarks of current US political culture. Many groups reported that they were no longer maintaining their former level of inclusivity in decisionmaking. [See Marx 1979, Boykoff 2006, Flam 1998, Goldestein 1978] "Sometimes a handful makes decisions and it never used to be that way."

Addressing surveillance is a prerequisite to focusing on minority concerns – so is debate's information processing skills

Kaminski & Witnov, 14 – Assistant Professor, Law and Technology, Ohio State University Moritz College of Law AND JD, UC Berkeley School of Law (Margot E. and Shane, "The Conforming Effect: First Amendment Implications of Surveillance, Beyond Chilling Speech," University of Richmond Law Review, Vol. 49, 506-509, http://lawreview.richmond.edu/wp/wp-content/uploads/2015/01/Kaminski-492.pdf)//SY

Surveillance can weaken minority influences. Minority influences have been shown to foster better, more deliberate, and more creative thinking than majority influence. 283 This happens, in part, because minority influence stimulates critical thought.284 Minority influence has been measured across a variety of domains, in topics as diverse as color perception, jury decisions, migrant workers, feminism, the military, pollution, the death penalty, and abortion.285 It is one of the key mechanisms by which individuals change their opinions. Even when minority opinions are wrong, they contribute to the detection of novel solutions and decisions that, on balance, are qualitatively better.‖ 286 Psychologists attribute many intellectual revolutions to minority influence. 287 They put forward the influences of thinkers such as Galileo, Marx, Freud, as well as minority social movements such as the civil rights, antiwar, and environmental movements, as examples of these minority influences. 288 However, being in the minority is hard. People have a basic need to feel good about themselves,289 and minorities are generally disliked and sometimes threatened by the majority, especially when the minority is one person.290 A 2014 Pew Research Center study found that people were only half as likely to join a conversation on a controversial subject on Facebook if they thought their friends disagreed with their position.291 The study's authors explain that their observations confirm a long-studied offline phenomenon called the ―spiral of silence,‖ which observes that people are less likely to speak up about policy issues in public when they believe they are in the minority.292 The recent study, about how people felt about the Snowden-NSA disclosures, also found that social media users thought they knew the views of those around them.293 The same social media users were less likely than non-social media users to discuss the Snowden issues in any context, online or off.294 Awareness of surveillance likely makes people more sensitive to being in a minority, thus interfering with their willingness to share opinions.295 The studies we reviewed above suggest that surveillance is likely to reduce the number of people willing to even consider, much less join or convert to, a minority.296 Numerous studies show that people in the majority generally have a personal aversion to adopting the deviant minority identity and thus are not easily directly influenced to publicly join the minority.297 They may also fear losing face.298 Thus, change caused by minority influence usually happens privately.299 Minority influence happens through active **information processing‖ by considering arguments and counterarguments.‖** 300 This analytic process is likely to be impaired by surveillance, which may make individuals less likely to research the minority position. Further, a person's commitment to a minority position is directly related to her ability to resist majority influence, and **surveillance is likely to make it harder to become committed to a minority position.**301 In a variation on Asch's experiment, researchers had subjects make a commitment to an answer by writing it down, before all of the members of the group announced their answers. 302 The more committed the subject was to the answer before hearing the responses of the group, the greater her ability to resist the group norm. 303 In the White and Zimbardo study on police surveillance, the surveillance had less effect on individuals who had already taken a public position on legalization of marijuana. 304 On the other hand, individuals who were less-decided were most influenced by the conforming effect of the surveillance.305 Accordingly, the conforming effect caused by surveillance can result in smaller and less confident minorities. These minorities, in turn, will be less successful than they otherwise might have been at challenging the status quo and the majority views. Thus, **individuals and the public will miss out on the better, more deliberate, more creative, and more critical thinking that results from minority influences**.

Answers to:

At: Debate bad

Debate is good for life skills and test taking

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

Robust evidence documents how policy debate aids traditional markers of academic achievement. The growth of the Urban Debate Leagues has provided research opportunities to advance the earlier findings of Allen, Berkowitz, Hunt, and Louden (1999) measuring improvements in students' academic achievement. Mezuk, Bondarenki, Smith, and Tucker (2011) study at-risk children in districts with Urban Debate Leagues. They found students who demonstrate sustained involvement in policy debate experience higher measures of academic achievement (Mezuk, Bondarenki, Smith and Tucker, 2011). Surveying the results of over 900 children in Chicago's public schools over ten years, Mezuk, Bondarenki, Smith and Tucker (2011) gathered data regarding graduation rates, test scores, college-readiness, and more among American urban high school debaters. After accounting for bias in self-selection, their extensive study documents sustained improvements in ACT scores, attendance rates, vocabulary, and Grade Point Averages for policy debaters. Furthermore, Anderson and Mezuk (2012) studied how policy debate participation uniquely impacts the academic lives of at-risk students within the Chicago Urban Debate League. Anderson and Mezuk (2012) looked at the academic performance of debate students by the quantity and success rates of at-risk debaters compared to at-risk students not involved in debate. Policy debaters achieved higher graduation rates, higher ACT scores, and had fewer drop-outs demonstrating policy debate to be a successful strategy for at-risk student intervention (Anderson and Mezuk, 2012, p. 8-10).

At: CI-discussion of the topic

Discussions of the topic fail to generate clash because even if they create a point of stasis, taking a forward stands in the direction of the topic is necessary for evaluation and clash

Smith 2003 (Ross, director of debate at wake forest, from critique to performance and back to topicality, http://groups.wfu.edu/debate/MiscSites/DRGArticles/Crtique2003.htm, LB)

Beyond competitiveness, there is a basic lack of criteria for even deciding what aspect of performance is best. How much weight do you give to the part of a performance that showed the plan is good? Do you use a point scale? Ten points for gestures, five for reasoning, six for vocabulary? Performance advocates will say that these questions should be decided in the debate according to arguments made by the debaters. Well, first, that is a cop out in a theory discussion. My question is what kinds of arguments might be made on the subject? To date, there is not a satisfactory answer. Second, this approach pushes the debate onto a ground that is far removed from the topic. While we are spending half of our time talking about how to judge a pair of original oratories and the rest of our time delivering them, when are we debating about mental health care? To this question the performers will say, "Oh, but the performance must be germane to the resolution." Germane, relevant, or some other substitute for topical. Which brings us to the second damning indictment of the performative affirmative: they are unpredictable. As the negative, you should be prepared to say that the federal government should not increase public health services for mental health care. But to be expected to oppose any performance that is in any way related to the resolution is a far greater task. First, there do not appear to be any real limits to things "germane" to the resolution. It includes the word, "should." So anything normative is fair game? Government. Mental. Care. There is not a novel, a song, nor a poem written that is not somehow germane. Second, there is no stable thing to oppose. It is ludicrous to say you can oppose one of the words your opponent chose. But what does it mean to oppose "the whole" of their performance? Do not all of the speeches count? If so, then there is not a stable focus of the debate and the last speaker wins. If not, then which parts and speeches count for what? The third, and final, indictment I will mention here is somewhat more esoteric but is most important. And that is that debate is a unique activity. Debate is the one activity we have in our educational system that teaches argumentative clash. Argumentative clash requires advocates to separate the wheat from the chaff of all that is said on a subject. Debate accomplishes this by having a question that is answered in the affirmative by the affirmative. Arguments that do not address that question are dismissed. Advocates are required to explain how their arguments support or refute the question. Saying "my performance was good" does not come close. There are individual events. There is music. Drama. Sculpture. All of these are activities where people perform. These activities have educated critics who can judge efforts of the performers. In debate we have debate judges who are very good at educating about one kind of performance: debate. Debate cannot be all things to all people any more than sculpture can. Some say we should not "silence voices" of those who want to do things differently, but surely they do not mean that we should reward people no matter what they say or do. And if not, then we're right back where we started. Again, I am not saying one should not be allowed to say or do anything in particular as long as it makes an argument that speaks to the focus (plan or resolution) of the debate. Nor am I arguing we should only have policy resolutions. But as long as we do have policy resolutions, then the question of the debate is a policy question. The question is interesting, controversial, and challenging. Those who do not engage it should lose to those who do.

A2: America Bad

Criticizing the U.S. government only isolates the left—brutal American history is a reason to engage the state, not reject it

GITLIN 2005

(Todd, professor of journalism and sociology at Columbia University, The Intellectuals and Patriotism, http://www.ciaonet.org/book/git01/)

From the late New Left point of view, then, patriotism meant obscuring the whole grisly truth of the United States. It couldn't help spilling over into what Orwell thought was the harsh, dan- gerous, and distinct phenomenon of nationalism, with its aggres-sive edge and its implication of superiority. Scrub up patriotism as you will, and nationalism, as Schaar put it, remained "patrio- tism's bloody brother." Was Orwell's distinction not, in the end, a distinction without a difference? Didn't his patriotism, while refusing aggressiveness, still insist that the nation he affirmed was "the best in the world"? What if there was more than one feature of the American way of life that you did not believe to be "the best in the world"—the national bravado, the overreach of the marketplace. Patriotism might well be the door through which you marched with the rest of the conformists to the beat of the national anthem. Facing these realities, all the left could do was criticize empire and, on the positive side, unearth and cultivate righteous tradi-tions. The much-mocked "political correctness" of the next aca- demic generations was a consolation prize. We might have lost politics but we won a lot of the textbooks. The tragedy of the left is that, having achieved an unprece-dented victory in helping stop an appalling war, it then proceeded to commit suicide. The left helped force the United States out of Vietnam, where the country had no constructive work to do—ei- ther for Vietnam or for itself—but did so at the cost of discon- necting itself from the nation. Most U.S. intellectuals substituted the pleasures of condemnation for the pursuit of improvement. The orthodoxy was that "the system" precluded reform—never mind that the antiwar movement had already demonstrated that reform was possible. Human rights, feminism, environmental- ism—these worldwide initiatives, American in their inception, flowing not from the American Establishment but from our own American movements, were noises off, not center stage. They were outsider tastes, the stuff of protest, not national features, the real stuff. Thus when, in the nineties, the Clinton administra-tion finally mobilized armed force in behalf of Bosnia and then Kosovo against Milosevic's genocidal Serbia, the hard left only could smell imperial motives, maintaining that democratic, anti-genocidal intentions added up to a paper-thin mask. In short, if the United States seemed fundamentally trapped in militarist imperialism, its opposition was trapped in the mir-ror-image opposite. By the seventies the outsider stance had be-come second nature. Even those who had entered the sixties in diapers came to maturity thinking patriotism a threat or a bad joke. But anti-Americanism was, and remains, a mood and a metaphysics more than a politics. It cannot help but see practical politics as an illusion, entangled as it is and must be with a sys-tem fatally flawed by original sin. Viewing the ongoing politics of the Americans as contemptibly shallow and compromised, the demonological attitude naturally rules out patriotic attachment to those very Americans. Marooned (often self-marooned) on university campuses, exiled in left-wing media and other cultural outposts—all told, an archipelago of bitterness—what sealed it- self off in the postsixties decades was what Richard Rorty has called "a spectatorial, disgusted, mocking Left rather than a Left which dreams of achieving our country."

at: debate = training ground

Play must exist separately from real life- once rules are broken and games are played to achieve some external goal they become a corrupted source of exhaustion and anxiety

Caillois, 1961- French philosopher (Roger, 1961, "Man, Play and Games," pg. 43-45, fg)

Where the problem is to enumerate the characteristics that define the nature of play, it appears to be an activity that is (1) free, (2) separate, (3) uncertain, (4) unproductive, (5) regulated, and (6) fictive, it being understood that the last two characteristics tend to exclude one another. These six purely formal qualities are not clearly related to the various psychological attitudes that govern play. In strongly opposing the world of play to that of reality, and in stressing that play is essentially a side activity, the inference is drawn that **any contamination by ordinary life runs the risk of corrupting and destroying its very nature.** At this point, it may be of interest to ask what becomes of games when the sharp line dividing their ideal rules from the diffuse and insidious laws of daily life is blurred. They certainly cannot spread beyond the playing field (chess- or checkerboard, arena, racetrack, stadium, or stage) or time that is reserved for them, and which ends as inexorably as the closing of a parenthesis. They will necessarily have to take quite different, and on occasion doubtlessly unexpected, forms. In addition, a strict and absolute code governs amateur players, whose prior assent seems like the very condition of their participation in an isolated and entirely conventional activity. But what if the convention is no longer accepted or regarded as applicable? Suppose the isolation is no longer respected? The forms or the freedom of play surely can no longer survive. All that remains is the tyrannical and compelling psychological attitude that selects one kind of game to play rather than another. It should be recalled that these distinctive attitudes are four in number: the desire to win by one's merit in regulated competition (agon), the submission of one's will in favor of anxious and passive anticipation of where the wheel will stop (alea), the desire to assume a strange personality (mimicry), and, finally, the pursuit of vertigo (ilinx). In agon, the player relies only upon himself and his utmost efforts; in alea, he counts on every thing except himself, submitting to the powers that elude him; in mimicry, he imagines that he is someone else, and he invents an imaginary universe; in ilinx, he gratifies the desire to temporarily destroy his bodily equilibrium, escape the tyranny of his ordinary perception, and provoke the abdication of conscience. If play consists in providing formal, ideal, limited, and escapist satisfaction for these powerful drives, what happens when every convention is rejected? When the universe of play is no longer tightly closed? When it is contaminated by the real world in which every act has inescapable consequences? Corresponding to each of the basic categories there is a specific perversion which results from the absence of both restraint and protection. The rule of instinct again becoming absolute, the tendency to interfere with the isolated, sheltered, and neutralized kind of play spreads to daily life and tends to subordinate it to its own needs, as much as possible. What used to be a pleasure becomes an obsession. What was an escape becomes an obligation, and what was a pastime is now a passion, compulsion, and source of anxiety. The principle of play has become corrupted. It is now necessary to take precautions against cheats and professional players, a unique product of the contagion of reality. Basically, it is not a perversion of play, but a sidetracking derived from one of the four primary impulses governing play. The situation is not unique. It occurs whenever the specified instinct does not encounter, in an appropriate game, the discipline and refuge that anchor it, or whenever it does not find gratification in the game. The cheat is still inside the universe of play. If he violates the rules of the game, he at least pretends to respect them. He tries to influence them. He is dishonest, but hypocritical. He thus, by his attitude, safeguards and proclaims the validity of the conventions he violates, because he is dependent upon others obeying the rules. If he is caught, he is thrown out. The universe of play remains intact. Neither does the professional player change the nature of the game in any way. To be sure, he himself does not play, but merely practices a profession. The nature of competition or the performance is hardly modified if the athletes or comedians are professionals who play for money rather than amateurs who play for pleasure. The difference concerns only the players. For professional boxers, bicycle riders, or actors, agon or mimicry has ceased being a recreation intended as a relaxation from fatigue or a relief from the monotony of oppressive and exhausting work. It is their very work, necessary to their subsistence, a constant and absorbing activity, replete with obstacles and problems, from which they properly find relaxation by playing at a game to which they are not contracted.

Play is, by definition, done for its intrinsic value, rather than focusing on possible external benefits- they turn play into work, stripping it of its intrinsic value

Rodriguez, 2006- media theory professor at the City University of Hong Kong with a PhD from NYU (Hector Rodriguez, December 2006, "The Playful and the Serious: An approximation to Huizinga's Homo Ludens," published in Game Studies, vol. 6 issue 1, fg)

Play is not characteristically undertaken to acquire some extrinsic benefit. The essential function of play is the modulation of experience. The intention of playing tennis to improve one's health is not playful in this sense, because it is motivated by the expectation of some future good. In contrast, persons who enjoy the sheer pleasure of competing with others, for instance, exhibit a genuinely playful attitude. Exercising may also help to upgrade our health, but this anticipated benefit is not here the principal reason for the action. Viewed from a biological viewpoint, it makes sense to ascribe functional advantages to physical exercise, but these advantages are not the agent's primary motivation. **People who play do so** mainly **because they treasure the experience of intense immersion that it uniquely affords.** When pursued in a purely playful spirit, the ludic experience of tension, uncertainty or release is its own justification, not a means to some subsequent end. Play thus resists any form of narrowly instrumental analysis. To be sure, Huizinga's argument against functionalism does not necessarily imply that all functional explanations of play are theoretically unsound. It is of course legitimate to inquire into the social or biological utility of play. Computer games, for instance, often help to enhance our motor coordination, visual perception and spatial reasoning. But the existence of biological, psychological or social benefits does not explain why players play. There is a difference between describing the functions that playing performs and describing the reasons why people play. Player experience is the "primary phenomenon" in the sense that whatever functional benefits are derived from play often depend on the quality of that experience. It is only because play is engrossing and absorbing that it can arguably enhance the player's physiological health, ego integration and social identity. Play is on the whole psychologically or socially efficacious only to the extent that players derive satisfaction from it. The intrinsic value and intensity of play must for this reason never be left out of the analysis. This line of thinking also suggests a potentially fruitful research agenda. **Playful activities are sometimes co-opted in the service of coercive institutions or functional ends.** Most modern nation-states, for instance, make sports training an integral part of the compulsory school curriculum. Psychologists utilize games to enhance social adaptation and regulate human conduct. Play thus becomes a tool to engineer docile citizens in the service of hierarchical institute ons. Corporations sometimes introduce play techniques to enhance the motivation and productivity of their workers. Treated as a mechanism of social engineering, play is subordinated to such functional goals as the cohesiveness of the state, the socialization of the child, or the success of a commercial firm. **Playing becomes a tool and an obligation.** There is room for critical theorists to trace in detail the ways in which social institutions "functionalize" play for the purpose of regulating human conduct, in line with some rational blueprint. Play and Human Nature According to Huizinga's critique of functionalism, people do not typically play because they have rationally inferred that playing is good for them. Those who emphasize the function of play often assume that playing is motivated by a rational assessment of its potential benefits. But play does not characteristically rest on utilitarian calculations. **Players are** typically **motivated by the quality of experience that playing affords, not by the expectation of some future utility.**

A2: Psychoanalysis

The refusal to engage institutions turns their hysteria arguments—they demand to be viewed as outsiders which represents the same desire they critique

LUNDBERG 2012 (Chris, comm studies prof at UNC, Lacan in Public)

Paradoxically, the third danger is that an addiction to the refusal of demands creates a paralyzing disposition toward institutional politics. Grossberg has identified a tendency in left politics to retreat from the "politics of policy and public debate."45 Although Grossberg identifies the problem as a specific coordination of "theory" and its relation to left politics, perhaps a hysterical commitment to marginality informs the impulse in some sectors to eschew engagements with institutions and institutional debate. An addiction to the state's refusal of ten makes the perfect the enemy of the good, implying a stifling commitment to po liti cal purity as a pretext for sustaining a structure of enjoyment dependent on refusal, dependent on a kind of paternal "no." Instead of seeing institutions and policy making as one part of the political field that might be pressured for contingent or relative goods, a hysterical politics is in the incredibly difficult position of taking an addressee (such as the state) that it assumes represents the totality of the political field; simultaneously it understands its addressee as constitutively and necessarily only a locus of prohibition.

These paradoxes become nearly insufferable when one makes an analytical cut between the content of a demand and its rhetorical functionality. At the level of the content of the demand, the state or institutions that represent globalization are figured as illegitimate, as morally and politically compromised because of their misdeeds. Here there is an assertion of agency, but because the assertion of agency is simultaneously a deferral of desire, the identity produced in the hysterical demand is not only intimately tied to but is ultimately dependent on the continuing existence of the state, hegemonic order, or institution. At the level of affective investment, the state or institution is automatically fig ured as the legitimate authority over its domain. As Lacan puts it: "demand in itself . . . is demand of a presence or of an absence . . . pregnant with that Other to be situated within the needs that it can satisfy. Demand constitutes the Other as already possessing the 'privilege' of satisfying needs, that it is to say, the power of depriving them of that alone by which they are satisfied."46

At: DSRB

At worst, you should affirm the resolution – the original theme of the project still defended a plantext

Reid-Brinkley '8 (Dr. Shanara Reid-Brinkley, University of Pittsburgh Department of Communications, "THE HARSH REALITIES OF "ACTING BLACK": HOW AFRICAN-AMERICAN POLICY DEBATERS NEGOTIATE REPRESENTATION THROUGH RACIAL PERFORMANCE AND STYLE" 2008, LB)

Even though the Louisville debaters violate the "plan text" norm, they do define a position for their advocacy, when affirmative, that argues in support of the resolution. In their affirmative rounds, Jones and Green defend that the United States Federal Government should withdraw from NATO. I remind you that the debate resolution for that year read: "Resolved: That the U.S. Federal Government should enact one or more of the following: Withdrawal of its WTO complaint against the EU's restrictions on GM Foods; Increase economic or conflict prevention aid to Greece &/or Turkey; Withdrawal from NATO; Remove barriers to EU/NATO participation in Peacekeeping and Reconstruction of Iraq; Remove TNWs from Europe; Harmonize DNA intellectual property law with EU; Rescission of 2002 Farm Bill Subsidies." Thus, the Louisville debaters do make this concession to normal debate practice. The resolution offers a number of policy areas from which debaters may choose to argue. In the following passage taken from Jones' 1AC against Wake Forest, Jones identifies the consequences of continued U.S. participation in NATO and argues that these consequences require a withdrawal of the U.S. from NATO: The USFG should withdraw from the North Atlantic Treaty Organization because the racism embedded in our institutional norms and procedures is exported to other lands. Huey P. Newton drew connections and parallels between police forces occupying the black community and military forces stationed abroad in countries of color such as Iraq, Haiti, and Afghanistan. NATO began bombing in Kosovo in 1999 and set off the ethnic cleansing of three hundred thousand Roma people. The Romani people represent Europe's largest ethnic minority, a group of people also held captive in slavery during the 1300's. The US is the most powerful country in the world, economically, politically, and militarily. America has the greatest of voting representation in the World Bank and IMF. These global economic institutions provide loans to countries provided that they cut social spending for people and use that money to promote capitalism. America has the power to veto any United Nations decision because of our seat on the UN security council. In 94 Pres. Clinton was able to block intervention into the Rwandan genocide that ultimately displaced or killed 75% of the African country's population. Iran in 1953 And Iraq in 2003 Are just two examples of the military power our country possesses to invade another state and overthrow its government.107 In this section of **the speech the Louisville team advocates a change in U.S. foreign policy in keeping with the resolution. Although clearly critical of the U.S. as a good faith actor in the international context, they still argue in support of U.S. action.** The narrative she constructs around the international example of the Romani people offers her an opportunity to discuss the manner in which institutional racism functions across various lines of difference. For example, earlier in this speech, Jones discusses the effects of institutional racism on African-Americans. She draws on statistics that provide striking evidence of the social and economic consequences of being young, black, poor and uneducated in the United States. She argues that these statistics are but one clear indication that institutional racism still plagues our society. Thus, Jones uses this section of the speech not necessarily to argue in favor of U.S. action, but instead to draw a connection between blacks in the U.S. and the Romani people in Eastern Europe. That connection being the institutional racism that still effects each population of peoples. Yet, even more specifically, Louisville argues that the institutional racism embedded within U.S. society becomes "exported" to other nations by the very nature of our interaction in the international community. In other words, Jones argues that the U.S. engages in institutionally racist practices within the international community and she lists a number of contemporary examples of this in U.S. foreign policy history.

At: Mitchell

Mitchell concedes that competitive debate is distinct from academic roleplaying – they can't access their policy simulation good offense

Mitchell, 2k – Associate Professor and Chair, Department of Communication, University of Pittsburgh (Gordon, "Simulated public argument as a pedagogical play on words," Argumentation and Advocacy, Vol. 36, No. 3, Winter, http://search.proquest.com/docview/203263325?pq-origsite=gscholar)//SY

Despite the communication discipline's historical opposition to top-down learning, as Tannen's observations in The Argument Culture illustrate, debate pedagogy does not automatically encourage "dialogue" in the Freireian sense. While many argumentation teachers extricate their classrooms from the "banking" concept of education by using competitive policy debates to involve students, a different but profound set of pedagogical limitations attach to the traditional formats for such debates as recommended frequently in the standard argumentation textbooks. The adversarial nature of such debates injects a competitive (even combative) element into the classroom that tends to **polarize discussion, penalize communicative cooperation, and alienate some students** (see Crenshaw 1995; Fulkerson 1996; Gehrke 1998; Tannen). The formal rules of evidence and logic underpinning many models of debate pedagogy work to exclude and devalue arguments couched in emotional, affective, or aesthetic registers. These limitations present teachers with a challenge to enhance the pedagogical dynamism of debate by theorizing innovative formats and approaches that can more deeply fulfill the profound potential of debate education. **Simulated public argument represents a form of academic debate that promises to redeem more fully debate's potential** as a method of "dialogic" learning. In the next section, I explore the basis for such optimism by sketching the historical roots and logistical dynamics of role-play as a classroom exercise. Since ancient times, schools have served as sites of dramatic performance in society. The idea of the "school play" is rooted in a venerable theatrical tradition that treats drama as an independent field of academic study, marked off from the "mainstream" curriculum. Only in this century, however, have teachers begun to recognize the value of dramatic role-play simulation as a generic pedagogical tool for teaching a wide variety of subjects, ranging from psychology to political science. The origin of this transition from drama as public performance to role-play as a general teaching tool can be traced to the 1930s, when "a growing interest in small-group bEhavior by psychologists, psychiatrists, and sociologists led to the use of role-play as a vehicle for extending research into human behavior in varied learning environments" (Taylor and Walford 1972, p. 19). According to McCaughan and Scott (1978, p. 22), this pedagogical technique was "first written about seriously" by Jacob Moreno, who suggested in a 1953 book, Who Shall Survive, that role-play exercises might have broad applicability in schools. During the 1960s, role-play teaching entered its "most prolific stage of development in the USA and UK" (McCaughan and Scott, p. 101), growing in popularity as interest in simulation gaming surged in schools and universities. Today, one can find a wide variety of role-play exercises designed by organizations and individual teachers to teach subjects as diverse as Bushmen hunting in the Kalahari Desert, inner-city community organizing, pollution control, and the legislative process (see Taylor and Walford, pp.147-172). The basic concept of the role-play technique is easy to grasp. "The idea of roleplay," as Van Ments explains, is asking someone to assume the dramatic posture of "another person in a particular situation. They are then asked to behave exactly as they feel that person would. As a result of doing this, they, or the rest of the class, or both, will learn something about the person and/or situation" (1983, p. 16). In their book, Simulation in the Classroom, Taylor and Walford explain that "[r]ole-play relies on the spontaneous performance of participants, when they have been placed in a hypothetical situation" (p. 19). In their formulation, Taylor and Walford isolate three key aspects of the role-play process: 1) Players take on roles which are representative of the real world, and then make decisions in response to their assessment of the setting in which they find themselves; 2) They experience simulated consequences which relate to their decisions and their general performance; 3) They 'monitor' the results of their actions, and are brought to reflect upon the relationship between their own decisions and the resultant consequences (1972, p. 17). Moore provides additional detail in his description of role-play as a pedagogical approach. Emphasizing pre-performance brainstorming as an essential feature of the process, Moore suggests that initially, students [f]reewrite a practice paragraph about the topic from the point of view of the character. Try to assume his or her voice. Imagine the character being asked to speak about the subject and write what

he or she would say" (1995, p. 194). After this initial brainstorming process, a secondary discussion takes place, where students meet in groups to "review others' papers, look for stereotypes and misconceptions ... land] [g]ive suggestions to the role-player on how to improve the character's argument" (Moore, p. 194). After scenes are developed and character sketches completed, role-play participants move from the realm of invention to performance, where students engage in simulated dialogues with each other, working to fashion statements that fit their character sketches and draw creatively from assigned readings and background knowledge. Throughout such exchanges, students present themselves and fashion arguments not from the perspective of their own self-identities, but rather from the perspective of hypothetical identities constructed to fit their interpretations of a dramatic role. Traditional debate contests encourage a similar kind of perspective-taking, with students assuming the roles of affirmative and negative advocates speaking for and against particular propositions. However, **opportunities for identity experimentation are limited in this context** by the expectation that debate adversaries present arguments in the voice of omniscient cornmentators, delivering overarching assessments of issues that "clash" directly with positions staked out by opponents. On the other hand, role-play exercises encourage students to speak not as transcendent, pro/con commentators, but as situated actors in everyday circumstances, able to assume a variety of flexible rhetorical postures, and **freed from the agonistic imperatives of competitive debate formats**.

At: words don't mean things

We don't have to win absolute truth—intersubjective meaning and knowledge are still possible

FERGUSON AND MANSBACH 2002

(Yale, Prof of IR at Rutgers, Richard, Prof of IR at Iowa State, *International Relations and the "Third Debate,"* ed. Jarvis)

Although there may be no such thing as "absolute truth" (Hollis, 1994:240-247; Fernandez-Armesto, 1997:chap.6), there is often a sufficient amount of intersubjective consensus to make for a useful conversation. That conversation may not lead to proofs that satisfy the philosophical nit-pickers, but it can be educational and illuminating. We gain a degree of apparently useful "understanding" about the things we need (or prefer) to "know."

At: Competition Bad

Competition in debate is good—it encourages education, strong community, and increases quality of work

GILLESPIE AND GORDON 2006

(William and Elizabeth, Kennesaw State University, "Competition, Role-Playing, and Political Science Education," Sep 1, http://www.allacademic.com//meta/p_mla_apa_research_citation/1/5/1/0/0/pages151007/p151007-1.php)

But, for the most part, coaches report that the competitive element enhances learning in several ways. First, many coaches perceive that competition motivates their students to put in the time and do their best work. Some indicate that no other means of motivation is as effective. Engaging in competition allows students to measure their progress. It also provides a goal, raises the stakes of the activity, and provides more rewards. Second, as one coach said, "the activity faithfully recreates many of the dynamics of the adversarial model, and my students report learning a lot." For the goal of substantive learning about how American law functions, especially in litigation, competition is an essential element. Mock trial allows students to experience some of the processes, constraints, and emotions associated with competition in a courtroom. Third, the stress of competition itself helps students gain flexibility and adaptability. Many coaches mention the ability to "think on one's feet" as a skill that students acquire in the fluid environment of a mock trial competition. "Competition enhances the learning experience. The students seem to absorb lessons more quickly and thoroughly under fire," writes one coach. Another writes: "They also learn to adjust and adapt quickly to the different evaluators. That is something they don't get from their regular classes." Fourth, some coaches explain that competing against other schools allows their students to learn by seeing different approaches to the same case. Representative comments along these lines include: "Students get to see what other teams do and learn from those experiences." "[Competition] exposes the students to different techniques and approaches that the other teams use." Fifth, many coaches explain that the competition enhances camaraderie and teamwork among their students. One coach explains that competition "gives a sense of duty to fulfill an obligation to their fellow teammates." "Students learn teamwork in an interactive and dynamic setting," reports another.

At: other forums solve

Policy debate is a key space in having discussion of normative claims for the government to do

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

The high school environment generally provides few opportunities for meaningful political learning and engagement. Isolated experiences of student council, volunteering, and/or high school civics or government classes, tends to be limited to immediate school needs or tied to a basic, mechanical political education (Colby, Beaumont, Ehrlich, and Corngold, 2007). These experiences do not require personal engagement or connection with local, state, national, and international politics. Rarely are civics or government courses about controversial political issues or discovering a sense of personal political identity. Even more rare are opportunities to question and analyze the political process as existing state and national standards exclude opportunities for in-depth, personal consideration of policy matters (Goertz, 2001). Instead, these courses tend to identify an American political identity through political philosophy and tracing presidential histories. Civics or government courses may also prescribe political characteristics through the American democratic core values, three branches of government, and anything that can be sung to School House Rock anthems. Perhaps one reason political knowledge is not privileged in schools is due to increased service opportunities masquerading as political awareness. Schools may offer opportunities for service learning through National Honors Societies and/or Youth Service Programs that encourage community involvement. These activities typically range from tutoring, organizing food drives, helping at local animal shelters, to assisting at homeless food kitchens. While many of these activities have deep-seeded political connections, unless the political connections are explicitly taught, these experiences do not translate into political knowledge (Colby, 2008; Colby, Beaumont, Ehrlich, and Corngold, 2007). When service learning is offered in a political vacuum, lacking parallels to political ideas and institutions, service may merely translate into an endorsement or invitation to an organization. Moreover, becoming aware of, or involved in, these activities is typically organized and relatively formalized by school personnel requiring little initiative outside of school (Colby, 2008; Colby, Beaumont, Ehrlich, and Corngold, 2007). While these activities can be civically minded and personally and socially rewarding, the ease and frequency at which service learning opportunities are offered compared to political opportunities is staggering. One program in particular, the Center for Civic Education's We the People congressional testimony simulation project, has received acclaim for its ability to produce sustained political engagement (Leming, 1996; Siegal, 2012). This program, combined with Model United Nations or Mock Trial opportunities, are not universal and based largely on an individual teacher's effort rather than school or larger institutional support.

at: rob = vote for team that did the better debating

Their role of the ballot argument makes no sense- it's impossible to determine who's better when everyone isn't playing according to the same rules

Caillois, 1961- French philosopher (Roger, 1961, "Man, Play and Games," pg. 14-15, fg)

Agon. A whole group of games would seem to be competitive, that is to say, like a combat in which equality of chances is artificially created, in order that the adversaries should confront each other under ideal conditions, susceptible of giving precise and incontestable value to the winner's triumph. It is therefore always a question of a rivalry which hinges on a single quality (speed, endurance, strength, memory, skill, ingenuity, etc.), exercised, within defined limits and without outside assistance, in such a way that the winner appears to be better than the loser in a certain category of exploits. Such is the case with sports con- tests and the reason for their very many subdivisions. Two individuals or two teams are in opposition (polo, tennis, football, boxing, fencing, etc.), or there may be a varying number of contestants (courses of every kind, shooting matches, golf, athletics, etc.). In the same class belong the games in which, at the outset, the adversaries divide the elements into equal parts and value. The games of checkers, chess, and billiards are perfect examples. The search for equality is so obviously essential to the rivalry that it is re-established by a handicap for players of different classes; that is, within the equality of chances originally established, a secondary inequality, proportionate to the relative powers of the participants, is dealt with. It is significant that such a usage exists in the agon of a physical character (sports) just as in the more cerebral type (chess games for example, in which the weaker player is given the advantage of a pawn, knight, castle, etc.). As carefully as one tries to bring it about, absolute equality does not seem to be realizable. Sometimes, as in checkers or chess, the fact of moving first is an advantage, for this priority permits the favored player to occupy key positions or to impose a special strategy. Conversely, in bidding games, such as bridge, the last bidder profits from the clues afforded by the bids of his opponents. Again, at croquet, to be last multiplies the player's resources. In sports contests, the exposure, the fact of having the sun in front or in back; the wind which aids or hinders one or the other side; the fact, in disputing for positions on a circular track, of finding oneself in the inside or outside lane constitutes a crucial test, a trump or disadvantage whose influence may be considerable. These inevitable imbalances are negated or modi- fied by drawing lots at the beginning, then by strict alternation of favored positions. The point of the game is for each player to have his superiority in a given area recognized. That is why the practice of agon presupposes sustained attention, appropriate training, assiduous application, and the desire to win. It implies discipline and perseverance. It leaves the champion to his own devices, to evoke the best possible game of which he is capable, and it obliges him to play the game within the fixed limits, and according to the rules applied equally to all, so that in return the victor's superiority will be beyond dispute. In addition to games, the spirit of agon is found in other cul- tural phenomena conforming to the game code: in the duel, in the tournament, and in certain constant and noteworthy aspects of so-called courtly war.

At: simulation

Debaters are not roleplaying the government – here's what a policy simulation actually is (hint: Model UN)

Raymond & Sorensen, 8 – Associate Professor, Political Science and International Relations, Salve Regina University AND Associate Professor, Political Science, Elon University (Chad and Kerstin, "The Use of a Middle East Crisis Simulation in an International Relations Course," Faculty and Staff – Articles & Papers, Paper 40, 1/1, http://digitalcommons.salve.edu/cgi/viewcontent.cgi?article=1041&context=fac_staff_pub)//SY

- Use this card on the AFF to say that they don't access an internal link to any of their roleplaying good args and on the NEG to no link out of roleplaying bad args

The Middle East crisis simulation was designed entirely by members of the MUN. The Princeton International Crisis Simulation, which several members of the MUN had participated in, was used as a guide. Only three MUN members known during the simulation as master minds-knew what events were planned for the simulation. The majority of the crises were state-oriented, but several involved non-state actors-i.e., terrorists. Crises included anti-government protests by the Muslim Brotherhood in five Egyptian cities, mortar fire from the Golan Heights into Israel, and an Iraqi oil tanker drifting into Iranian waters in the Strait of Hormuz. The students who participated in the simulation were divided into teams that represented government cabinets from the six Middle Eastern states-Egypt, Israel, Syria, Saudi Arabia, Iran, and Iraq. Each cabinet team was composed of a chairperson from the MUN, who functioned as the line of communication between his or her cabinet and the simulation's command center operated by MUN members, and 11 international relations students. Ten of the students within each cabinet were randomly assigned to represent government officials from their respective states. One student in each cabinet was randomly designated as a "special actor." These special actor characters included Major General Frank Patton of U.S. CENTCOM for Iraq, the Hezbollah representative Mullah Karim Abd Jihad for Iran, and for Israel, Lieu tenant Colonel David Emmanuel Gold stein, the commanding officer of Mossad Task Force Seven. Special actors were able to submit their own action orders (see below) without the consent of their respective cabinets or chairpersons. The simulation occurred over two successive days for a total period of eight hours. Each cabinet was in a separate room equipped with a computer console, internet access, and a large wall-screen. The MUN members staffing the command center processed action orders submitted by cabinets; electronically transmitted text, audio, and video information to cabinets; and made presentations to cabinets at specific points during the simulation. Communications from a cabinet to the crisis command center were in the form of action orders, of which there were six types. For example, an operation action order notified the command center that a cabinet wanted to launch a military operation, while a diplomatic action order functioned as a message from one cabinet to another. All communications from and to the cabinets had to pass through the crisis command center so that the masterminds could be aware of all the cabinets' decisions and coordinate events.

At: USFG not for us

Makes you better advocate

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

Finally, shifting political identities is not a source of concern. The PEP researchers found how teaching for political learning did not change students' fundamental values. Instead teaching different political concepts helped align students to their own political identities; teaching politics helps students explore their own internal argumentative consistency and beliefs. Evaluating "tensions and consistencies among values and beliefs or between values and actions is an important part of working toward a more 'examined life' and a more fully integrated sense of oneself as a civic or political person" (Colby, Beaumont, Ehrlich, and Corngold, 2007, p. 262). Thus, political learning practices help students realize their own political identity through careful consideration of multiple viewpoints.

Creates empathy

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

Viewing debate as a dialogue, helps move understanding debate beyond students set in one political ideology to those who must consider the best in arguments from multiple sides of an argument. One of the most compelling arguments as to how debate increases empathy, regards the practice of debating multiple sides of the same issue. This practice is one of political understanding as it helps create empathy by humanizing people who advance opposing arguments. This practice bridges the world of argument with political and personal understanding. "[T]he unique distinctions between debate and public speaking allow debaters the opportunity to learn about a wide range of issues from multiple perspectives. This allows debaters to formulate their own opinions about controversial subjects through an in-depth process of research and testing of ideas" (Galloway, 2007, p. 13).

empowerment

Zwarensteyn 2012 (Ellen C., "High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning" (2012). *Masters Theses.* Paper 35.
http://scholarworks.gvsu.edu/theses/35, LB)

Students learn to speak outside their comfort zones and engage in difficult dialectics about policy matters. The process of debate requires a critical stance of proving current government policy insufficient and requires questioning opposing teams' arguments. Students in the habit of questioning the claims of others and thinking through the possible objections of their own claims easily develop the mental faculties needed to become active consumers of information… [S]tudents almost automatically begin thinking through possible objections to any knowledge claim and developing probing questions about it (Warner and Brushke, 2001, p. 6). A debate education becomes a way for students to think of themselves as activists and critics of society. This is a practice of empowerment. Warner and Brushke (2001) continue to highlight how

practicing public speaking itself may be vitally empowering. Speaking in a highly engaged academic environment where the goal is analytical victory would put many on edge. Taking academic risks in a debate round, however, yields additional benefits. The process of debating allows students to practice listening and conceiving and re-conceiving ideas based on in-round cooperation. This cooperation, even between competing teams, establishes respect for the process of deliberation. This practice may in turn empower students to use speaking and listening skills outside the debate round and in their local communities skills making students more comfortable talking to people who are different from them (Warner and Brushke, 2001, p. 4-7). Moreover, there is inherent value in turning the traditional tables of learning around. Reversing the traditional classroom demonstrates students taking control of their own learning through the praxis of argumentation. Students learn to depend on themselves and their colleagues for information and knowledge and must cooperate through the debate process. Taken together, policy debate aids academic achievement, student behavior, critical thinking, and empowers students to view themselves as qualified agents for social change.

At: women excluded

false

Butt 2010 (neil, phd in communication studies at wayne university, Argument Construction, Argument Evaluation, And Decision-Making: A Content Analysis Of Argumentation And Debate Textbooks, http://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=1076&context=oa_dissertations, LB)

Some feminist scholars have made the claim that argumentation and debate are male constructs and are not the natural mode of communication for women (Foss & Griffin, 1995; Gearhart, 1979; Stepp, 1997). As a result, some scholars have moved away from argument and persuasion in their classes and have emphasized other modes of discourse, such as narrative; Fulkerson (1996) identified three examples of these moves in the area of college composition classes alone. Others have argued for changes in debate practices and in the structure of debate organizations in order to challenge the perceived discrimination (Hobbs et al., 2000; Stepp, 1997). These moves might be understandable if there was any evidence to support the idea that engaging in argument inherently disadvantages women or allows men to perpetuate their dominant role. However, this notion has already been solidly debunked by a number of authors. For example, Condit (1997) explained that such a view assumes that individuals have "unique, pre-given selves" (p. 93), operates with a binary conception of gender, which excludes homosexual, transgender, or other possibilities, and conflates sex with gender. Condit also argued that this perspective ignores the impact rhetoric has in constructing gender and gender roles and the fact that most men (including white men) are also excluded from current power structures. Finally, she contended that this view may discourage women from seeing themselves as public speakers or advocates, which in turn would reinforce the notion of difference and entrench patriarchy, however it is defined. Frank (1997) echoed this last argument, adding that even if there are socialized differences, they simply constitute a reason for making sure more women are trained in these skills. In addition, Dow (1995) argued that the assumption of difference has the potential to undermine communication research because "we risk limiting our definitions, our audience, and our purposes" (p. 108). Dow further argued that such a view risks undermining progress and activism by making it more difficult for feminists to build coalitions. Fulkerson (1996) directly confronted the idea that there is any measurable difference in the first place. He identified and reviewed the studies that have served as the underlying basis for most of the "difference feminist" position, noted significant problems with the earlier studies, and concludes that there is "too little solid evidence" (p. 206) for difference claims. For example, Fulkerson noted that some studies reached comparative conclusions about differences between men and women despite only examining women. Fulkerson also notes that while the most recent and thorough studies find some differences in male and female communication patterns, they find little or no difference in the areas of persuasion or argument. Fulkerson explains that his 30 years of experience teaching composition courses that emphasize argument have demonstrated to him that women compose and deploy arguments just as well as men do (though he is quick to admit that his experience does not constitute a systematic study).

All topics involve personal connections—claiming that a topic represents one group more than another disenfranchizes people in minority groups who care about policy issues

FUGATE 1997
(Amy, Director of Forensics at Johnson County Community College, Argumentation and Advocacy, Spring)

One area that seems problematic is the argument that debate resolutions do not focus on real people but rather abstract ideas and hypothetical examples (Bartanen, 1995). While my experience has been with NDT topics, I cannot think of one topic which did not deal with "real people". In fact, some years the topics seem eerily real! In one debate round last year, the affirmative argued in favor of increased United States assistance to the Palestinians. The negative argued that if the United States gave more assistance to the Palestinians it would cause the Israeli right wing to revolt with an impact of potential assassination of the Israeli Prime Minister. While the disadvantage was "hypothetical," it mirrored the real world when two weeks later, Rabin was assassinated. I would argue that topics which deal with the environment, the legal system, foreign assistance, military commitments, media, politics, United States relations with other countries, the different branches of our government, and so on are part of what makes academic debate "academic." I have even greater concern with deciding certain topic areas are more relevant to one gender or ethnic group than to another. There are several of my colleagues who would find it very difficult to be told that as women they aren't concerned with "masculine" issues such as nuclear disarmament.

Policy Framework No

top level

gotta alter impact uq for debate

the only way to control the potential for debate is embracing a will to power and refusing to tie ourselves to certain practices

Schnurer 2004 (Maxwell, Ph.D., Pittsburgh, Assistant Professor at Marist College, Spring 2004 "GAMING AS CONTROL: WILL TO POWER, THE PRISON OF DEBATE AND GAME CALLED POTLATCH," CONTEMPORARY ARGUMENTATION AND DEBATE", LB)

As pointed out in the last section, the stakes for the game of debate are high. The method of debate contains the possibility for revolutionary insight and revolutionary praxis. The question is how to understand an activity without systematizing and controlling the potential of debate. What we really must do is let free the will to power within debaters. In this sense, we can use gaming as the topoi to launch our conversation to a debate game that might encourage revolution. But what does will to power look like? How do we encourage it? Lets get a feeling from George Bataille, who orients the Nietzschean impulse of will to power alongside a quote from Nietzsche himself: Through the shutters into my window comes an infinite wind, carrying with it unleashed struggles, raging disasters of the ages. And don't I too carry within me a blood rage, a blindness satisfied by the hunger to mete out blows? How I would enjoy being a pure snarl of hatred, demanding death: the upshot being no prettier than two dogs going at it tooth and nail! Though I am tired and feverish . . . "Now the air all around is alive with the heat, earth breathing a fiery breath. Now everyone walks naked, the good and bad, side by side. And for those in love with knowledge, it's a celebration." (The Will to Power) (4). Will to power can be the outgrowth of debate that challenges existing structures. Bataille and Nietzsche desire a wild emancipation from traditional structures, far beyond conventional morality. Coupling Nietzsche's theorizing with the practice of debate something new can emerge, but only if we free ourselves from the shackles of conventional debate, including gaming. How to break these chains? How do we get beyond that which has brought us so far? To help, I want to turn to Guy Debord and the Situationists.

Debate is a sisyphusian activity that breeds ressentiment

Schnurer 2004 (Maxwell, Ph.D., Pittsburgh, Assistant Professor at Marist College, Spring 2004 "GAMING AS CONTROL: WILL TO POWER, THE PRISON OF DEBATE AND GAME CALLED POTLATCH," CONTEMPORARY ARGUMENTATION AND DEBATE", LB)

The big question is: does gaming contribute to these revolutionary format changes? I will answer no. Rather, I would like to position gaming as a controlling force. Gaming is a challenging, innovative, and adaptable theory but, fundamentally, a theory of control. Gaming works as an answer to the question of what debates do. But while we can answer that we play a game (albeit a serious and complex one), we also say something about the players and why we play the game. Gaming became a tool for control – convincing debaters that energies of criticism should be reinvested into the debate community. The very parameters of Snider's goals, to encourage more participants in debate, belie a rigged question. We are intended to succeed through gaming to bring a few other voices into debate. But like the plus-one activist struggle that simply seeks representation, this approach is doomed to failure. We should not be surprised that the traditional agents of social control have a brilliant new theory that encourages limited change. Gaming in fact operates to metastasize the crisis-politics of modern policy debate, covering over the rotting corpse with a sweet perfume. For example, gaming minimizes and cripples the increasing tension over activist-oriented arguments in debate rounds. Gaming encourages such argument innovation not for the world community but for the debate community, teaching students to passionately plead for change to an empty room. How

can a theory understand the desire of debaters to crack open the debate methods and introduce something "outside" of debate as Snider points to in his most recent gaming essay? The answer is that it can't. Debate as a model can only create more debate, and so long as our goal for debate is more debate, then we will never emerge to challenge larger forces of control. Worse than being satisfied with shouting at walls, approaching debate from the perspective of games encourages a god-complex that teaches debaters that saying something poignant in a debate round translates into something larger in the world. Christopher Douglas, a professor of English at Furman University, explores how games teach us to adore the replay: "This is the experience structured into the gaming process—the multiple tries at the same space-time moment. Like Superman after Lois Lane dies, we can in a sense turn back the clock and replay the challenge, to a better end" (2002, p. 7). What kind of academic activity encourages students to fantasize about making change without considering for the slightest bit how to bring that change about? Douglas positions this impulse alongside the Sisyphean burden of trying to make the world into a structured, controlled, sterile environment. Sisyphus and the reset button on a videogame console share a common ancestor with the debate model that has thirty debate teams advocating different policies in separate rooms at exactly the same time. All of these examples showcase humans desperately attempting to construct meaning out of a confusing world, where the human will to power forces the world to fit a structure. Douglas reminds us that games help to structure an oft-confusing world, imbuing the person imagining with god-like powers (McGuire, 1980; Nietzsche 1966): Games therefore do not threaten film's status so much as they threaten religion, because they perform the same existentially soothing task as religion. They proffer a world of meaning, in which we not only have a task to perform, but a world that is made with us in mind. And indeed, the game world is made with us, or at least our avatar in mind. (Douglas, 2002, p. 9). Gaming draws forth a natural impulse of humans – to make the world in our image. But debate and videogames contain the same fantastic lure that encourages people to pore their energies into debate. Fiat and utopian flights of fancy are both seductions of our will to power, encouraging us to commit to becoming better debaters.

Self creation is a prior question to engaging the state

Newman 2k (saul, Reader in Political Theory at Goldsmiths College, anarchism and the politics of ressentiment, http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/theory_and_event/v004/4.3newman.html, LB)

Rather than having an external enemy — like the State — in opposition to which one's political identity is formed, we must work on ourselves. As political subjects we must overcome ressentiment by transforming our relationship with power. One can only do this, according to Nietzsche, through eternal return. To affirm eternal return is to acknowledge and indeed positively affirm the continual 'return' of same life with its harsh realities. Because it is an active willing of nihilism, it is at the same time a transcendence of nihilism. Perhaps in the same way, eternal return refers to power. We must acknowledge and affirm the 'return' of power, the fact that it will always be with us. To overcome ressentiment we must, in other words, will power. We must affirm a will to power — in the form of creative, life-affirming values, according to Nietzsche.[56] This is to accept the notion of self-overcoming'.[57] To 'overcome' oneself in this sense, would mean an overcoming of the essentialist identities and categories that limit us. As Foucault has shown, we are constructed as essential political subjects in ways that that dominate us — this is what he calls subjectification.[58] We hide behind essentialist identities that deny power, and produce through this denial, a Manichean politics of absolute opposition that only reflects and reaffirms the very domination it claims to oppose. This we have seen in the case of anarchism. In order to avoid this Manichean logic, anarchism must no longer rely on essentialist identities and concepts, and instead positively affirm the eternal return of power. This is not a grim realization but rather a 'happy positivism'. It is characterized by political strategies aimed at minimizing the possibilities of domination, and increasing the possibilities for freedom. If one rejects essentialist identities, what is one left with? Can one have a notion of radical politics and resistance without an essential subject? One might, however, ask the opposite question: how can radical politics continue without 'overcoming' essentialist identities, without, in Nietzsche's terms, 'overcoming' man? Nietzsche says: "The most cautious people ask today: 'How may man still be

preserved?' Zarathustra, however, asks as the sole and first one to do so: 'How shall man be overcome?'"[59] I would argue that anarchism would be greatly enhanced as a political and ethical philosophy if it eschewed essentialist categories, leaving itself open to different and contingent identities — a post-anarchism. To affirm difference and contingency would be to become a philosophy of the strong, rather than the weak. Nietzsche exhorts us to 'live dangerously', to do away with certainties, to break with essences and structures, and to embrace uncertainty. "Build your cities on the slopes of Vesuvius! Send your ships into unchartered seas!" he says.[60] The politics of resistance against domination must take place in a world without guarantees. To remain open to difference and contingency, to affirm the eternal return of power, would be to become what Nietzsche calls the superman or Overman. The overman is man 'overcome' — the overcoming of man: "God has died: now we desire — that the Superman shall live."[61] For Nietzsche the Superman replaces God and Man — it comes to redeem a humanity crippled by nihilism, joyously affirming power and eternal return. However I would like to propose a somewhat gentler, more ironic version of the Superman for radical politics. Ernesto Laclau speaks of "a hero of a new type who still has not been created by our culture, but one whose creation is absolutely necessary if our time is going to live up to its most radical and exhilarating possibilities."[62]

deliberation

Deliberation = ressentiment

The deliberative model is both violent and ends any democracy they want to create

stuhr 2007 (john, Arts and Sciences Distinguished Professor of Philosophy and Department Chair, pragmatism with ressentiment, http://www.philosophy.uncc.edu/mleldrid/SAAP/USC/PD12.html, LB)

Deliberative democratic theory holds out the hope that a people, or peoples, if you like, can talk and reason together well enough to work out their differences and arrive at policy directions that would be amenable to all involved. This hope is not shared by all. It is shared readily by many analytic philosophers (those analysts who are willing, anyway, to dally with values), since analytic philosophers generally accept that there is an objective and shared world that can be accessed and evaluated with language. However, it is not generally shared or accepted by continental philosophers who harbor a long suspicion, heralded by the masters of suspicion (Marx, Nietzsche, and Freud), that all is rarely what it seems to be, that history is made behind the backs of men, that power is too often wielded out of ressentiment rather than strength, and that what we say may be largely influenced by what we are unwilling and unable to acknowledge. As a result, there is no easy fit between continental philosophy and most deliberative democratic theory. Those who have been willing to venture there, such as Jürgen Habermas, share more of the analytic frame of mind than they do of the continental, even though they are heirs of Marx and to a certain extent Freud. But they, at least Habermas, are no heirs of Nietzsche and his account of ressentiment. There is something about the Nietzschean suspicion of power, reason, and truth that makes for a tortuous view of deliberative democratic theory and its cousins (e.g., Rawls's late work on international theory and the laws of peoples). That Nietzsche is suspicious of democracy – for upholding the common mentality and meager aspirations of the herd – is the least of the problem. The greater problem, again, is that in a Nietzschean view what we say, and what we say is reasonable -- our very postulation of reason and truth -- is often a will to power gone astray out of weak and malignant motivations steeped in ressentiment. In their explorations into democracy, post-Nietzscheans are more likely to turn to an agonistic view of politics, what Chantal Mouffe and others call "radical democracy," brought on by Schmitt, rather than by any kind of deliberative hope. Radical democrats think that any kind of consensus achieved through talking is the end of democracy, not the beginning of it. One might even say that the continental left's antipathy to deliberative theory is its own longstanding ressentiment at the linguistic turn in political theory and practice and at the resurgence of democratic ideals that aim toward consensus rather than valuing supposedly irreconcilable differences. The odd, often missing, figure in all this is Dewey, and the odd, also often missing, philosophy more largely is pragmatism. The most mainstream of analytic philosophers of deliberation will never mention John Dewey, though Dewey's entire body of work lends itself to this kind of collective learning and working out through communication what we as a people want to be. The more interesting philosophers of deliberative democratic theory will turn to Dewey often. And as for pragmatism at large, one should recall Habermas's reliance on Mead for his notion of individuation and how one begins to converse with others in the first place. In light of this background, in my contribution to this panel, I will trace the resources that deliberative theory has found in pragmatism, and I will inquire into why and how it is that pragmatism avoids the continental left's ressentiment toward any hope in deliberative talk. But in the main, the central question I will address is this: Should pragmatism hold out hope in deliberation when the Nietscheans may well be right that ressentiment clouds and dogs all deliberative encounters and all political arrangements? Given that the Deweyans and pragmatists more broadly don't share the faith of most analytical philosophers in the objective reality of the world, or at least of a world given ready-made and waiting prior to human interpretation, the Deweyans share the continentals' suspicion of language as a mere tool for accessing the real. How far does this resemblance continue, and how does this resemblance augur for a non-analytic philosophy of deliberative democracy. Have Dewey and other pragmatists simply finessed the problem of ressentiment's power to skew deliberative talk? Or are there resources in pragmatism that actually help a deliberating people acknowledge and work through ressentiment and its causes and consequences, in some kind of marriage of Freudian "working through" and pragmatic problem solving? If pragmatism has been too naïve in its hope in the "winged words" of conversation and their ability for a people to find new direction, might it still have resources to work through the question properly? In the final sections of my presentation, I develop positive responses to these pressing questions for pragmatic theory and democratic practice.

Framework is a politics of reactivity that rejects all alterity and creates the conditions for violence

Newman 2k (saul, Reader in Political Theory at Goldsmiths College, anarchism and the politics of ressentiment, http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/theory_and_event/v004/4.3newman.html, LB)

Political values also grew from this poisonous root. For Nietzsche, values of equality and democracy, which form the cornerstone of radical political theory, arose out of the slave revolt in morality. They are generated by the same spirit of revenge and hatred of the powerful. Nietzsche therefore condemns political movements like liberal democracy, socialism, and indeed anarchism. He sees the democratic movement as an expression of the herd-animal morality derived from the Judeo-Christian revaluation of values.[6] Anarchism is for Nietzsche the most extreme heir to democratic values — the most rabid expression of the herd instinct. It seeks to level the differences between individuals, to abolish class distinctions, to raze hierarchies to the ground, and to equalize the powerful and the powerless, the rich and the poor, the master and the slave. To Nietzsche this is bringing everything down to level of the lowest common denominator — to erase the pathos of distance between the master and slave, the sense of difference and superiority through which great values are created. Nietzsche sees this as the worst excess of European nihilism — the death of values and creativity. Slave morality is characterized by the attitude of ressentiment — the resentment and hatred of the powerless for the powerful. Nietzsche sees ressentiment as an entirely negative sentiment — the attitude of denying what is life-affirming, saying 'no' to what is different, what is 'outside' or 'other'. Ressentiment is characterized by an orientation to the outside, rather than the focus of noble morality, which is on the self.[7] While the master says 'I am good' and adds as an afterthought, 'therefore he is bad'; the slave says the opposite — 'He (the master) is bad, therefore I am good'. Thus the invention of values comes from a comparison or opposition to that which is outside, other, different. Nietzsche says: "... in order to come about, slave morality first has to have an opposing, external world, it needs, psychologically speaking, external stimuli in order to act all, — its action is basically a reaction."[8] This reactive stance, this inability to define anything except in opposition to something else, is the attitude of ressentiment. It is the reactive stance of the weak who define themselves in opposition to the strong. The weak need the existence of this external enemy to identify themselves as 'good'. Thus the slave takes 'imaginary revenge' upon the master, as he cannot act without the existence of the master to oppose. The man of ressentiment hates the noble with an intense spite, a deep-seated, seething hatred and jealousy. It is this ressentiment, according to Nietzsche, that has poisoned the modern consciousness, and finds its expression in ideas of equality and democracy, and in radical political philosophies, like anarchism, that advocate it.

They aren't a deliberative democracy but a rehierachization of oppression/At: may

May et al 2008 (todd, saul newman and Benjamin noys, Democracy, Anarchism and Radical Politics Today: An Interview with Jacques Rancière, https://www.questia.com/library/journal/1P3-1626560811/democracy-anarchism-and-radical-politics-today-an, LB)

What I mean is man can never be identified with a system of constitutional forms. Democratic ideas and practices can of course inspire and animate constitutional forms and modes of public life. But diese can never incarnate democracy because the demos is immediately double. On the one hand, it is the collective, which is the source of power's legitimacy. In this sense 'democracy' designates the system of forms actualizing the power of the people in texts, institutions and institutional practices. It designates a certain sovereignty, one similar to that of the monarch or 'superior class' (aristocracy). But at the same time, the demos is the

subject who even undermines the idea of sovereignty by undermining the principle binding it to specific positions of a specific population [such as . . .] a king, a superior class, savants or priests who are supposed to govern in the name of this position itself. For its part, the people govern in the absence of these positions. This is the principle of arche: those who command are those who possess the principle which gives them the right to command.1 The power of the people itself is anarchic in principle, for it is the affirmation of the power of anyone, of those who have no title to it. It is thus the affirmation of the ultimate illegitimacy of domination. Such power can never be institutionalized. It can, on the other hand, be practised, enacted by political collectives. But the latter precisely act beyond legal authority on the official public stage which is the power, exercised in the name of the people, of petty oligarchies. Democratic action allows the intervention of subjects who are supplementary in relation to the simple figure of the citizen electorate represented in the constitutional order, and these subjects intervene in places other than those of executive and representative power (the street, workplace, school, etc.); they give rise to other voices and other objects. Therefore there is indeed an institutional inscription of the 'power of the people', but in light of that mere is an opposition between state logic, which is a logic of the restriction and the privatisation of the public sphere, and democratic political logic which, on the contrary, aims to extend tins power through its own forms of action.

Openness key

understanding and being open to different people's arguments is the only way to turn debate into a real deliberative democracy

Ralston 2011 (Shane, interdisciplinary teacher-scholar-practitioner with graduate-level training in Philosophy, Political Science, Public Administration, Human Resources and Labor Relations. He teaches Philosophy at the Hazleton campus of Pennsylvania State University. He has also worked in city government and private business. . Deliberating with Critical Friends. Teaching Philosophy 34 (4):393-410, LB)

sarah stitzlein's deliberative democracy in teacher education addresses how education professors employ deliberative teaching methods and how deliberative democracy serves as an aspirational ideal in teacher education. Although teacher education and philosophical training might appear disconnected, this is certainly not the case if we consider the parallel process of training philosophy students to become effective teachers. Sitzlein describes what it means to be part of a deliberative learning process: to be active and informed participants..involves critically reflecting on one's own way of living and learning to give good reasons to support it, while simultaneously being open to learning other, better ways from peers.. Students then need to learn and listen to and appreciate the arguments and point of view of their peers. Furthermore stutzlein insists that "students must master that ability to carefully listen to the ideas and arguments expressed by others. They should learn how to ask insightful and respectful questions that clarify an interlocutors perspective or request more exlpanatio. Students must learn to identify underlying assumptions and biases. Deliberative learning involves self-criticism, openness to others' perspectives and the capacity to interrogate claims, not for the purpose of winning the argument but to each a higher level of clarity and understanding. Besides teasing out the generic features of deliberative learning, stutzlein identifies a form of reflexive critique at work in specific educational programs with a deliberative learning component. For instance, as part of a social foundations of education course offered at kent state university "students…reflect on the deliberative process, problematic aspects of reaching consensus too quickly, participation patterns and on their own changing positions throughout the endeavor." While learning and deliberating about social justice issues, especially topics of economic inequality and educational disparity, the students critically scrutinize their own deliberations, including their tendency to marginalize some speakers and to force consensus in a process known as group think. Most of the educational programs and courses with a deliberation element, stutzlein notes, are at the graduate level

Portable Skills Bad

Governing debate based on what it will do in the outside "real world" corrupts the whole thing—it becomes a political obsession instead of a game that allows an outlet for competition

CAILLOIS 2001 (Roger, French anthropologist, Man, Play, and Games, trans Barash, orig. published 1958, p. 44

In addition, a strict and absolute code governs amateur players, whose prior assent seems like the very condition of their participation in an isolated and entirely conventional activity. But what if the convention is no longer accepted or regarded as applicable? Suppose the isolation is no longer respected? The forms or the freedom of play surely can no longer survive. All that remains is the tyrannical and compelling psychological attitude that selects one kind of game to play rather than another. It should be recalled that these distinctive attitudes are four in number: the desire to win by one's merit in regulated competition (agon), the submission of one's will in favor of anxious and passive anticipation of where the wheel will stop (alea), the desire to assume a strange personality (mimicry), and, finally, the pursuit of vertigo (ilinx). In agon, the player relies only upon himself and his utmost efforts; in alea, he counts on everything except himself, submitting to the powers that elude him; in mimicry, he imagines that he is someone else, and he invents an imaginary universe; in ilinx, he gratifies the desire to temporarily destroy his bodily equilibrium, escape the tyranny of his ordinary perception, and provoke the abdication of conscience.

If play consists in providing formal, ideal, limited, and escapist satisfaction for these powerful drives, what happens when every convention is rejected? When the universe of play is no longer tightly closed? When it is contaminated by the real world in which every act has inescapable consequences? Corresponding to each of the basic categories there is a specific perversion which results from the absence of both restraint and protection. The rule of instinct again becoming absolute, the tendency to interfere with the isolated, sheltered, and neutralized kind of play spreads to daily life and tends to subordinate it to its own needs, as much as possible. What used to be a pleasure becomes an obsession. What was an escape becomes an obligation, and what was a pastime is now a passion, compulsion, and source of anxiety.

This obsession with real-world policy effects makes disaster inevitable—when the debate game is always judged by its policy effects, there is only space for power-hungry competition

CAILLOIS 2001 (Roger, French anthropologist, Man, Play, and Games, trans Barash, orig. published 1958, p. 53-55

What we set out to analyze was the corruption of the principles of play, or preferably, their free expansion without check or convention. It was shown that such corruption is produced in identical ways. It entails consequences which seem to be inordinately serious. Madness or intoxication may be sanctions that are disproportionate to the simple overflow of one of the play instincts out of the domain in which it can spread without irreparable harm. In contrast, the superstitions engendered by deviation from alea seem benign. Even more, when the spirit of competition freed from rules of equilibrium and loyalty is added to unchecked ambition, it seems to be profitable for the daring one who is abandoned to it. Moreover, the temptation to guide one's behavior by resort to remote powers and magic symbols in automatically applying a system of imaginary correspondences does not aid man to exploit his basic abilities more efficiently. He becomes fatalistic. He becomes incapable of deep appreciation of relationships between phenomena. Perseverance and trying to succeed despite unfavorable circumstances are discouraged.

Transposed to reality, the only goal of agon is success. The rules of courteous rivalry are forgotten and scorned. They seem merely irksome and hypocritical conventions. Implacable competition becomes the rule. Winning even justifies foul blows. If the individual remains inhibited by fear of the law or public opinion, it nonetheless seems permissible, if not meritorious, for nations to wage unlimited ruthless warfare.

Various restrictions on violence fall into disuse. Operations are no longer limited to frontier provinces, strongholds, and military objectives. They are no longer conducted according to a strategy that once made war itself resemble a game. War is far removed from the tournament or duel, i.e. from regulated combat in an enclosure, and now finds its fulfillment in massive destruction and the massacre of entire populations.

Any corruption of the principles of play means the abandonment of those precarious and doubtful conventions that it is always permissible, if not profitable, to deny, but the arduous adoption of which is a milestone in the development of civilization. If the principles of play in effect correspond to powerful instincts (competition, chance, simulation, vertigo), it is readily understood that they can be positively and creatively gratified only under ideal and circumscribed conditions, which in every case prevail in the rules of play. Left to themselves, destructive and frantic as are all instincts, these basic impulses can hardly lead to any but disastrous consequences. Games discipline instincts and institutionalize them. For the time that they afford formal and limited satisfaction, they educate, enrich, and immunize the mind against their virulence. At the same time, they are made fit to contribute usefully to the enrichment and the establishment of various patterns of culture.

fairness

surveillance debate's aren't fair

If the state isn't fair, we shouldn't have to be either

Toledo 2015 (Tamara, co-founder and Visual Arts Director of the Salvador Allende Arts Festival for Peace. Toledo is currently a recipient of the Culturally Diverse Curators grant of the Canada Council for the Arts and is in residence at A Space Gallery. Her critical writing has been published in Fuse Magazine, ARM Journal and C Magazine. Tamara Toledo is the Public Programs Manager at Prefix Institute of Contemporary Art and Executive Director of LACAP (Latin American Canadian Art Projects). She has organized the Latin American Speakers Series, and has invited Gerardo Mosquera to Canada for a series of tutorials and lectures at various educational institutions,"Sportsmanship under Surveillance // Latin American-Canadian Art Projects." *Sportsmanship under Surveillance // Latin American-Canadian Art Projects*. N.p., 27 June 2015. Web. 04 July 2015. http://lacap.ca/sur-gallery/schedule-of-eventsexhibitions/sportsmanship-under-surveillance/, LB)

The exhibition exposes various points of view of what it means for individuals when governments use scrutinized surveillance in the name of national security. The artists Jota Castro (Peru/Belgium), Minerva Cuevas (Mexico), Juan Ortiz-Apuy (Costa Rica/Canada), Marcos Ramirez ERRE (Mexico), and Regina Silveira (Brazil) will offer insights on how to adapt, control, rebel and live under surveillance. All eyes are on us today, as Toronto hosts the 2015 Pan Am and Parapan Am Games in the City of Toronto, offering a spectacle of wealth, sports and arts. Underneath the bewildering veil of prosperity and celebrations, the games will also bring heavier control over citizens invading privacy and obstructing notions of what a free society should condemn. Today, more than ever, Canadians have been exposed to an unprecedented heightened state of security measures and have been given little voice or opportunities to oppose them. The growing level of violence at a global level and the ability of governments to watch over us create states of fear and suspicion amongst the general population. In this context, we can no longer rely on the assumption that our opponents (in the way we would refer to players in a game of sport) will 'play fair' under equal terms and conditions or that we completely understand the 'rules of the game'. When governments dismantle civil liberties or disrupt basic human rights in the name of national security it seems contradictory to ask civilians to follow the virtues of fairness, self-control, courage and persistence essential during the act of a game. This exhibition exposes the 'observer' and the roles are reversed. Instead, the eyes of the artist are on governments and their policies of surveillance. The artists in the exhibition offer an insight on the dilemma of having to negotiate the terms of the game, they provide guides to demonstrate, they create alternative modes of identification, they expose relationships between hemispheres, they question historical references and offer philosophical and metaphorical insights that help us survive an age of surveillance.

Institutions

Topic Ed/Surv. Democracy

Portable skills don't matter for this topic—secrecy undermines the impact of democratic debates on surveillance

FRIEDERSDORF 2013 (CONOR FRIEDERSDORF is a staff writer at The Atlantic, where he focuses on politics and national affairs, "Secrecy has Already Corroded Our Democracy in Real Ways," The Atlantic, Aug 8, http://www.theatlantic.com/politics/archive/2013/08/secrecy-has-already-corroded-our-democracy-in-real-ways/278478/)

The effect of secrecy on democracy isn't abstract. The consequences of secret law and policy are not something we're risking, or that we might suffer at some time in the indeterminate future.

Secrecy is already corroding our democracy. It's impossible to see at the time, and obvious in hindsight, when the truth outs.

In 2011, the debate surrounding the re-authorization of a major piece of domestic legislation was, indisputably, a sham. Legislators were misled. Careful, informed commentators contributing arguments and analysis in the press unwittingly misled readers with content that lacked crucial context. Hard-news articles were just as useless for formulating an informed opinion.

Even those elected representatives informed about the full extent of government surveillance were deprived of normal legislative practices -- like floor debate, letters and phone calls from constituents, input from experts outside government, and public-opinion polls -- that properly factor into their typical deliberation and voting decisions. And Americans were deprived of the right to know what their representatives really approved, meaningfully robbing them of the ability to cast a meaningful vote in the Congressional races of the 2012 cycle, a key check and balance.

We don't change surveillance by debating it—surveillance orders our debates and the evidence we employ only lets us debate state policies after the fact when the chance for democratic intervention has already passed

BAJC 2012 (Vida, University of Pennsylvania, "Debating Surveillance in the Age of Security," American Behavioral Scientist, August)

The public domain is where we, the public, are able to see and experience how taxonomies and their specifications produced within the meta-frame of securitization are used to order our social life. Mass media provide a crucial link through which the general public is made aware of, and informed about, different practices of surveillance in service of securitization. As de Lint and his colleagues discuss in this issue, the mass media are a venue through which state agencies seek public legitimacy for their surveillance operations. For example, we are informed in great detail how the operatives unraveled a terrorist plot: how they received tips about abnormal behavior of particular individuals; how they were able to follow conversations, travels, purchases, and inter- net searches of these individuals; how this information allowed the operatives to con- clude that these individuals were plotting terrorist activities; and how, at just the right moment, the operatives were able to preempt the intended acts of mass destruction. So, too, as Bajc demonstrates in this issue, the media are an indispensable element of security meta-rituals that order public events. In this case, the media communicate to the public the details of spatial and temporal ordering through which the zone of safety is brought to existence: which streets will be closed off and when, where the check- points will be installed, what the public is allowed to carry through the checkpoints, and what kind of surveillance resources and technologies are employed to create and maintain an impermeable boundary between the zone of safety and the everyday life. In this process of acquiring ever more detailed information and grouping individuals within different zones of exclusion, the mass media also constitute a virtual world in which the citizenry feels connected. They provide a public sphere in

the Habermasian sense where the citizenry follows the court battles over illegal aspects of surveillance and where the citizenry could debate how much security should be given up in exchange for freedom. In this sense, the Habermasian public sphere is very often not a forum of public deliberation over how the matters of civic life will be handled, but rather, a sphere where the public and its institutions of law debate the outcomes and the consequences of the state's preemptive actions.

Surveillance is part of a changing state structure that makes their framework arguments obsolete—the state assimilates efforts for legal change, outsources surveillance, operates internationally, and avoids democratic checks

BAJC 2012 (Vida, University of Pennsylvania, "Debating Surveillance in the Age of Security," American Behavioral Scientist, August)

Through these shifts, the state as a form of social organization has proven to be remarkably flexible. It has been able to reshape itself to encompass, subsume, and capture populations within its domain. So, too, it has been able to expel from within itself mobility that is in excess or not assimilable. In doing so, as Agamben (2005) has pointed out, the state has been able to work within the legal limits as well as evade the legal constraints. In the governmentality of potentialities, oriented within the meta- frame of securitization, ordering continues to follow the bureaucratic logic developed through biopolitics at the inception of the modem state but expands and reshapes its Weberian bureaucratic structure. Internally, this means organizing surveillance agencies in such a way that the officials within each agency must orient their responsibilities to the meta-frame of securitization (de Lint et al., 2007). This system allows the deci- sion-making specifications to be more centralized. Externally, this means forging suprastate security alliances to be able to surpass the limitations of state-bound surveillance (Chalfin, 2007). At both levels, the state seeks to outsource its responsi- bilities to private enterprise. In the state's push for flexibility, outsourcing and privati- zation of surveillance services seem to be a way to bypass and work around the rigidity of its own Weberian bureaucratic structure of legal rules and hierarchy of responsibil- ities. Kapferer (2005) suggests that we are seeing the emergence of a new state form which combines state bureaucracy with corporate formations at a global scale. In his terms, this emerging state form is less concerned with Hobbesian responsibilities to its citizens and oriented more toward expansion of commerce, deregulation, and freedom from public participation.

The conditions of surveillance make their framework model outdated—the issue is not individuals influencing the state, but the fact that surveillance has reduced us to mere information. Legal strategies do nothing to confront the underlying moral and ethical issues that must be our starting point

BAJC 2012 (Vida, University of Pennsylvania, "Debating Surveillance in the Age of Security," American Behavioral Scientist, August)

At the onset of modernity, the holistic cosmology was disintegrating, leaving the person individuated from the kin but protected by a personal space established throughout modernity. Biopolitics directed toward potentialities penetrates this personal protective space, leaving a person individuated from the integrity of the self—reduced to biometrics, smaller particles than the self, believed to be still more unique than the self was to the cosmology of modernity. The individual now reduced to biometrics—that most inner and irreducible information about the self that professionals hold to be the true statement of one's potentialities—enters into a new relationship with the state. We

have yet to understand what manner of morality and ethical standards are to support this social order and how ethical and philosophic thought will stand up to the logic of securitization. Some of these questions are addressed by Nieuwenhuys and Pecoud in this issue. What we see so far are battles in the domain of the legal, but this is not to be confused with the moral. As Bauman (1989) concluded, following his analysis of the relationship between bureaucracy and the Holocaust, surveillance is not, or should not be, a matter of what is legally right or wrong. This is so not only because surveillance destroys the protective space of the private but also because of why this is possi- ble. The bureaucratic structure, thought of in the Weberian sense as cumbersome and stable, has shown itself to be moldable and open to reshaping. What does endure, instead, is the bureaucratic logic and its linear, causal, and directional ordering dynamic of human behavior through continuous classification and reclas- sification of information about individuals. In light of this, philosophy, ethics, and morality will need to measure up not only to the current taxonomy of securitization but also to all its future reinventions and mutations.

Education about surveillance won't do anything—the public just doesn't care and there's no way to change that without challenging the foundations of the U.S. system itself

POSNER 2013 (Eric Posner, a professor at the University of Chicago Law School, is the co-author of "Terror in the Balance" and "The Executive Unbound," Is the N.S.A. Surveillance Threat Real or Imagined?, New York Times, June 9, http://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined)

One reason it is too easy is that it implies that secrecy can be exceptional. Government secrecy in fact is ubiquitous in a range of uncontroversial settings. To do its job and protect the public, the government must promise secrecy to a vast range of people — taxpayers, inventors, whistle-blowers, informers, hospital patients, foreign diplomats, entrepreneurs, contractors, data suppliers and many others. But that means that the basis of government action, which relies on information from these people, must be kept secret from the public. Economic policy is thought to be open, but we saw during the financial crisis that government officials needed to deceive the public about the health of the financial system to prevent self-fulfilling runs on banks. Then there are countless programs that are not secret but that are too complicated and numerous for the public to pay attention to — from E.P.A. regulation to quantitative easing. N.S.A. surveillance blends into this incessant, largely invisible background buzz of government activity; there is nothing exceptional about it.

And this puts even more pressure on the first prong of the paradox. If much (most?) of government activity remains invisible to the public, how can democratic accountability work? The answer, I think, is that political accountability in modern, large-scale democracies rarely takes place through informed public monitoring of specific government programs and policies. A few discrete issues (abortion, same-sex marriage) aside, and not counting political scandals, the public largely votes on the basis of its pocketbook and its feeling of security. The political consequences of war, terrorist attacks and economic distress — all of which are publicly observable — keep officeholders in line, but they retain vast discretion to choose among means. Because some government officials are ill-motivated and others are incompetent, government abuse is inevitable, but it is the price we pay for a government large and powerful enough to regulate 300 million people.

Think of the N.S.A. program as the security equivalent of the Affordable Care Act (which will unavoidably involve government monitoring of people's medical care on the basis of bureaucratic procedures that no one understands): in both cases, we must prepare ourselves for the inevitable abuses that accompany a large, unwieldy, hard-to-monitor program, in order to obtain the (promised) benefits.

Objections to the secrecy of the N.S.A. program are thus really objections to our political system itself, and, for all its flaws, there are no obviously superior alternatives.

Their impact is not unique and surveillance doesn't chill deliberation—if the system isn't working, that's not something their model of debate can fix

POSNER 2013 (Eric Posner, a professor at the University of Chicago Law School, is the co-author of "Terror in the Balance" and "The Executive Unbound," Is the N.S.A. Surveillance Threat Real or Imagined?, New York Times, June 9, http://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined)

This brings me to another valuable point you made, which is that when people believe that the government exercises surveillance, they become reluctant to exercise democratic freedoms. This is a textbook objection to surveillance, I agree, but it also is another objection that I would place under "theoretical" rather than real. Is there any evidence that over the last 12 years, during the flowering of the so-called surveillance state, Americans have become less politically active? More worried about government suppression of dissent? Less willing to listen to opposing voices? All the evidence points in the opposite direction.

Views from the extreme ends of the political spectrum are far more accessible today than they were in the past. It is infinitely easier to get the Al Qaeda perspective today — one just does a Google search — than it was to learn the Soviet perspective 40 years ago, which would have required one to travel to one of the very small number of communist bookstores around the country. It is hard to think of another period so full of robust political debate since the late 1960s — another era of government surveillance.

The skills of debate don't translate into checks on surveillance—there's no democratic accountability

HAGGERTY AND SAMATAS 2010 (Kevin, Professor of Sociology and Criminology at the University of Alberta; Minas, Associate Professor of Political Sociology in the Sociology, Department at the University of Crete, Surveillance and Democracy)

Greater democratization often appears to be a panacea for individuals concerned about the continuing expansion of surveillance; democracy promises to introduce systems of accountability that will provide some bulwark against our nonchalant drift towards a despotic surveillance society. With that in mind, we conclude our brief introduction on a regrettably despondent note, accentuating some of the factors that limit the prospect for meaningful democratic accountability as it pertains to surveillance.

The first point to note is that today many surveillance developments are technological. Groundbreaking surveillance initiatives emerge out of laboratories with each new imputation of computer software or hardware. These augmented technological capacities are only rarely seen as necessitating explicit policy decisions, and as such disperse into society with little or no official political discussion. Or, alternatively, the comparatively slow timelines of electoral politics often ensure that any formal scrutiny of the dangers or desirability of surveillance technologies only occurs long after the expansion of the surveillance measure is effectively a fait accompli.

By default, then, many of the far-reaching questions about how surveillance systems will be configured occur in organizational back regions amongst designers and engineers, and therefore do not benefit from the input of a wider range of representative constituencies. Sclove (1995) has drawn attention to this

technological democratic deficit, and calls for greater public input at the earliest stages of system design (see also Monahan in this volume). And while this is a laudable ambition, the prospect of bringing citizens into the design process confronts a host of pragmatic difficulties, not the least of which are established understandings of what constitutes relevant expertise in a technologized society.

Even when surveillance measures have been introduced by representative bodies this is no guarantee that these initiatives reflect the will of an informed and reasoned electorate. One of the more important dynamics in this regard concerns the long history whereby fundamental changes in surveillance practice and infrastructure have been initiated in times of national crisis. The most recent and telling example of this process occurred after 9/11 when many Western governments, the United States most prominently, passed omnibus legislation that introduced dramatic new surveillance measures justified as a means to enhance national security (Ball and Webster, 2003; Haggerty and Gazso, 2005; Lyon, 2003). This legislation received almost no political debate, and was presented to the public in such a way that it was impossible to appreciate the full implications of the proposed changes. This, however, was just the latest in the longstanding practice of politicians embracing surveillance at times of heightened fear. At such junctures one is more apt to encounter nationalist jingoism than measured debate about the merits and dangers of turning the state's surveillance infrastructure on suspect populations.

The example of 9/11 accentuates the issue of state secrets, which can also limit the democratic oversight of surveillance. While few would dispute the need for state secrets, particularly in matters of national security, their existence raises serious issues insofar as the public is precluded from accessing the information needed to judge the actions of its leaders. In terms of surveillance, this can include limiting access to information about the operational dynamics of established surveillance systems, or even simply denying the existence of specific surveillance schemes. Citizens are asked (or simply expected) to trust that their leaders will use this veil of secrecy to undertake actions that the public would approve of if they were privy to the specific details. Unfortunately, history has demonstrated time and again that this trust is often abused, and knowledge of past misconduct feeds a political climate infused with populist conspiracy theories (Fenster, 2008). Indeed, one need not be paranoid to contemplate the prospect that, as surveillance measures are increasingly justified in terms of national security, a shadow "security state" is emerging—one empowered by surveillance, driven by a profit motive, cloaked in secrecy and unaccountable to traditional forms of democratic oversight (see Hayes in this volume).

There's no democratic accountability for surveillance—privatization undermines all of that

HAGGERTY AND SAMATAS 2010 (Kevin, Professor of Sociology and Criminology at the University of Alberta; Minas, Associate Professor of Political Sociology in the Sociology, Department at the University of Crete, Surveillance and Democracy)

A central dilemma in trying to establish democratic oversight of surveillance measures concerns larger dynamics in the international system of states and corporations. Over the past quarter century a neoliberal project of globalization has resulted in the steady decline of national sovereignty. One upshot is that the bodies which effectively govern a host of matters, including concrete affairs of security and surveillance, are effectively unaccountable to the citizens who will be subject to these policies. One example of this is the internationalization of domestic policy-making in the European Union where "around seventy per cent of new legislation in the UK originates in Brussels, where it is subject to the approval of a ministerial council drawn from all member states" (Beetham, 2005:59). This is itself part of what Vibert (2007) characterizes as the "rise of the unelected," a process whereby assorted private institutions ranging from banks, international organizations and regulators operate a form of post-democratic governance.

The internationalization of surveillance can also occur more informally, as smaller states are pressured to bend to the sway of the surveillance-infused agendas of the remaining superpower and corporations aligned with its geopolitical aspirations. In the domain of realpolitik, small democratic nations can have little opportunity to resist the hegemony of major states and an increasingly international surveillance industrial complex (see Hayes and Samatas, both in this volume).

All of this points to one of the most intractable dilemmas pertaining to surveillance and democracy, which is the play of private corporations on the surveillance landscape. Democracy is not the operative principle of private companies, but these entities initiate an ever greater percentage of surveillance measures. Moreover, with the ongoing corporate appropriation of the internet, assorted informational spaces where people spend an increasing amount of time socializing are being revealed to be legally private spaces, and not subject to principles of democratic accountability (see Whitson in this volume). In an era of globalization, it is hard to bring such companies under the sway of national interests, with the upshot being that large swathes of our lives are lived in the confines of surveillance-infused institutions where claims to democratic representation have no purchase.

Authority Bad

We should reject notions of authority – institutions reproduce social integration and create liberal violence

Antonio 95 (Robert, most qualified man in debate, nietzsche's anti-sociology: subjectified culture and the end of history, http://kuscholarworks.ku.edu/handle/1808/17941, LB)

Nietzsche held that the current wave of rationalization has depleted culture so severely that virtually all of "our institutions are no longer fit for anything" (Nietzsche 1968a, p. 93). Because "shared" values, norms, and ideas are no longer binding, culturally reproduced social integration has dissolved. Rather than being normatively regulated, uncoerced behavior follows the grooves of habit, organizational routine, and mass culture or is simply disoriented (Nietzsche 1974, pp. 302-4, 338; 19696, pp. 121-26; 1969c, p. 226; 19686, p. ISO). For institutions to exist there must exist the kind of will, instinct, imperative which is anti-liberal to the point of malice: the will to tradition, to authority, to centuries-long responsibility, to solidarity between succeeding generations backwards and forwards in infinitum. . . . The entire West has lost those instincts out of which institutions grow, out of which the future grows. . . . One lives for today, one lives very fast—one lives very irresponsibly: it is precisely this which one calls "freedom." That which makes institutions institutions is despised, hated, rejected: whenever the word "authority" is so much as heard one believes oneself in danger of a new slavery. (Nietzsche 1968a, pp. 93-94) The state's newly developed top-to-bottom officialdom is emblematic of this sweeping disintegration; its arsenal of disciplinary mechanisms fill the breach left by the lack of legitimate authority. Nietzsche held that the state and culture are inherent "antagonists." Pointing to the cultural stagnation that followed Germany's victory in the Franco-Prussian War, he stated, "Coming to power is a costly business: power makes stupid. . . . The Germans—once they were called a nation of thinkers: Do they still think at all? Nowadays the Germans are bored with intellect, . . . politics devours all seriousness for really intellectual things—Deutschland, Deutschland iiber alles was, I fear, the end of German philosophy" (Nietzsche 1968a, p. 60). Immobilizing intellectual and aesthetic creativity, the power state manipulates through a new mix of draconian law, welfare provision, propaganda, and nationalism. It is a "new idol" and the focal point of dangerous currents of mass ressentiment and regimentation (Nietzsche [1873-76] 1983, pp. 3-6; 1969c, 75-78; [1883] 19686, p. 48; [1888] 19826; [1888] 1967; 1968a, 62-63; [1888], 1969a, p. 319). Nietzsche viewed socialism as an outgrowth of Socratic culture's democratic ethos and expansionary state.10 The self-righteous egalitarian, collectivist, and redemptive thrust of socialism's highly secularized Christian ressentiment makes it all the more dangerous. Because socialists simply want to manage "more cheaply, more safely, more equitably, more uniformly," Nietzsche argued, they would, if they came to power, amplify all the pathologies inherent in "state power." He held that socialism is a "younger brother" of ancient despotism, promising "iron chains," "fearful discipline," "abolition of the individualand "complete subservience." It would re-create "Chinese conditions" of enduring stasis and absolutism (Nietzsche [1878-80] 1986, pp. 173-74; [1881] 1982a, pp. 83, 109, 126-27; 1974, pp. 99, 338; 19686, pp. 77-78, 463-64).

At: State inevitable

state inevitable is literally ressentiment

Newman 2k (saul, Reader in Political Theory at Goldsmiths College, anarchism and the politics of ressentiment, http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/theory_and_event/v004/4.3newman.html, LB)

This conception of the State ironically strikes a familiar note with Nietzsche. Nietzsche, like the anarchists, sees modern man as 'tamed', fettered and made impotent by the State.[15] He also sees the State as an abstract machine of domination, which precedes capitalism, and looms above class and economic concerns. The State is a mode of domination that imposes a regulated 'interiorization' upon the populace. According to Nietzsche the State emerged as a "terrible tyranny, as a repressive and ruthless machinery," which subjugated, made compliant, and shaped the population.[16] Moreover the origins of this State are violent. It is imposed forcefully from without and has nothing to with 'contracts'.[17] Nietzsche demolishes the "fantasy" of the social contract — the theory that the State was formed by people voluntarily relinquishing their power in return for the safety and security that would be provided by the State. This idea of the social contract has been central to conservative and liberal political theory, from Hobbes to Locke. Anarchists also reject this theory of the social contract. They too argue that the origins of the State are violent, and that it is absurd to argue that people voluntarily gave up their power. It is a dangerous myth that legitimizes and perpetuates State domination.

Claims of the inevitability of the state doom us to perpetual nihilism – the state is an unnecessary evil

Newman 2k (saul, Reader in Political Theory at Goldsmiths College, anarchism and the politics of ressentiment, http://muse.jhu.edu/login?auth=0&type=summary&url=/journals/theory_and_event/v004/4.3newman.html, LB)

For Hobbes, State sovereignty is a necessary evil. There is no attempt to make a fetish of the State: it does not descend from heaven, preordained by divine will. It is pure sovereignty, pure power, and it is constructed out of the emptiness of society, precisely in order to prevent the warfare immanent in the state of nature. The political content of the State is unimportant as long as it quells unrest in society. Whether there be a democracy, or a sovereign assembly, or a monarchy, it does not matter: "the power in all forms, if they be perfect enough to protect them, is the same."[34] Like the anarchists, Hobbes believes that the guise taken by power is irrelevant. Behind every mask there must be a pure, absolute power. Hobbes' political thought is centered around a desire for order, purely as an antidote to disorder, and the extent to which individuals suffer under this order is incomparable to the suffering caused by war.[35] For anarchists, on the other hand, because society regulates itself according to natural laws and because there is a natural ethics of cooperation in man, the State is an unnecessary evil. Rather than preventing perpetual warfare between men, the State engenders it: the State is based on war and conquest rather than embodying its resolution. Anarchism can look beyond the State because it argues from the perspective of an essential point of departure — natural human sociality. It can, therefore, conceive of an alternative to the State. Hobbes, on the other hand, has no such point of departure: there is no standpoint that can act as an alternative to the State. Society, as we have seen with Hobbes, is characterized by rift and antagonism. In fact, there is no essential society to speak of — it is an empty place. Society must therefore be constructed artificially in the shape of the absolute State. While anarchism can rely on natural law, Hobbes can only rely on the law of the State. At the heart of the anarchist paradigm there is the essential fullness of society, while at the heart of the Hobbesian paradigm there is nothing but emptiness and dislocation.

At: Agonism Good

Agonism is bad—encourages artificial disputes rather than cooperative deliberation

Tannen 2013 (Deborah, University Professor in the Department of Linguistics at Georgetown University. Her recent books include You Were Always Mom's Favorite!: Sisters in Conversation Throughout Their Lives (2009), Talking Voices: Repetition, Dialogue, and Imagery in Conversational Discourse (2nd ed., 2007), and You're Wearing THAT?: Understanding Mothers and Daughters in Conversation (2006). She is currently a fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford University, the argument culture: agonism and the common good, http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00211, LB)

Key to my notion of the argument culture is the term agonism, which I have borrowed from the late Jesuit scholar Walter Ong. From the Latin term for war, agon, agonism is taking a warlike stance to accomplish something that is not literally a war. Agonism underlies our conviction that opposition leads to truth, so the best way to discuss an idea is to have proponents of two opposing sides face off in a debate; the best way to cover news is to ½nd spokespeople for the most extreme, polarized views and present them as "both sides"; the best way to settle disputes is litigation that pits one party against the other, with a winner-take-all result; the best way to frame an article is an attack; and the best way to show you are really thinking is to criticize. Agonism surrounds us in the form of ubiquitous military metaphors: the war on poverty, war on cancer, war on drugs, war on terror, and so on. War metaphors come so naturally, and are so catchy, that we barely notice them. A survey of recent reality TV shows reveals those entitled Weed Wars, Whale Wars, Shipping Wars, Storage Wars, and Parking Wars–and these are only a few of innumerable examples. War metaphors are also everywhere in coverage of political campaigns. For example, an exhibit at the Newseum in Washington, D.C., traces the history of press coverage of presidential elections. It begins with a plaque saying: "Every four years, Americans elect a president. And every four years battle lines are drawn as presidential candidates face off in the conflict zone known as the campaign trail." "Battle lines," "face off," and "conflict zone" seem self-evidently appropriate ways to frame presidential campaigns; indeed, the word campaign itself derives from a military action. The next plaque goes on to say, "This exhibit examines the tactics used by politicians –and illuminated by the press–to put democracy to the test and a candidate in the White House." This formulation casts the press as a mere observer–illuminating politicians' tactics–whereas in fact the role played by the press is far more active. This is acknowledged in a later plaque, which also makes use of war metaphors: "In the 20th century, new rules of engagement were drawn up between candidates and reporters. . . . The battle for control of the story and image was on." There is ample evidence in coverage of any electoral season that the press does not just observe and report but also creates and reinforces the agonistic framework through which we view events. Any day's news contains a multitude of examples; here are just a few. A typical talk show host begins a discussion by saying that President Obama "came out swinging" on the payroll tax cut. A New York Times headline reads, "The Calculations that Led Romney to the Warpath." And visual metaphors reinforce verbal ones. When New York magazine featured a story entitled "2012: The Bloodiest Campaign Ever," the cover displayed a photo of Romney's and Obama's faces literally bloodied, black and blue, and plastered with bandaids and sutures. It would be as telling, I think, to show the American people similarly bruised and bloodied, because that is the result of the escalating agonism in our public discourse.

Rules

Rules bad

Challenging the rules of the game is important- it allows for reflection on the relationship between society, norms, and the self

Rodriguez, 2006- media theory professor at the City University of Hong Kong with a PhD from NYU (Hector Rodriguez, December 2006, "The Playful and the Serious: An approximation to Huizinga's Homo Ludens," published in Game Studies, vol. 6 issue 1, fg)

My suggestion is that serious games can address fundamental aspects of social philosophy and social science. Once again, such games would not be designed with the intention of making the subject more "attractive" or "entertaining" to students. The aim should be to reveal the playful features of societal institutions. Consider a game where the boundaries of the magic circle are not yet clearly defined, and its rules not yet finalized; the game itself would consist in the tentative and risky process of negotiating these rules and boundaries. A competition could also be held without a referee, so that all or most decisions have to be reached by the negotiated consensus of all players. This competition may even take place in a public space, without a precise starting or ending time. Whereas both Huizinga and Caillois argue that the boundaries of the magic circle and the rules of the game must always be fixed in advance of the start of play, this type of game would make both elements contingent on the decisions and responses of players. It remains an open question whether this approach would lead to a sort of Hobbesian state of suspicion and aggression, or whether new forms of creative association would arise through trial and error. Players could also explore how different resources, such as the internet, help to sustain or impede these emerging forms of community. The experimental emergence, sustenance and transformation of a community would thus become the core subject and aim of the game. Students would then write reports, keep research documents or conduct seminars based on their design experience, and perhaps modify their design ideas iteratively on the basis of successive runs of the game, leading to theoretical conclusions about the interpersonal process of community formation. The magic circle offers many opportunities for game designers to address aspects of human society. A familiar example is Eric Zimmerman's Suspicion, a conspiratorial game played in an everyday office environment where each player started out not knowing the identity of the other players (Salen and Zimmerman, 2004). Game designers aiming to highlight trust and suspicion sometimes take the radical step of rendering the boundaries of the magic circle deliberately ambiguous. Phone calls or text messages received in the middle of the night may be real calls for help from a friend or part of the game's conspiracy. Well-known examples include the Electronic Arts game Majestic and the plot of David Fincher's 1997 film The Game. This uncertainty can generate experiences that resemble philosophical scepticism about reality. The designer becomes the equivalent of a Cartesian evil genius capable of controlling, and potentially deceiving, our sense of the distinction between reality and make-believe. From the designer's standpoint, the players become toys to be played with; the game designer is the only player who for sure knows where the boundaries of the magic circle are. Sceptical uncertainty may well become a central topic in experimental game design. The experiential correlate of this technique, in many cases, is paranoia. I am not here using this term in a strictly clinical sense. Paranoia is a mode of perception that actively seeks out potential threats or secret plots. The perceiver is always ready to turn any movement into a warning signal, and to respond by fleeing, attacking, or decoding. Play is here underpinned by a defensive-aggressive attitude and an obsession with conspiratorial themes.[5] In paranoid gaming, the player is led to question where the boundaries of the game actually lie, sometimes even whether they exist at all. The location of the magic circle is no longer taken for granted; it becomes the very subject of the game. In this context, I would take issue with one of Huizinga's main theses. He repeatedly emphasizes that, within the magic circle, the rules of a game hold absolutely. There is no room for scepticism. The player may reject the rules (for instance, by refusing to play) or manipulate them by cheating, but it makes no sense to doubt them. While it is conceptually possible to doubt the existence of a planet or the accuracy of a scientific model, Huizinga asserts, the rules of a game are a priori not open to this sort of uncertainty. Epistemological scepticism has no place in this arena. My objection to this conclusion is that **sceptical doubt can** sometimes **become central to** the **play** experiences that I have described as paranoid, **and this** kind of **experience can become a powerful springboard for reflection about the relationship between society and the self.**

Roleplaying contradicts rules

We can have policy simulation or enforce the rules, but not both—there are no rules for the institutions that we simulate so insisting on limits means that their game is not portable

CAILLOIS 2001 (Roger, French anthropologist, Man, Play, and Games, trans Barash, orig. published 1958, p. 8-9

Many games do not imply rules. No fixed or rigid rules exist for playing with dolls, for playing soldiers, cops and robbers, horses, locomotives, and airplanes—games, in general, which presuppose free improvisation, and the chief attraction of which lies in the pleasure of playing a role, of acting as if one were someone or something else, a machine for example. Despite the assertion's paradoxical character, I will state that in this instance the fiction, the sentiment of as if replaces and performs the same function as do rules. Rules themselves create fictions. The one who plays chess, prisoner's base, polo, or baccara, by the very fact of complying with their respective rules, is separated from real life where there is no activity that literally corresponds to any of these games. That is why chess, prisoner's base, polo, and baccara are played for real. As if is not necessary. On the contrary, each time that play consists in imitating life, the player on the one hand lacks knowledge of how to invent and follow rules that do not exist in reality, and on the other hand the game is accompanied by the knowledge that the required behavior is pretense, or simple mimicry. This awareness of the basic unreality of the assumed behavior is separate from real life and from the arbitrary legislation that defines other games. The equivalence is so precise that the one who breaks up a game, the one who denounces the absurdity of the rules, now becomes the one who breaks the spell, who brutally refuses to acquiesce in the proposed illusion, who reminds the boy that he is not really a detective, pirate, horse, or submarine, or reminds the little girl that she is not rocking a real baby or serving a real meal to real ladies on her miniature dishes.

Thus games are not ruled and make-believe. Rather, they are ruled or make-believe. It is to the point that if a game with rules seems in certain circumstances like a serious activity and is beyond one unfamiliar with the rules, i.e. if it seems to him like real life, this game can at once provide the framework for a diverting make-believe for the confused and curious layman. One easily can conceive of children, in order to imitate adults, blindly manipulating real or imaginary pieces on an imaginary chessboard, and by pleasant example, playing at "playing chess."

Predictability/games

The demand that debate be predictable is an attempt to discipline chance and reduce politics to accumulation and work—critique is tolerated only within a set of limits that hollow out its potential

CAILLOIS 2001 (Roger, French anthropologist, Man, Play, and Games, trans Barash, orig. published 1958, p. 157-158)

Vertigo and simulation are in principle and by nature in rebellion against every type of code, rule, and organization. Alea, on the contrary, like agon calls for calculation and regulation. However, their essential solidarity in no way prevents their competing with each other. The principles they represent are too strictly opposed not to tend toward mutual exclusion. Work is obviously incompatible with the passive anticipation of chance, just as is the unfair favor of fortune with the legitimate rewards of effort and merit. The abandonment of simulation and vertigo, mask and ecstasy, has never meant the departure of an incantational universe and the arrival of the rational world of distributive justice. Problems remain to be resolved.

In such a situation, agon and alea no doubt represent the contradictory and complementary principles of a new social order. Moreover, they must fulfill parallel functions which are recognizably indispensable in one or the other situation. Agon, the principle of fair competition and creative emulation, is regarded as valuable in itself. The entire social structure rests upon it. Progress consists of developing it and improving its conditions, i.e. simply eliminating alea, more and more. Alea, in fact, seems like the resistance posed by nature against the perfect equity of human institutional goals.

In addition, chance is not only a striking form of injustice, of gratuitous and undeserved favor, but is also a mockery of work, of patient and persevering labor, of saving, of willingly sacrificing for the future—in sum, a mockery of all the virtues needed in a world dedicated to the accumulation of wealth. As a result, legislative efforts tend naturally to restrain the scope and influence of chance. Of the various principles of play, regulated competition is the only one that can be transposed as such to the domain of action and prove efficacious, if not irreplaceable. The others are dreaded. They are regulated or even tolerated if kept within permitted limits. If they spread throughout society or no longer submit to isolation and neutralizing rules, they are viewed as fatal passions, vices, or manias.

This is the essential structure of fascism, an attempt to purify and order politics such that catastrophic violence becomes possible in the name of saving the polity—the worst possibility for debate is that policy skills **really are portable**

LAND 1992 (Nick Land is a lecturer in Continental Philosophy at Warwick University, The Thirst for Annihilation: Georges Bataille and Virulent Nihilism, 138-140)

However great the revulsion that can be felt in contact with a single corpse, especially when it is in an advanced state of decomposition, or marked with the traces of an ignoble extremity of agony (torture in particular), this is massively augmented—and not merely quantitatively—when one is confronted by heaps or mounds of corpses; the stacked remains of an ossuary, the human remnants from an extermination camp, piles of skulls, anonymous tangles of bodies in the Ugandan bush or at the edge of a Kampuchean paddy field. The corpse not as a lost person, but as a disintegrating clot in the depersonalized refuse of death. Sade's writings are not without such images, but nor are the mass media of twentieth-century societies. It is only at the lip of such abysmal indignities, when bodies are vomited as faceless masses of Herakleitean dung, that one glimpses the filthy and senseless death one craves. Whatever the monstrosity of Sade, he does not point into Auschwitz; it is more true to suggest that he points out of it. Despite the peculiar desperation in our attempts to give a moral interpretation to the somatic shock induced by traces of the Nazi exterminations, our intellectual conscience remains offended by the sanctimonious inanities that ensue. We treat Hitler as a

persuasive Satan, a figure that the church was unable to invent, in whom we vicariously live our evil (as if we were masturbating over a magazine). In the aggregate, our squalid separation from the victims gapes its stale complacency. Our lurch for innocence seals us against communion, and we are repulsed from the place where their fate is also ours, as if death itself has been soiled by their torments. That we are an ineliminably massacreable species of animal scarcely marks us. We engineer an apartheid of the dead. Partly this is due to the widespread dread of corpses, Jews, Gypsies, and homosexuals prevalent in our societies. All of which elements are consigned by morality to the same howl-choked dungeon as desire, irresponsibility, and profound contact with the real. Our moral natures would complete the sanitization of the 1940s' pogroms, contributing to the elimination of sprawling bodies, and of the problematic affects they provoke. We are even stupid enough to believe that between a KZ guard and a young Jew treading the edge of a death factory it is the latter who is most profoundly caged.

The technical core of the final solution was not merely an apparatus for mass killings, but one that was also guided by the exigency of the utile disposal of corpses. We simplify out of anxiety when we conflate the mounds of emaciated bodies strewn about the camps at the point of their liberation—the bodies of those annihilated by epidemics during the collapse of the extermination system—with the reduced ash and shadows of those erased by the system in its smooth functioning. The uneliminated corpse is not a submissive element within this or any other 'final solution', but an impersonal resistance to it, a token of primordial community. The docility of the inert body is itself a fascist myth. The final solution is a myth and a fact; each of its traces being invested by complex libidinal forces. The lamp-shades made from human skin, the meticulously salvaged heaps of dentures and artificial limbs, the calm efficiency of the Nazi genocidebureaucrat: all are freely circulating tokens of powerful affect. None of these images is more extraordinarily wounding to our sense of cosmic order than the bars of soap made from the body fat of the exterminated, the transubstantiation of verminized flesh into an implement of hygiene; white, glistening, malleable, inert. The soporific words of the allied propaganda machinery, with their insistence on fascist filthiness, are paralysed in the throat. Here are purists; clean and dutiful men, and yet we would be more fastidious than they were?

That there is nothing to insulate us from falling prey to such things—that the slime and ash in a drainage ditch outside Birkenau might be the residue of our own flesh—is a savagery of chance in which it is necessary to exult if we are to connect. A wall that stood between us and such acute horror would still be a wall, and if a God had existed to prevent the annihilation of Hitler's victims life as a whole would be the camp (for the Nazi it is). Pain, degradation, and death are one thing, the enslavement of desire something else. It is only because our bodies are weak and die that it is impossible for there to be a perfect cage, or for the sun to be locked interminably in a fascist health. To be protected by something more than zero is the final term of imprisonment.

* * *

There is poetry after Auschwitz, just as there was poetry within it, and only because there was. There is poetry wherever there are droplets of the sun who are not afraid to touch (however imperilled). I imagine there was even laughter amongst the doomed. There have been shadow-spaces of the Earth such as are impossible to think, but '[w]hat does truth signify…if we do not think what exceeds the possibility of thought…?' [III 12]. It is only at the edge of the impossible that the wretchedness of isolated being is grated open, and 'poetry is the impossible' [III 520].

It is not out of innocence, but from out of a history pock-marked by exterminations, that Bataille writes: 'I would like to efface the trace of my steps…' [III 161].

I efface

the step

i efface

the word

space

and breath

are lacking [IV 28].

The alcohol

Of poetry

Is silence

Unmade [of a corpse] [III 372].

*

Fascism is not so much a symptom of political desperation, as of libidino-religious numbness, a kind of anti-poetry on the streets. **Like all policy-obsessed behaviour** patterns it is rooted in the humanist dead-end characterized by hysterical struggle for autonomy: self-determination, national self-management, master-races, autarky…all attempts to seal the blister from within, **to hide from the ocean**. The thought that there might be a political response to fascism makes me laugh. Shall we set our little fascism against their big one? Organize ourselves, become disciplined, maybe we could make ourselves some smart uniforms and stomp about in the street? Politics is the last great sentimental indulgence of mankind, and it has never achieved anything except a deepened idiocy, more work, more repression, more pompous ass-holes demanding obedience. Quite naturally we are bored of it to the point of acute sickness. I have no interest at all in groping at power in the blister. What matters is **burning a hole through the wall**.

roleplaying

DSRB

simulation ignores the colonialist legacy of the federal government

Reid-Brinkley '8 (Dr. Shanara Reid-Brinkley, University of Pittsburgh Department of Communications, "THE HARSH REALITIES OF "ACTING BLACK": HOW AFRICAN-AMERICAN POLICY DEBATERS NEGOTIATE REPRESENTATION THROUGH RACIAL PERFORMANCE AND STYLE" 2008, LB)

Genre Violation Four: Policymaker as Impersonal and the Rhetoric of Personal Experience. Debate is a competitive game.112 It requires that its participants take on the positions of state actors (at least when they are affirming the resolution). Debate resolutions normally call for federal action in some area of domestic or foreign policy. Affirmative teams must support the resolution, while the negative negates it. The debate then becomes a "laboratory" within which debaters may test policies.113 Argumentation scholar Gordon Mitchell notes that "Although they may research and track public argument as it unfolds outside the confines of the laboratory for research purposes, in this approach students witness argumentation beyond the walls of the academy as spectators, with little or no apparent recourse to directly participate or alter the course of events."114 Although debaters spend a great deal of time discussing and researching government action and articulating arguments relevant to such action, what happens in debate rounds has limited or no real impact on contemporary governmental policy making. And participation does not result in the majority of the debate community engaging in activism around the issues they research. Mitchell observes that the stance of the policymaker in debate comes with a "sense of detachment associated with the spectator posture."115 In other words, its participants are able to engage in debates where they are able to distance themselves from the events that are the subjects of debates. Debaters can throw around terms like torture, terrorism, genocide and nuclear war without blinking. Debate simulations can only serve to distance the debaters from real world participation in the political contexts they debate about. As William Shanahan remarks: …the topic established a relationship through interpellation that inhered irrespective of what the particular political affinities of the debaters were. The relationship was both political and ethical, and needed to be debated as such. When we blithely call for United States Federal Government policymaking, we are not immune to the colonialist legacy that establishes our place on this continent. We cannot wish away the horrific atrocities perpetrated everyday in our name simply by refusing to acknowledge these implications" (emphasis in original).116The "objective" stance of the policymaker is an impersonal or imperialist persona. The policymaker relies upon "acceptable" forms of evidence, engaging in logical discussion, producing rational thoughts. As Shanahan, and the Louisville debaters' note, such a stance is integrally linked to the normative, historical and contemporary practices of power that produce and maintain varying networks of oppression. In other words, the discursive practices of policy oriented debate are developed within, through and from systems of power and privilege. Thus, these practices are critically implicated in the maintenance of hegemony. So, rather than seeing themselves as government or state actors, Jones and Green choose to perform themselves in debate, violating the more "objective" stance of the "policymaker" and require their opponents to do the same.

antonio

best card in debate (aka the only card you'll need to answer roleplaying good)

Antonio 95 (Robert, most qualified man in debate, nietzsche's anti-sociology: subjectified culture and the end of history, http://kuscholarworks.ku.edu/handle/1808/17941, LB)

According to Nietzsche, the "subject" is Socratic culture's most central, durable foundation. This prototypic expression of ressentiment, master reification, and ultimate justification for slave morality and mass discipline "separates strength from expressions of strength, as if there were a neutral substratum . . . free to express strength or not to do so. But there is no such substratum; there is no 'being' behind the doing, effecting, becoming; 'the doer' is merely a fiction added to the deed" (Nietzsche 19696, pp. 45-46). Leveling of Socratic culture's "objective" foundations makes its "subjective" features all the more important. For example, the subject is a central focus of the new human sciences, appearing prominently in its emphases on neutral standpoints, motives as causes, and selves as entities, objects of inquiry, problems, and targets of care (Nietzsche 1966, pp. 19-21; 1968a, pp. 47-54). Arguing that subjectified culture weakens the personality, Nietzsche spoke of a "remarkable antithesis between an interior which fails to correspond to any exterior and an exterior which fails to correspond to any interior" (Nietzsche 1983, pp. 78-79, 83). The "problem of the actor," Nietzsche said, "troubled me for the longest time."1* He considered "roles" as "external," "surface," or "foreground" phenomena and viewed close personal identification with them as symptomatic of estrangement. While modern theorists saw differentiated roles and professions as a matrix of autonomy and reflexivity, Nietzsche held that persons (especially male professionals) in specialized occupations overidentify with their positions and engage in gross fabrications to obtain advancement. They look hesitantly to the opinion of others, asking themselves, "How ought I feel about this?" They are so thoroughly absorbed in simulating effective role players that they have trouble being anything but actors—"The role has actually become the character." This highly subjectified social self or simulator suffers devastating inauthenticity. The powerful authority given the social greatly amplifies Socratic culture's already self-indulgent "inwardness." Integrity, decisiveness, spontaneity, and pleasure are undone by paralyzing overconcern about possible causes, meanings, and consequences of acts and unending internal dialogue about what others might think, expect, say, or do (Nietzsche 1983, pp. 83-86; 1986, pp. 39-40; 1974, pp. 302-4, 316-17). Nervous rotation of socially appropriate "masks" reduces persons to hypostatized "shadows," "abstracts," or simulacra. One adopts "many roles," playing them "badly and superficially" in the fashion of a stiff "puppet play." Nietzsche asked, "Are you genuine? Or only an actor? A representative or that which is represented? . . . [Or] no more than an imitation of an actor?" Simulation is so pervasive that it is hard to tell the copy from the genuine article; social selves "prefer the copies to the originals" (Nietzsche 1983, pp. 84-86; 1986, p. 136; 1974, pp. 232— 33, 259; 19696, pp. 268, 300, 302; 1968a, pp. 26-27). Their inwardness and aleatory scripts foreclose genuine attachment to others. This type of actor cannot plan for the long term or participate in enduring networks of interdependence; such a person is neither willing nor able to be a "stone" in the societal "edifice" (Nietzsche 1974, pp. 302-4; 1986a, pp. 93-94). Superficiality rules in the arid subjectivized landscape. Neitzsche (1974, p. 259) stated, "One thinks with a watch in one's hand, even as one eats one's midday meal while reading the latest news of the stock market; one lives as if one always 'might miss out on something.' 'Rather do anything than nothing': this principle, too, is merely a string to throttle all culture. . . . Living in a constant chase after gain compels people to expend their spirit to the point of exhaustion in continual pretense and overreaching and anticipating others." Pervasive leveling, improvising, and faking foster an inflated sense of ability and an oblivious attitude about the fortuitous circumstances that contribute to role attainment (e.g., class or ethnicity). The most mediocre people believe they can fill any position, even cultural leadership. Nietzsche respected the self-mastery of genuine ascetic priests, like Socrates, and praised their ability to redirect ressentiment creatively and to render the "sick" harmless. But he deeply feared the new simulated versions. Lacking the "born physician's" capacities, these impostors amplify the worst inclinations of the herd; they are "violent, envious, exploitative, scheming, fawning, cringing, arrogant, all according to circumstances." Social selves are fodder for the "great man of the masses." Nietzsche held that "the less one knows how to command, the more urgently one covets someone who commands, who commands severely— a god, prince, class, physician, father confessor, dogma, or party conscience." The deadly combination of desperate

conforming and overreaching and untrammeled ressentiment paves the way for a new type of tyrant (Nietzsche 1986, pp. 137, 168; 1974, pp. 117-18, 213, 288-89, 303-4).

Education

Debate teaches terrible research skills—it requires quick decisions after information overload and doesn't universalize its benefits to policy skills or democracy

ANDREJEVIC 2013 (Mark, Assoc Prof, Centre for Critical and Cultural Studies, U of Queensland, Infoglut: How Too Much Information Is Changing the Way We Think and Know, Kindle edition)

If it is impossible to be fully informed, in the sense of knowing all of the available accounts of the world (and the accounts about the accounts), it is also necessarily impossible for any particular account to be complete and anything other than partial - in both senses of the word. We have all become intelligence analysts sorting through more data than we can absorb with - and tins is one of the recurring themes of the book - what are proving to be inadequate resources for adjudicating amongst the diverse array of narratives. We have become, in a sense, like the intelligence analysts overwhelmed by a tsunami of information or the market researcher trying to make sense of the exploding data "troves" they have created and captured.

In this regard, an era of information overload does not merely change our understanding of how- much information is available to us; it also corresponds to changes in the way we think about the role of information in our economic, political, and social lives. This book is, in large part, about the nature of these shifts. If it is, indeed, the case that a growing number of people, from intelligence analysts to citizens, are facing the prospect of unprecedented access to mediated forms of information, then it is worth exploring the ways in which people are adjusting to a changing understanding of how information is treated in a data-saturated world. Unsurprisingly, one of the characteristic responses to the perceived surfeit of information has been the cultivation of techniques for cutting through the information clutter - shortcuts for managing large amounts of information without necessarily having to delve into, engage with, or even understand it.

These techniques vary greatly according to one's position with respect to the database: data miners, for example, have access to resources for storing and sorting large quantities of data that are not available to the typical worker or consumer. Nevertheless, the data miner and the Web surfer are united by a common logic - the need to make sense of a welter of information for the purposes of decision-making. The following chapters will explore a range of diverse responses to the challenge of making sense of information in an era of data surfeit - one in which traditional models of representation and comprehension are called into question not just by the sheer volume of data, but by a reflexive awareness of its incompleteness: its partiality.

These approaches to the challenges posed by information overload range across disparate realms of social practice but share a unifying thread: the attempt to find a shortcut that bypasses the need to comprehend proliferating narrative or referential representations, whether these are in the form of descriptive data, first-person accounts, or expert analysis. The range of approaches covered in this book is meant to be indicative, rather than exhaustive, and includes the following: data mining and predictive analytics (which automate information processing and displace explanation with correlation); sentiment analysis (which purports to translate emotional response and individual opinions into machine readable data that can bemined); prediction markets (which replace credentialed expertise with aggregate demand and calls this wisdom); body language analysis (which privileges immediate bodily reactions over the vagaries of narrative content) and neuro-marketing (a form of body language analysis that requires special equipment).

These strategies for cutting through the information clutter vary widely in terms of the resources and techniques they draw- on, not least because managing large amounts of data can be an expensive and resource intensive proposition. At the same time, they are united not just by the problem they address - how- to make sense of more data than can be fully understood or absorbed (or, and I will argue that this is a related development, how- to bypass the contrived character of representation) - but also by the solution they envisage: an attempt to bypass or short-circuit the problem of comprehension and the forms of discursive, narrative representation upon which it relies. This might sound at first like a somewhat opaque formulation, but it is one that will become clearer with the help of the examples and case studies that follow. Because information is crucial to the functioning of any society - and widespread access to information is an important aspect of a democratic society - the shifting information environment has important consequences for questions of power and politics. Thus, the following chapters will consider the societal implications of a new- information landscape in which only the few- have access to the

infrastructure for storing and making sense of large amounts of data. It will also consider the political implications of the challenges to traditional models of sense-making posed by a reflexive aw-areness of the partial character of mediated forms of representation.

The Changing Landscape of Information and Power

Once upon a time, in an era of relative media and data scarcity, the political control of information relied upon attempts to define and reinforce dominant narratives that accorded with the interests of those in power. Karl Marx and Friedrich Engels's famous formulation in The German Ideology captured this version of ideological control: "The ideas of the ruling class are in every epoch the ruling ideas ... The class which has the means of material production at its disposal, has control at the same time over the means of mental production ... therefore, as they rule as a class and determine the extent and compass of an epoch, it is self-evident that they do this in its whole range, hence among other things rule also as thinkers, as producers of ideas. This understanding of the relationship of ideas to power meant that attacks on dominant interests relied at least in part on challenges to the dominant understandings of the world upon which they depended. Similarly, economic control of information meant securing the most accurate and up-to-date information about prices and the variables likely to affect them. In still another register, police control of information meant targeting wTongdoers: finding the evidence to identify, catch, and prosecute lawbreakers.

In an era of information glut, however, new strategies of control emerge alongside these: in the political realm, information control over information no longer necessarily depends upon sustaining a dominant narrative; in the financial realm, as in that of policing and security, data collection leads to large-scale strategies of correlation, prediction, and pre-emption that would have been impossible in the pre-digital era. This shift, to the extent that it accurately characterizes a changing relationship between ways of knowing and forms of power, heralds a reconfiguration of our understanding of the political implications of challenges to dominant narratives - of the efficacy of "speaking truth to power." It also augers a changed understanding of the role played by data in managing markets and securing the population - themes that will be taken up in subsequent chapters.

Consider an example from the political realm, in which the proliferation of narratives and counter-narratives, of fact-checking and critiques of fact-checking, can all work to multiply the available accounts of reality to the point that it becomes difficult to adjudicate between them based on the constantly moving evidence. The George W. Bush administration relied on a proliferating tangle of multiple and conflicting narratives to manage the revelation that US troops in the initial stages of the Iraq invasion had failed to secure the huge weapons cache at the Al QaQaa facility - a site that the International Atomic Energy Agency (IAEA) had repeatedly warned the administration about, describing it as "the greatest explosives bonanza in history."2 The revelation of the missing explosives, coming as it did in the midst of the 2004 presidential campaign, might have been devastating to Bush, whose administration had, despite repeated warnings and its alleged goal of discovering "weapons of mass destruction," apparently allowed some 380 tons of high-grade explosives, ideal for the purposes of concealed, portable bombs, to fall into enemy hands, providing ample armaments for an extended and violent resistance.

The way the administration handled the revelation, which it had tried to keep under wTaps by preventing the IAEA from inspecting the site, was instructive: rather than providing a "dominant" narrative of what had happened, it did its best to exploit the fog of war to throw- up a series of often contradictory explanations. This might be described, following the philosopher Slavoj Zizek's invocation of Freud, as the "borrowed kettle" alibi of power. The term refers to the multiplication of contradictory- narratives refuting apparent facts: confronted with the fact that a borrow-ed kettle was returned with a hole in it, the person accused of breaking it responds with several mutually contradictory excuses: "there was already a hole when I borrowed it; the hole wasn't there when I returned it; I didn't even borrow- the kettle. Such forms of narrative multiplication have become a hallmark of the media strategy of what might be described as the postmodern right for handling political debates that they appear to be losing, such as that over climate change: global warming does not exist; even if it does exist, it is not caused by man-made activity; if there is global warming it could have beneficial effects (longer growing seasons, etc.); the world is actually getting cooler, etc.

Social Science K of Deliberation

Framework Links to Social Science

Their framework argument is worse than our K—it's not just unfalsifiable but fails every standard of social theory

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

Falsifiability is probably the **single most intransigent issue** in getting normative theory and empirical research to speak to one another in the realm of deliberative theory. Several problems conspire to make deliberative theory elusive in this respect. For some theorists, deliberation is simply defined as intrinsically good. Obviously, such a claim renders empirical research irrelevant (see, e.g., Stokes 1998). But even without the assumption of intrinsic goodness, more complex problems hinder the interaction between empirical studies and political theory.

It is difficult to envision an empirical test that might produce evidence construed by theorists and empiricists alike as disconfirming the claims of deliberative theory. This is because deliberation falls short on many of the standards deemed essential to good social science theory, at least as the theory is currently construed. Beyond the general issue of falsifiability, deliberative theory falls short of meeting three requirements for productive social theory that are enumerated in **virtually any textbook**:

1. clearly defined concepts;
2. specification of logical relationships among concepts within the theory;
3. consistency between hypotheses and evidence accumulated to date.

It is, of course, unfair to criticize a normative theory for lacking the characteristics required of productive social science theory. But criticism is not my main purpose. Instead, I want to take seriously the admonition that the two subfields should talk to one another. To make a dialogue possible, this normative theory must be translated into the terminology of empirical social science and must then be subjected to the standards of theory testing within the social science tradition. It is crucial to address these three problems in order to accumulate useful empirical evidence on the potential of deliberative democracy.

Social scientists generally define "theory" as a set of interrelated statements intended to explain and/or make predictions about some aspect of social life. Toward those ends, a good theory is supposed to have well-defined constructs of general theoretical interest. It is supposed to describe logical associations among these constructs (which are most often causal associations), and it should allow for connections between the theoretical constructs and observable entities. When theories cannot meet these three criteria, they are generally unproductive in advancing our understanding of the phenomenon of interest.2

What happens when empirical researchers attempt to translate deliberative theory into these terms? First, as Thompson points out, they discover a great deal of conceptual ambiguity as to what should qualify as deliberation. Moreover, the definitions offered by theorists frequently conflate causes (criteria defining deliberation) and effects (its beneficial consequences). Second, the tests of deliberative theory offered to date typically do not develop well-specified explanations for the relationships between deliberation and its many proposed benefits. Third, deliberative theory is inconsistent with much of what is already known about political discourse in group contexts. Many, though not all, of the hypotheses that flow from the deliberative framework are not well-grounded in either previous theory or empirical evidence.

Their framework arguments fail every social scientific test

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

Although it may seem desirable to let a thousand flowers bloom in this regard, if we cannot agree on what the independent variable is, we cannot hope to systematically evaluate its impact. Interestingly, the number of conceptions of deliberation is surpassed perhaps only by the number of versions of social capital, another concept that has intrigued both theorists and empiricists. Perhaps a certain amount of conceptual ambiguity is inherent in extremely rich concepts. Whatever the cause, the lack of agreement about what constitutes deliberation makes it extremely difficult for empirical researchers to address the claims of normative theory. How can one safely assert that deliberation has occurred when there are no necessary and sufficient conditions routinely applied to this concept? For those who study political discourse as it occurs in real-world contexts, how can one decide if the type of discourse that transpired qualifies?

For theorists, this lack of agreement and uneven stipulation of definitions is less troubling. But for those who want to know whether deliberation produces its promised benefits before they sink millions of dollars of foundation money into encouraging more of it, the uncertainty is problematic indeed. Thompson's (2008) review of what should and should not qualify according to normative theory illustrates a desire not to exclude, but in so doing renders deliberation a far less useful concept for empirical research than it might be. For example, Thompson suggests that ordinary political discussion should be distinguished from the decision-oriented talk that constitutes deliberation. But this argument is seemingly contradicted by the subsequent suggestion that "maintaining this distinction should not be taken to imply that other forms of discussion are somehow less worthy of a place in deliberative democracy, but we can more clearly retain the connection to the central aim of deliberative theory if we treat those other activities as part of a larger deliberative process, rather than instances of deliberation per se." Likewise, Thompson suggests that although like-minded discussion does not qualify as deliberation, "[T]hat is not to say that discussion among like-minded people cannot contribute to deliberative democracy."

Empirical researchers attempting to test deliberative theory can be forgiven for wanting to **bang their collective heads against a wall** in reaction to definitions of this kind. What does it mean to say that something is not part of deliberation but is part of the larger deliberative process? And if one theorist's version of normative theory includes the requirement of consensus decision-making whereas another's does not, then how do social scientists design studies that address the implications of deliberative theory?

It is commonly claimed that empirical studies do not fully embrace deliberative theory, and of course this statement is entirely correct. No study could include all criteria invoked by all theorists collectively, and to do so would violate even other theorists' conceptualizations of deliberation. Thus, the conversation between theorists and empiricists is next to impossible if one aims to produce research that can be used to decide whether to pursue deliberation at all, or whether such practices need refinement in order to work beneficially. The common problem faced by empirical researchers is that when benefits are not found from a given conceptualization of deliberation in a particular study, the null findings are as easily attributed to the operationalization of deliberation as to the theory itself.

Given this state of affairs, it is difficult to envision disconfirming evidence that would be widely accepted as such.

Their framework impact doesn't meet the falsifiability standard

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

The dialogue between political theorists interested in deliberative democracy and those who study deliberative democracy empirically has been strained at best. As Thompson (2008) describes in this volume, both groups seem to realize that they have much to gain from one another, yet frustration remains on both sides due to our inability to accept one another's assumptions and even to understand one another's terms. Indeed, for many political scientists, reading theorists' accounts of deliberative democracy can be aggravating. On the one hand, many of the assertions seem to cry out for empirical verification. On the other hand, much of the empirical work in this vein has been deemed irrelevant to the theory of deliberative democracy by political theorists.

Excellent reviews of this literature have been provided elsewhere (in addition to Thompson's article, see also Ryfe 2005, Delli Carpini et al. 2004, Mendelberg 2002). My purpose here is to delve deeper into the conversation—or lack thereof—between theory and empirical research in this important area to see what progress might be made. In contrast to Thompson, I approach this dilemma from the perspective of empirical social scientists who want to test the posited beneficial consequences of deliberative theory. The general question before us as empirical researchers is: How can we take what has been, by its origins, a normative theory and turn it into an empirically testable theory?

I begin with an overview of the problems involved in constructing deliberative democratic theory in terms that satisfy the requirements for a productive and testable social theory. A great deal of the difficulty in this conversation results from definitions of deliberative democracy that are too broad and that effectively insulate the theory from falsification. Falsifiability—the possibility of refutation—is held to be essential to the scientific method because it offers the possibility of scientific progress: Faulty theories will encounter refuting evidence and will be discarded in favor of other theories. Philosophers of science consider falsifiability an essential requirement for a theory to be deemed scientific (see Popper 1963); some go so far as to say that unfalsifiable hypotheses are meaningless. As I describe below, unfalsifiable aspects of deliberative theory translate into concrete obstacles that prevent testing and improving the theory.

Lack of an ideal speech situation makes their framework claim non falsifiable

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

The fact that the ideal conditions do not exist introduces a painful circularity into studies that attempt to test whether deliberation produces any of the benefits that are theoretically predicted. If negative evidence is produced by a study that attempts to look at the consequences of deliberation, such evidence is easily dismissed because the discussion in question did not meet all of the necessary and sufficient conditions to qualify as deliberation. Once again, deliberative theory is rendered unfalsifiable.

Debate is not Deliberation

Debate the opposite of public deliberation—their model causes spectatorship, partisan infighting, competitiveness, and bad citizenship

KADLEC AND FRIEDMAN 2009 (Alison and Will, Center for Advances in Public Engagement, "Beyond Debate Impacts of Deliberative Issue Framing on Group Dialogue and Problem Solving," Occasional Paper No. 4, http://www.publicagenda.org/files/pa_cape_paper4_beyonddebate.pdf)

The purpose of debate is to win an argument through persuasion, and it is therefore premised on the assumption that there is a clear right answer that will be revealed through the force of the better argument. Because debate is fundamentally competitive, it is a combative mechanism for information distribution and is therefore better suited to a spectatorial model of public life in which citizens stand on the sidelines and watch "experts" battle two sides of an issue in an effort to win the public over to one side or the other. It is easy to see how a consumer model of citizenship might thrive under these circumstances but is it really best for our democracy that citizens are reduced to spectators and consumers of prepackaged decisions? Is it not reasonable to expect that the soaring levels of dissatisfaction and disengagement that tend to characterize public life (even during heady political times like these) might be directly connected to this model of information distribution which both underscores the public's exclusion from important public decision-making processes and exacerbates the widespread feeling among citizens that the public is always being manipulated by leaders and the media?

In a society as complex as ours, public deliberation might be viewed as a therapeutic alternative to the consumer/spectator model of politics that seems to only amplify people's sense of alienation from public life. While debates are entertaining to watch and can, in moderation, serve a useful purpose in the American political landscape by helping people differentiate their choices, deliberation operates on a very different set of principles about how people can and should be able to encounter and navigate complex political issues.

Whereas debate is competitive and spectatorial, public deliberation is collaborative and is focused on solving shared problems. As such, it assumes that many people have many pieces of the answer and is therefore fundamentally about listening to understand different points of view and new ideas and discovering new options for addressing a problem.

Upgrade Deliberation and Active, Engaged Citizenship

Having issues framed for deliberation, rather than persuasion, is important because many of the issues we face in our communities and in our nation are highly complex and laden with difficult trade-offs that can be hard to uncover, unpack and get a handle on. This is where the principles of deliberation come in by helping people consider a variety of solutions and approaches and then develop common ground around those approaches together. But it is important to understand that deliberation is not a goal, it is a strategy and tool for overcoming hostile dead-end partisan rhetoric, for ending deadlock, and for helping citizens become vital partners in public problem solving.

A2: Your Fault for Broadening

The aff's claimed benefits for deliberation violate their theoretical basis—attempting to account for both fairness and portable skills makes the benefits of deliberation untestable

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

Theorists are loath to exclude many kinds of political talk from the deliberative framework; in fact, the trajectory has been toward progressively greater inclusiveness, incorporating emotional as well as rational appeals, informal speech as well as rule-bound discourse, and so forth. This very openness delays progress in understanding deliberation's consequences. If the deliberative umbrella is too broad, then it is not clear how deliberative theory can be differentiated from any of dozens of other theories. Indeed, much of the literature cited in overviews of evidence on deliberation does not purport to be about deliberation so much as about persuasion, social interaction, **procedural fairness**, etc. (see, e.g., Delli Carpini et al. 2004). Nor is it clear what a given confirmation or disconfirmation says about deliberative theory. A more narrowly specified independent variable might better serve progress toward understanding how to achieve the ends sought by advocates of deliberation.

A2: Some Kinds of Deliberation Better than Others

Their argument amounts to "good deliberation is good"—it's circular and untestable

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

In short, my quarrel is not with how theorists have chosen to define deliberation but with the fact that the concept itself is a moving target. If every theorist's definition is somewhat different from the next, then it is impossible to study deliberation in a way that theorists collectively find relevant to their work. Upon encountering an unsupportive (or supportive) finding, it is far too easy to dismiss it as uninformative because the deliberation that took place in that particular study did not satisfy all of the prerequisites offered collectively by deliberative theory, even if it did satisfy some theorists' definitions.

The solution that theorists have generally offered is not a clear definition of this phenomenon but an evaluative distinction between "good" deliberation and "bad" deliberation. If we grade the many forms of deliberation along a continuous scale from good to bad, then we can predict that more beneficial consequences will result from good deliberation than from bad. To the extent that good deliberation actually brings about more of the beneficial consequences than bad deliberation, we can conclude that deliberation is delivering the benefits that the theory promises. The more that political discourse approaches the ideal of equal opportunities to speak, for example, the more it will bring about the proposed benefits. The more reason-giving that occurs, the more valuable should be the consequences of this activity. Fishkin (1995, p. 41) calls this continuum "incompleteness":

When some citizens are unwilling to weigh some of the arguments in the debate, the process is less deliberative because it is incomplete in the manner specified. In practical contexts, a great deal of incompleteness must be tolerated. Hence, when we talk of improving deliberation, it is a matter of improving the completeness of the debate and the public's engagement in it, not a matter of perfecting it…

It is unclear, however, at what point a process of this kind is so "incomplete" as to be irrelevant to the study of deliberation. Moreover, the logic behind the idea of a continuum of predictions is not as simple as it first appears. For example, should bad deliberation merely produce fewer beneficial effects than good deliberation? Or should bad deliberation produce deleterious effects, such that bad deliberation is worse than no deliberation at all? Moreover, are some evaluative standards more important than others, such that no beneficial consequences should be expected unless some minimal conditions are first met?

Because so many different criteria have been proposed for the deliberative ideal, using evaluative standards is unfortunately no easier than establishing clear conceptual criteria. In practice, good deliberation is often defined as deliberation that produces the desired consequences outlined in the theory. This circularity makes it impossible to use this approach to evaluate the claims of deliberative theory.

And their combination of link and impact arguments exacerbates this

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

A related confounding of cause and effect manifests itself in two different kinds of claims involving deliberation and its consequences. The more obviously difficult situation is when the independent variable (deliberation) is defined in terms of its hypothesized effects. As Elster (1998, p. 9) notes, empiricists tend to be interested in "whether and when the empirically identifiable phenomenon of discussion has good results, rather than to define it such that it is intrinsically desirable." Theorists are more likely to treat deliberation as something to promote rather than evaluate. As Fearon (1998, p. 63) notes, to facilitate meaningful empirical claims about deliberation, "we should keep distinct (a) arguments for why more deliberation would be a good thing and (b) arguments that in effect define deliberation or 'deliberative democracy' so that these entail good things."

A2: Portable Skills

Their link arguments and portable skills impacts are separate research questions—this doesn't meet the standards of social science and good research shows that procedural rules aren't necessary to solve their impact

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

A second source of confusion in understanding the consequences of deliberation is studies that "test" deliberative theory by focusing on the extent to which political discourse meets some set of qualifications. Based on such assessments, some scholars infer various benefits from the quality of the discussion. Just as an analysis of the content of a political advertisement tells us nothing about its effects on voters, the content of deliberation tells us nothing about whether it changes its participants in the directions theorists hope. More importantly, this confusion means that those claiming to "test" or "evaluate" deliberative theory are often testing completely different hypotheses. For example, some of the "tests" of deliberative theory identified by Thompson (2008) are examinations of whether political discussion in a particular time or place meets the standards to be considered deliberative. Does the discussion involve reason-giving, equal participation, and so forth? Other studies also reviewed as empirical tests of deliberative theory evaluate whether, once discussion does meet one or more standards for deliberation, it produces any of its theoretically claimed benefits.

These are two very different research questions, and their conclusions are logically independent of one another. A given instance of political discourse might meet all of a given set of requirements for deliberation and yet still not produce the benefits that have been assumed. Likewise, political discourse might not meet the criteria for deliberation but still produce some of the beneficial consequences claimed by deliberative theory. For example, in my social network studies (see Mutz 2002), I find that exposure to cross-cutting political discourse produces greater tolerance and greater awareness of rationales for oppositional political views. These effects result from exposure to oppositional political views even without all the trappings of deliberative interaction. In our study of political discussions in the American workplace, Jeff Mondak and I similarly find that people are influenced in the direction of political tolerance and greater awareness of the rationales for oppositional views simply by listening to their coworkers talk about their political views (Mutz & Mondak 2006). No one would call such experiences deliberation; participation in the conversation is not even necessary. Yet understanding the kinds of benefits that derive from simply listening to others is central to understanding the benefits of the deliberative process as a whole (Mutz & Mondak 2006, Mondak & Mutz 2006).

A2: Echo Chamber, Education, Tolerance

Education, the echo chamber argument, and tolerance are all wrong—debate isn't key to any of them

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

For example, the kind of direct, face-to-face exchange that traditionally characterizes deliberation need not occur in order for people to become better informed. There are undoubtedly easier, far less expensive means of producing that end than hosting a deliberative poll, as successful information campaigns have demonstrated (see, e.g., Klingemann & Roemmele 2007). Moreover, enhancing the depth of understanding of one's own position relative to others' probably does not require a public forum; it happens commonly in private settings as well. If one wants to enhance mutual respect among those of opposing views, then civility is probably a requirement for the discourse to be effective, but requiring that the group reach a consensus seems superfluous to this particular goal. If one envisions Table 1 as a matching game, in which everything on the right must be matched to one or more factors on the left, then we have a primitive middle-range theory generator for purposes of deliberative theory.

A2: Info Processing/Education/Tolerance

Debate does not change preexisting opinions or promote tolerance

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

Within political science, the most commonly investigated source of bias in processing new information is the person doing the processing. Deliberative theory typically assumes that people come to the table with opinions and that they are willing to justify those views publicly in a way that brings people's views closer together rather than increases conflict. The problem with this assumption is that people with different pre-existing opinions and partisan orientations are unlikely to respond the same way to a given argument, regardless of its inherent rationality and appeal.

In a deliberative encounter, given the requirement of respectful attention, we should assume that people will not be able to selectively expose themselves to different types of information. Unfortunately, people may still selectively interpret the implications and importance of new information, typically so that it does not threaten their initial predispositions. In the earliest empirical studies of the impact of information on mass opinion, Campbell et al. (1960, p. 133) noted, "Identification with a party raises a perceptual screen through which an individual tends to see what is favorable to his partisan orientation." Subsequent research has accentuated the importance of this original observation. The now extensive literature on selective processing of information calls into question the idea that deliberation, through the force of rational argument, will gradually bring people closer together and make mutually agreeable compromise possible (see Bartels 2002, cf. Gerber & Green 1998, 1999). When new information enters an environment, opinionated citizens tend to adjust their views in the same general direction, but they seldom converge—even when the new information seems to have obviously unidirectional implications for the issue at hand. Of course, open-mindedness is also a prerequisite in some definitions of deliberation, which might seem to eliminate the potential for this problem. But so long as people hold initial opinions on an issue, as is true of most issues worth discussing among the public, their information processing is likely to be influenced by them. People need not be closed-minded and dogmatic in order for biased processing to be problematic.

A2: Policymaking

There's no internal link between better deliberation and better policymaking

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

Whether social scientists like it or not, deliberative encounters are inevitably social situations. Whenever people interact with one another, they will inevitably have many motives beyond simply the desire to reach the best policy position. They also want to be perceived as likable and smart, for example. Models of political reasoning must consider that political reasoning is often motivated by goals other than accuracy (e.g., Taber et al. 2001).

Most organizers of deliberative events go to great lengths to assure us that the information provided is valid and unbiased toward any particular outcome, but faith in the deliberative enterprise rests on believing that organizers and moderators have somehow overcome their own biases and also counteracted social psychological biases among their participants. Their efforts to ensure more deliberative group dynamics are admirable, yet many possible dynamics are unlikely to be recognized based on casual observation. And even when people are motivated purely by a desire to reach the best, most accurate conclusion with their fellow deliberators, they are still subject to conscious and unconscious biases as they process what they hear. These biases call into question whether the process of persuasive argumentation will necessarily lead to a better outcome. For example, if one person claims to have a larger number of arguments than another, he or she will be more persuasive, even when both people in fact give the same number of arguments (see Petty & Cacioppo 1981, Chaiken 1987). In addition, even if everyone in the deliberative encounter views one another as equal in status, it is likely that some will attribute their views or arguments to entities of higher status who are not present (e.g., God), thus making it impossible for the argument to stand solely on the force of its own merit (see, e.g., Petty & Cacioppo 1981).

A2: Ev from Debate People

Evidence from debate people should be ignored—it's necessarily biased

MUTZ 2008 (Diana, Department of Political Science and Annenberg School, University of Pennsylvania, "Is Deliberative Democracy a Falsifiable Theory?" Annual Review of Political Science Vol. 11: 521-538)

It is in some ways unfortunate that deliberative theory is a cause célèbre for its advocates, as well as an important social theory. I say this not because I anticipate that it will necessarily have negative effects on democracy when implemented, but rather because once a phenomenon acquires such a head of steam as the deliberative democracy movement has, it seldom slows down for purposes of advancing scientific understanding. Instead, there is a rush to implement deliberative encounters willy-nilly, because advocates genuinely believe that its consequences must, of necessity, be beneficial. Just as drug companies cannot be counted on to publicize the negative side effects of their drugs, advocates—whether individuals or large organizations—who have invested huge amounts of time, energy, and money into organizing and promoting deliberation are not likely to be the first to perceive, let alone publicize, any shortcomings. Thus, whether the consequences of deliberation are, in fact, consistently beneficial or not, without careful, methodical study, we will not know why in either case.

Attention has now turned to large-scale, institutional implementation of deliberative practices. These projects are not oriented around the best possible research designs for purposes of understanding what deliberation can and cannot deliver so much as they are designed to spread an already accepted practice as widely as possible. I think this kind of action is premature.

US =/= Democracy

Illusion of Democracy Turn (A2: Warming, Antipolitics)

Their faith that debate can change policy is exploited to support corporate power—participation in traditional democracy is a trap, and the very worst factions are already in charge

MEDIA LENS 2014 (Media Lens is a media watchdog group based in the UK, "The Illusion of Democracy," Dissident Voice, December 19, http://dissidentvoice.org/2012/12/the-illusion-of-democracy/)

In an era of permanent war, economic meltdown and climate 'weirding', we need all the champions of truth and justice that we can find. But where are they? What happened to trade unions, the green movement, human rights groups, campaigning newspapers, peace activists, strong-minded academics, progressive voices? We are awash in state and corporate propaganda, with the 'liberal' media a key cog in the apparatus. We are hemmed in by the powerful forces of greed, profit and control. We are struggling to get by, never mind flourish as human beings. We are subject to increasingly insecure, poorly-paid and unfulfilling employment, the slashing of the welfare system, the privatisation of the National Health Service, the erosion of civil rights, and even the criminalisation of protest and dissent.

The pillars of a genuinely liberal society have been so weakened, if not destroyed, that we are essentially living under a system of corporate totalitarianism. In his 2010 book, Death of the Liberal Class, the former New York Times reporter Chris Hedges notes that:

The anemic liberal class continues to assert, despite ample evidence to the contrary, that human freedom and equality can be achieved through the charade of electoral politics and constitutional reform. It refuses to acknowledge the corporate domination of traditional democratic channels for ensuring broad participatory power. (p. 8)

Worse, the liberal class has "lent its voice to hollow acts of political theater, and the pretense that democratic debate and choice continue to exist." (pp. 9-10)

This pretense afflicts all the major western 'democracies', including the UK, and it is a virus that permeates corporate news reporting, not least the BBC. For example, the BBC's political editor Nick Robinson has a new book out with the cruelly apt title, 'Live From Downing Street'. Why apt? Because Downing Street is indeed the centre of the political editor's worldview. As he explains in the book's foreword:

My job is to report on what those in power are thinking and doing and on those who attempt to hold them to account in Parliament. (Added emphasis).

Several observations spring to mind:

1. How does Nick Robinson know what powerful politicians are thinking?

2. Does he believe that any discrepancy between what they really think and what they tell him and his media colleagues is inconsequential?

3. Why does the BBC's political editor focus so heavily on what happens in Parliament? What about the wider spectrum of opinion outside Parliament, so often improperly represented by MPs, if at all? What about attempts in the wider society to hold power to account, away from Westminster corridors and the feeble, Whip-constrained platitudes of party careerists? No wonder Robinson might have regrets over Iraq, as he later concedes when he says:

The build-up to the invasion of Iraq is the point in my career when I have most regretted not pushing harder and not asking more questions. (p. 332).

4. Thus, right from the start of his book Robinson concedes unwittingly that his journalism cannot, by definition, be 'balanced'.

But, of course, corporate media professionals have long propped up the illusion that the public is offered an 'impartial' selection of facts, opinions and perspectives from which any individual can

derive a well-informed world view. Simply put, 'impartiality' is what the establishment says is impartial.

The journalist and broadcaster Brian Walden once said: 'The demand for impartiality is too jealously promoted by the political parties themselves. They count balance in seconds and monitor it with stopwatches.' (Quoted, Tim Luckhurst, 'Time to take sides', Independent, July 1, 2003). This nonsense suggests that media 'impartiality' means that one major political party receives identical, or at least similar, coverage to another. But when all the major political parties have almost identical views on all the important issues, barring small tactical differences, how can this possibly be deemed to constitute genuine impartiality?

The major political parties offer no real choice. They all represent essentially the same interests crushing any moves towards meaningful public participation in the shaping of policy; or towards genuine concern for all members of society, particularly the weak and the vulnerable.

The essential truth was explained by political scientist Thomas Ferguson in his book Golden Rule (University of Chicago Press, 1995). When major backers of political parties and elections agree on an issue -– such as international 'free trade' agreements, maintaining a massive 'defence' budget or refusing to make the necessary cuts in greenhouse gas emissions – then the parties will not compete on that issue, even though the public might desire a real alternative.

US media analyst Robert McChesney observes:

In many respects we now live in a society that is only formally democratic, as the great mass of citizens have minimal say on the major public issues of the day, and such issues are scarcely debated at all in any meaningful sense in the electoral arena. (McChesney, Rich Media, Poor Democracy, The New Press, 2000, p. 260).

As the Washington Post once noted, inadvertently echoing Ferguson's Golden Rule, modern democracy works best when the political "parties essentially agree on most of the major issues". The Financial Times put it more bluntly: capitalist democracy can best succeed when it focuses on 'the process of depoliticizing the economy.' (Cited by McChesney, ibid., p. 112).

The public recognises much of this for what it is. Opinion polls indicate the distrust they feel for politicians and business leaders, as well as the journalists who all too frequently channel uncritical reporting on politics and business. A 2009 survey by the polling company Ipsos MORI found that only 13 per cent of the British public trust politicians to tell the truth: the lowest rating in 25 years. Business leaders were trusted by just 25 per cent of the public, while journalists languished at 22 per cent.

And yet recall that when Lord Justice Leveson published his long-awaited report into 'the culture, practices and ethics of the British press' on November 29, he made the ludicrous assertion that "the British press – I repeat, all of it – serves the country very well for the vast majority of the time."

That tells us much about the nature and value of his government-appointed inquiry.

The Flagship Of Liberal Journalism On The Rocks

Damning indictments of the liberal media were self-inflicted by its vanguard newspaper, the Guardian, in two recent blows. First, consider Decca Aitkenhead's hostile interview with Wikileaks co-founder Julian Assange in which he is described as a "fugitive" who has been "holed up" in the Ecuadorian embassy in London for six months. Aitkenhead casts doubts over his "frame of mind", with a sly suggestion that he might even be suffering from "paranoia". She claims Assange "seems more like an in-patient than an interviewee […]. If you have ever visited someone convalescing after a breakdown, his demeanour would be instantly recognisable. Admirers cast him as the new Jason Bourne, but in these first few minutes I worry he may be heading more towards Miss Havisham."

He "talks in the manner of a man who has worked out that the Earth is round, while everyone else is lumbering on under the impression that it is flat." Aitkenhead continues: "It's hard to read his book without wondering, is Assange a hypocrite – and is he a reliable witness?" Indeed "some of his supporters despair of an impossible personality, and blame his problems on hubris."

Aitkenhead asks him "about the fracture with close colleagues at WikiLeaks" and wants him to "explain why so many relationships have soured". She gives a potted, one-sided history of why the relationship between the Guardian and Wikileaks "soured", saying dismissively that "the details of the dispute are of doubtful interest to a wider audience".

The character attack continues: "The messianic grandiosity of his self-justification is a little disconcerting" and "he reminds me of a charismatic cult leader". Aitkenhead concludes: "The only thing I could say with confidence is that he is a control freak."

The hostile, condescending and flippant tone and content contrast starkly with the more respectable treatment afforded to establishment interviewees such as Michael Gove, Michael Heseltine, Christopher Meyer and Alistair Darling. Aitkenhead almost fawns over Darling, then the Chancellor:

His dry, deadpan humour lends itself to his ironic take on the grumpy old man, which he plays with gruff good nature. […] He reminds me of childhood friends' fathers who seemed fearsome until we got old enough to realise they were being funny.

Darling says that "I was never really interested in the theory of achieving things, just the practicality of doing things", Aitkenhead sighs:

One might say this has been Darling's great strength. The pragmatic clarity made him a highly effective minister… But it may well also be his weakness – for at times he seems almost too straightforward, even high-minded, for the low cunning of political warfare.

Sometimes people would approach the Chancellor in public and demand that he fix the economy. Darling recalls that one chap accosted him at a petrol station:

I know it's to do with oil prices – but what are you going to do about it? People think, Well, surely you can do something, you are responsible – so, of course, it reflects on me.

Aitkenhead asks him sweetly: "Is it painful to be blamed so personally?"

Two days after the Guardian's hit job on Julian Assange, it was followed by the paper's low-key announcement of its public poll for person of the year: Bradley Manning, the US soldier suspected of leaking state secrets to Wikileaks. The implication of the Guardian's grudging note was that Manning had only won because of "rather fishy voting patterns":

Manning secured 70 percent of the vote, the vast majority of them coming after a series of @Wikileaks tweets. Project editor Mark Rice-Oxley said: It was an interesting exercise that told us a lot about our readers, our heroes and the reasons that people vote.

Although the short entry appeared in the Guardian's online news blog, there was no facility for adding reader comments, thus avoiding any possible additional public embarrassment. Perhaps the paper is mortified that it has been shown up by Wikileaks and Manning for not doing its job of holding power to account.

As Jonathan Cook, a former Guardian journalist, wrote last year:

The Guardian, like other mainstream media, is heavily invested – both financially and ideologically – in supporting the current global order. It was once able to exclude and now, in the internet age, must vilify those elements of the left whose ideas risk questioning a system of corporate power and control of which the Guardian is a key institution.

So much for the British flagship of liberal journalism then.

Climate Betrayal And Deceptions

One of the biggest failures of the liberal class has been its inability to see, far less challenge, the inherently destructive and psychopathic nature of corporations.

We once wrote to Stephen Tindale, then executive director of Greenpeace UK, and asked him why they did not address this in their campaigning:

Let us see Greenpeace (and other pressure groups) doing more to oppose, not so much what corporations do, but what they are; namely, undemocratic centralised institutions wielding illegitimate power. (Email, January 7, 2002)

Ignoring or missing the point, Tindale replied:

We will continue to confront corporations where necessary […] we are an environmental group, not an anti-corporate group. We will therefore work with companies when we can do so to promote our campaign goals. (Email, January 28, 2002)

Corporate Watch has pointedly asked of nongovernmental organisations, such as Greenpeace: "Why are NGOs getting involved in these partnerships?" One important factor, it seems, is "follow the leader". Corporate Watch notes:

For many NGOs, the debate on whether or not to engage with companies is already over. The attitude is "all the major NGOs engage with companies so why shouldn't we?' (Corporate Watch, 'What's Wrong with Corporate Social Responsibility?', 2006, p. 2).

The sad reality is that Greenpeace and other major NGOs accept the ideological premise that the corporate sector can be persuaded to act benignly. To focus instead on the illegitimate power and inherent destructive nature of the corporation is a step too far for today's emasculated 'pressure groups', whether they are working on environmental protection, human rights or fighting poverty.

Adding to the already overwhelming evidence of corporate power protecting itself at almost any cost, a recent book titled Secret Manoeuvres in the Dark (Pluto Books, 2012) exposes the covert methods of corporations to evade democratic accountability and to undermine legitimate public protest and activism. Using exclusive access to previously confidential sources, Eveline Lubbers, an independent investigator with SpinWatch.org, provides compelling case studies on companies such as Nestlé, Shell and McDonalds. "The aim of covert corporate strategy", she observes, "is not to win an argument, but to contain, intimidate and ultimately eliminate opposition."

Lubbers also points out that dialogue, one of the key instruments of "corporate social responsibility", is exploited by big business "as a crucial tool to gather information, to keep critics engaged and ultimately to divide and rule, by talking to some and demonizing others." Lubbers' book, then, is yet another exposure of corporate efforts to prevent civil society from obtaining real power.

And yet virtually every day comes compelling evidence showing how disastrous this is for humanity. A new scientific report this month reveals that global carbon emissions have hit a record high:

In a development that underscores the widening gap between the necessary steps to limit global warming and the policies that governments are actually putting into place, a new report shows that global carbon dioxide (CO2) emissions will likely reach a record high of 35.6 billion tonnes in 2012, up 2.6 percent from 2011.

This is a disaster for climate stability. Meanwhile, a new study based on 20 years of satellite observations shows that the planet's polar ice sheets are already melting three times faster than they were in the the 1990s.

In September, senior NASA climate scientist James Hansen had warned of a "planetary emergency" because of the dangerous effects of Arctic ice melt, including methane gas released from permafrost regions currently under ice. "We are in a planetary

emergency",, said Hansen, decrying "the gap between what is understood by scientific community and what is known by the public."

As ever, the latest UN Climate Summit in Doha was just another talking shop that paid lip service to the need for radical and immediate action in curbing greenhouse gas emissions in the face of climate chaos.

The failure of the liberal class to rein in, or seriously challenge, corporate power is typified by this appalling gap between climate change rhetoric and reality. The rhetoric is typified by the political call to keep the average global temperature rise to under 2 degrees Celsius by 2100. The appalling reality is that the rise is likely to be in the region of 4-6 deg C (but potentially much higher if runaway global warming kicks in with the release of methane). This gap – actually a chasm of likely tragic proportions – is graphically depicted by climate scientist Professor Kevin Anderson of Manchester University in a recent powerful and disturbing presentation.

Anderson cites an unnamed 'very senior political scientist' who often advises the government. This adviser says:

Too much has been invested in two degrees C for us to say it is not possible. It would undermine all that has been achieved. It would give a sense of hopelessness that we may as well just give in.

Anderson also reports that on the eve of the UN Climate Summit in Copenhagen in 2010, he had a 20-minute meeting in Manchester with Ed Miliband, then the of Secretary of State for Energy and Climate Change. Miliband told Anderson:

Our position is challenging enough. I can't go with the message that two degrees C is impossible – it's what we've all worked towards.

Anderson also relates that he attended a Chatham House event where the message from both "a very senior government scientist and someone very senior from an oil company" – which he strongly hinted was Shell – was this: "[We] think we're on for 4 to 6 degrees C but we just can't be open about it."

Anderson warns that this deception is "going on all the time behind the scenes" and "that somehow we can't tell the public" the truth. The consequences could be terminal for large swathes of humanity and planetary ecosystems.

In short, we desperately need to hear the truth from people like Kevin Anderson, Julian Assange and Bradley Manning.

To return to Chris Hedges on "the death of the liberal class":

The liberal class is expected to mask the brutality of imperial war and corporate malfeasance by deploring the most egregious excesses while studiously refusing to question the legitimacy of the power elite's actions and structures. When dissidents step outside these boundaries, they become pariahs. Specific actions can be criticized, but motives, intentions, and the moral probity of the power elite cannot be questioned. (Hedges, op. cit., pp. 152-153)

and he warns:

We stand on the verge of one of the bleakest periods in human history, when the bright lights of civilizations will blink out and we will descend for decades, if not centuries, into barbarity. The elites, who successfully convinced us that we no longer possessed the capacity to understand the revealed truths presented before us or to fight back against the chaos caused by economic and environmental catastrophe, will use their resources to create privileged little islands where they will have access to security and goods denied to the rest of us. (p. 197)

We must have the vision to imagine that, however bleak things appear now, things can change: if we put our minds to it and work together.

Anarchy Alt

Playing government doesn't teach us good portable skills, but our K does—modeling direct action and the refusal of state authority is a better means of coping with violence and aggression

S.E.C. 1998 (Spunk Editorial Collective, "Section J—What Do Anarchists Do?" Last Modified June 5 http://www.spunk.org/library/intro/faq/sp001761.txt)

The kinds of activity outlined in this section are a general overview of anarchist work. It is by no means exclusive as we are sure to have left something out. However, the key aspect of *real* anarchist activity is *direct action* - self-activity, self-help, self-liberation and solidarity. Such activity may be done by individuals (for example, propaganda work), but usually anarchists emphasis collective activity. This is because most of our problems are of a social nature, meaning that their solutions can only be worked on collectively. Individual solutions to social problems are doomed to failure (for example green consumerism). In addition, collective action gets us used to working together, promoting the experience of self-management and building organisations that will allow us to activity manage our own affairs. Also, and we would like to emphasis this, it's *fun* to get together with other people and work with them, it's fulfilling and empowering.

Anarchists do not ask those in power to give up that power. No, they promote forms of activity and organisation by which all the oppressed can liberate themselves by their own hands. In other words, we do not think that those in power will altruistically give up that power or their privileges. Instead, the oppressed must take the power *back* into their own hands by their own actions. We must free ourselves, no one else can do it for [us] use.

As we have noted before, anarchism is more than just a critique of statism and capitalism or a vision of a freer, better way of life. It is first and foremost a movement, the movement of working class people attempting to change the world. Therefore the kind of activity we discuss in this section of the FAQ forms the bridge between capitalism and anarchy. By self-activity and direct action, people can change both themselves and their surroundings. They develop within themselves the mental, ethical and spiritual qualities which can make an anarchist society a viable option. As Noam Chomsky argues, "Only through their own struggle for liberation will ordinary people come to comprehend their true nature, suppressed and distorted within institutional structures designed to assure obedience and subordination. Only in this way will people develop more humane ethical standards, 'a new sense of right', 'the consciousness of their strength and their importance as a social factor in the life of their time' and their capacity to realise the strivings of their 'inmost nature.' Such direct engagement in the work of social reconstruction is a prerequisite for coming to perceive this 'inmost nature' and is the indispensable foundations upon which it can flourish." [preface to Rudolf Rocker's _Anarcho-Syndicalism_, p. viii]

In other words, anarchism is not primarily a vision of a better future, but the actual social movement which is fighting within the current unjust and unfree society for that better future and to improve things in the here and now. Without standing up for yourself and what you believe is right, nothing will change. Therefore anarchists would agree whole-heartedly with Frederick Douglass (an Abolitionist) who stated that:

"If there is no struggle, there is no progress. Those who profess to favour freedom and yet deprecate agitation are people who want crops without plowing up the ground. They want rain without thunder and lightning. That struggle might be a moral one; it might be a physical one; it might be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and never will. People might not get all that they work for in this world, but they must certainly work for all they get."

In this section of the FAQ we will discuss anarchist ideas on struggle, what anarchists actually (and, almost as importantly, do not) do in the here and now and the sort of alternatives anarchists try to build within statism and capitalism in order to destroy them. As well as a struggle against oppression, anarchist activity is also struggle for freedom. As well as fighting against material poverty, anarchists combat spiritual poverty. By resisting hierarchy we emphasis the importance of *living* and of *life as art.* By proclaiming "Neither Master nor Slave" we urge an ethical transformation, a transformation that will help create the possibility of a truly free society.

This point was argued by Emma Goldman after she saw the defeat of the Russian Revolution by a combination of Leninist politics and capitalist armed intervention:

"the ethical values which the revolution is to establish must be initiated with the revolutionary activities. . . The latter can only serve as a real and dependable bridge to the better life if built of the same material as the life to be achieved" [_My Further Disillusionment in Russia_] In other words, anarchist activity is more than creating libertarian alternatives and resisting hierarchy, it is about building the new world in the shell of the old not only with regards to organisations and self-activity, but also within the individual. It is about transforming yourself while transforming the world - both processes obviously interacting and supporting each other - "the first aim of Anarchism is to assert and make the dignity of the individual human being." [Charlotte Wilson, _Three Essays on Anarchism_, p. 17]

Public = No Influence

The issues we train for won't even be considered—the policy agenda is not shaped by the public

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

Of course our findings speak most directly to the "first face" of power: the ability of actors to shape policy outcomes on contested issues. But they also reflect—to some degree, at least—the "second face" of power: the ability to shape the agenda of issues that policy makers consider. The set of policy alternatives that we analyze is considerably broader than the set discussed seriously by policy makers or brought to a vote in Congress, and our alternatives are (on average) more popular among the general public than among interest groups. Thus the fate of these policies can reflect policy makers' refusing to consider them rather than considering but rejecting them. (From our data we cannot distinguish between the two.) Our results speak less clearly to the "third face" of power: the ability of elites to shape the public's preferences. 49 We know that interest groups and policy makers themselves often devote considerable effort to shaping opinion. If they are successful, this might help explain the high correlation we find between elite and mass preferences. But it cannot have greatly inflated our estimate of average citizens' influence on policy making, which **is near zero**.

What do our findings say about democracy in America? They certainly constitute troubling news for advocates of "populistic" democracy, who want governments to respond primarily or exclusively to the policy preferences of their citizens. In the United States, our findings indicate, the majority does not rule—at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites or with organized interests, they generally lose. Moreover, because of the strong status quo bias built into the U.S. political system, even when fairly large majorities of Americans favor policy change, they generally do not get it.

Data Supports Economic Domination

Data supports our claim

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

Each of these theoretical traditions has given rise to a large body of literature. Each is supported by a great deal of empirical evidence—some of it quantitative, some historical, some observational—concerning the importance of various sets of actors (or, all too often, a single set of actors) in U.S. policy making. This literature has made important contributions to our understanding of how American politics works and has helped illuminate how democratic or undemocratic (in various senses) our policy making process actually is. Until very recently, however, it has been impossible to test the differing predictions of these theories against each other within a single statistical model that permits one to analyze the independent effects of each set of actors upon policy outcomes.

Here—in a tentative and preliminary way—we offer such a test, bringing a unique data set to bear on the problem. Our measures are far from perfect, but we hope that this first step will help inspire further research into what we see as some of the most fundamental questions about American politics.

The central point that emerges from our research is that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while mass-based interest groups and average citizens have little or no independent influence. Our results provide substantial support for theories of Economic-Elite Domination and for theories of Biased Pluralism, but not for theories of Majoritarian Electoral Democracy or Majoritarian Pluralism.

Our ev is based on a huge, unique data set

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

What makes possible an empirical effort of this sort is the existence of a unique data set, compiled over many years by one of us (Gilens) for a different but related purpose: for estimating the influence upon public policy of "affluent" citizens, poor citizens, and those in the middle of the income distribution.

Gilens and a small army of research assistants 29 gathered data on a large, diverse set of policy cases: 1,779 instances between 1981 and 2002 in which a national survey of the general public asked a favor/oppose question about a proposed policy change. A total of 1,923 cases met four criteria: dichotomous pro/con responses, specificity about policy, relevance to federal government decisions, and categorical rather than conditional phrasing. Of those 1,923 original cases, 1,779 cases also met the criteria of providing income breakdowns for respondents, not involving a Constitutional amendment or a Supreme Court ruling (which might entail a quite different policy-making process), and involving a clear, as opposed to partial or ambiguous, actual presence or absence of policy change. These 1,779 cases do not constitute a sample from the universe of all possible policy alternatives (this is hardly conceivable), but we see them as particularly relevant to assessing the public's influence on policy. The included policies are not restricted to the narrow Washington "policy agenda." At the same time—since they were seen as worth asking poll questions about—they tend to concern

matters of relatively high salience, about which it is plausible that average citizens may have real opinions and may exert some political influence. 30

A2: Empirically Does Change Stuff

There's only a correlation between public opinion and change because there's correlation in issue support—on things that the elite opposes, deliberative democracy has no effect

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

What are we to make of findings that seem to go against volumes of persuasive theorizing and much quantitative research, by asserting that the average citizen or the "median voter" has little or no independent influence on public policy?

As noted, our evidence does not indicate that in U.S. policy making the average citizen always loses out. Since the preferences of ordinary citizens tend to be positively correlated with the preferences of economic elites, ordinary citizens often win the policies they want, even if they are more or less coincidental beneficiaries rather than causes of the victory. There is not necessarily any contradiction at all between our findings and past bivariate findings of a roughly two-thirds correspondence between actual policy and the wishes of the general public, or of a close correspondence between the liberal/conservative "mood" of the public and changes in policy making. 42 Our main point concerns causal inference: if interpreted in terms of actual causal impact, the prior findings appear to be largely or wholly spurious.

Further, the issues about which economic elites and ordinary citizens disagree reflect important matters, including many aspects of trade restrictions, tax policy, corporate regulation, abortion, and school prayer, so that the resulting political losses by ordinary citizens are not trivial. Moreover, we must remember that in our analyses the preferences of the affluent are serving as proxies for those of truly wealthy Americans, who may well have more political clout than the affluent, and who tend to have policy preferences that differ more markedly from those of the average citizens. Thus even rather slight measured differences between preferences of the affluent and the median citizen may signal situations in which economic-elites want something quite different from most Americans and they generally get their way.

A final point: Even in a bivariate, descriptive sense, our evidence indicates that the responsiveness of the U.S. political system when the general public wants government action is severely limited. Because of the impediments to majority rule that were deliberately built into the U.S. political system—federalism, separation of powers, bicameralism—together with further impediments due to anti-majoritarian congressional rules and procedures, the system has a substantial status quo bias. Thus when popular majorities favor the status quo, opposing a given policy change, they are likely to get their way; but when a majority—even a very large majority—of the public favors change, it is not likely to get what it wants. In our 1,779 policy cases, narrow pro-change majorities of the public got the policy changes they wanted only about 30 percent of the time. More strikingly, even overwhelmingly large pro-change majorities, with 80 percent of the public favoring a policy change, got that change only about 43 percent of the time.

Even if changes have happened in line with public opinion, they aren't causally connected

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

Before we proceed further, it is important to note that even if one of our predictor variables is found (when controlling for the others) to have no independent impact on policy at all, it does not follow that the actors whose preferences are reflected by that variable—average citizens, economic elites, or organized interest groups of one sort or another—always "lose" in policy decisions. Policy making is not necessarily a zero-sum game among these actors. When one set of actors wins, others may win as well, if their preferences are positively correlated with each other.

It turns out, in fact, that the preferences of average citizens are positively and fairly highly correlated, across issues, with the preferences of economic elites (refer to table 2). Rather often, average citizens and affluent citizens (our proxy for economic elites) want the same things from government. This bivariate correlation affects how we should interpret our later multivariate findings in terms of "winners" and "losers." It also suggests a reason why serious scholars might keep adhering to both the Majoritarian Electoral Democracy and the Economic-Elite Domination theoretical traditions, even if one of them may be dead wrong in terms of causal impact. Ordinary citizens, for example, might often be observed to "win" (that is, to get their preferred policy outcomes) even if they had no independent effect whatsoever on policy making, if elites (with whom they often agree) actually prevail.

But net interest-group stands are not substantially correlated with the preferences of average citizens. Taking all interest groups together, the index of net interest-group alignment correlates only a non-significant .04 with average citizens' preferences! (Refer to table 2.) This casts grave doubt on David Truman's and others' argument that organized interest groups tend to do a good job of representing the population as a whole. Indeed, as table 2 indicates, even the net alignments of the groups we have categorized as "mass-based" correlate with average citizens' preferences only at the very modest (though statistically significant) level of .12.

A2: Use our Privilege for Good

Training an elite still isn't good—the rich and powerful don't represent the public interest on policy decisions

GILENS AND PAGE 2014 (Martin Gilens is Professor of Politics at Princeton University; Benjamin I. Page is Gordon S. Fulcher Professor of Decision Making at Northwestern University, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," Perspectives on Politics 12.3, September)

A possible objection to populistic democracy is that average citizens are inattentive to politics and ignorant about public policy; why should we worry if their poorly-informed preferences do not influence policy making? Perhaps economic elites and interest-group leaders enjoy greater policy expertise than the average citizen does. Perhaps they know better which policies will benefit everyone, and perhaps they seek the common good, rather than selfish ends, when deciding which policies to support.

But we tend to doubt it. We believe instead that—collectively—ordinary citizens generally know their own values and interests pretty well, and that their expressed policy preferences are worthy of respect. 50 Moreover, we are not so sure about the informational advantages of elites. Yes, detailed policy knowledge tends to rise with income and status. Surely wealthy Americans and corporate executives tend to know a lot about tax and regulatory policies that directly affect them. But how much do they know about the human impact of Social Security, Medicare, food stamps, or unemployment insurance, none of which is likely to be crucial to their own well-being? Most important, we see no reason to think that informational expertise is always accompanied by an inclination to transcend one's own interests or a determination to work for the common good.

Switch-Side Bad

***Switch Side = Political Apathy

Switch-side debate causes uncertainty and indecision—this undermines political participation

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

There are at least two potential social psychological mechanisms that might explain why cross-cutting exposure discourages participation. First, political inaction could be induced by the ambivalence that crosscutting exposure is likely to engender within an individual. If citizens are embedded in networks that do not reinforce their viewpoints, but instead tend to supply them with political information that challenges their views, then cross-cutting exposure could make people uncertain of their own positions with respect to issues or candidates and therefore less likely to take political action as a result. In this case it is an internal (i.e., intrapersonal) conflict that drives the effect. The chain of events leading to suppressed participation would be one in which crosscutting exposure leads to ambivalent attitudes, which, in turn, reduce political participation because these individuals do not have views that are sufficiently definite or strong to motivate them to political action.

No character has been criticized more for inaction that results from ambivalence than Hamlet, prince of Denmark. Laurence Olivier's Hamlet is described simply as "The Prince who could not make up his mind."35 Readers of Shakespeare's famous play have long criticized Hamlet for indecisiveness and they frequently cite that quality as the cause of his ultimate downfall. His failure to kill Claudius when he had the chance resulted in a tragic series of events that ultimately led to his own death, as well as his mother's. And yet, could one not also argue that his extensive weighing of the pros and cons was entirely appropriate under the circumstances?

Hamlet is painfully self-aware, as are many of Shakespeare's characters. His motives may be noble, but his constant questioning of himself is not practical, and he experiences a paralyzing ambivalence as a result. His slow, plodding, deliberative decision-making process produces ambivalence and leads him to act "with wings as swift as meditation," which is to say, not swiftly at all. Although Hamlet might be the poster child for the deliberative process, the price he pays for it is enormous.

In today's popular parlance, the very kind of deliberation that theorists advocate – one that involves careful, time-consuming weighing of pros and cons, and exposure to a multitude of different viewpoints – is popularly chided as the antithesis of action. As H. Ross Perot put it, "I come from an environment where, if you see a snake, you kill it." He contrasts this with the more deliberative style of corporations such as General Motors (GM): "At GM, if you see a snake, the first thing you do is go hire a consultant on snakes. Then you get a committee on snakes, and then you discuss it for a couple of years. The likely course of action is – nothing. You figure the snake hasn't bitten anybody yet, so you just let him crawl around on the factory floor."36

Switch-side debate hurts political participation by causing delayed opinion formation

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

Yet another way in which cross-pressures have been argued to reduce political participation is by promoting political decisions that are made later in the campaign season. If people make up their minds late in an election year, then there is little time or opportunity for actively partisan forms of political participation. In Figure 4.4, I illustrate the effects of network composition on the timing of presidential voting decisions. Although this figure looks a bit more complicated, it tells essentially the same story: Exposure to dissonant views encourages people to make up their minds later in the campaign, thus discouraging partisan forms of participation. As illustrated, the probability of deciding only the week before the election increases dramatically with greater cross-cutting exposure in a person's network. The likelihood of deciding on a presidential candidate early, say, before or during the summer, declines with more heterogeneous networks. Although this measure does not directly tap participation, it seems inevitable that the later one makes up his or her mind, the less time there is for actively promoting one's political preferences.

In Figure 4.5 I draw on a completely different national survey and find that intent to vote in a preelection survey – this time in the 1996 presidential election – is also negatively influenced by cross-cutting exposure. Even employing the more stringent controls included in this survey (political knowledge in addition to political interest), crosscutting exposure encourages respondents to report no intent to vote.

Drawing on every available indicator of political participation across these two surveys, my findings are extremely consistent: crosscutting exposure discourages political participation. This pattern of findings is extremely robust even when using two different surveys with slightly different ways of tapping network composition and participation. Nonetheless, given that these are cross-sectional surveys, it is important to acknowledge the possibility that causality might run in the reverse direction. In other words, is it plausible that participating in political activities could lead one to associate with a more politically homogeneous group of contacts? If so, political participation could be causing lower levels of cross-cutting exposure rather than the other way around. If we call to mind highly social participatory acts such as working on a campaign or attending a fundraiser, it is relatively easy to entertain this possibility; through these kinds of events, one would make more like-minded friends and acquaintances. But for the remaining, equally supportive results, reverse causation makes no theoretical sense. The act of voting or of making up one's mind does not require a person to be in a particular social environment that is more conducive to like-minded views. Thus the bulk of evidence so far supports the idea that the degree of supportiveness of people's social environments influences their likelihood of political participation.

Switch-side debate is bad even when it succeeds—exposure to other a broad range of political views causes paralysis and decreases political participation

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In all of the examples provided thus far, the potential for negative outcomes from cross-cutting exposure occurs strictly because cross-cutting contact has failed to produce the benefits that deliberative theory and intergroup contact ideally might bring about. For example, if conversations across lines of difference lead participants to polarize their positions, then cross-cutting exposure has failed to create mutual understanding. Likewise, if contact among members of different groups only brings about greater animosity and resentment, then communication across lines of difference has failed to improve intergroup relations. In contrast, this chapter examines the potential for an undesirable outcome that occurs as a result of the success of cross-cutting exposure in giving people of opposing perspectives an understanding of the other side's views. Although the potential benefits of these interactions have received the most attention, other theories hint at the potential drawbacks of cross-cutting exposure for one democratic outcome in particular – political participation.

Within political science, exposure to those of differing political perspectives was first raised to the status of a research concept under the designation of "cross-pressures." Authors of some of the earliest research on American elections voiced concerns about the potentially deleterious impact of cross-pressures, defined as the presence of people of inconsistent political views within an individual's social environment.

Interest in cross-pressures emerged from observations of how neatly social groups mapped onto patterns of voting behavior. Indeed, one of the strongest messages conveyed by the earliest studies of American voting was the theme of the social homogeneity of political behavior. For example, The People's Choice and Voting both stressed the social nature of political decisions. As Lazarsfeld and colleagues put it, "More than anything else, people can move other people."6 They suggested that the social nature of political decisions extended not only to decisions about whether to vote for a given candidate, but also whether to participate politically at all.

The People's Choice was the first study to suggest that conflicts and inconsistencies among the factors influencing an individual's vote decision had implications for political participation: "Whatever the source of the conflicting pressures, whether from social status or class identification, from voting traditions or the attitudes of associates, the consistent result was to delay the voter's final decision."7 Subsequently, The American Voter more directly acknowledged the problem of conflicting considerations surrounding political choices:

The person who experiences some degree of conflict tends to cast his vote for President with substantially less enthusiasm . . . and he is somewhat less likely to vote at all than is the person whose partisan feelings are entirely consistent. . . . If attitude conflict leaves its impress on several aspects of behavior it also influences what we will call the individual's involvement in the election.8 Likewise, Carl Hovland and colleagues suggested that the effects of conflicting social influences included "vacillation, apathy, and loss of interest in conflict-laden issues."9

Cross-pressures that arise from affiliations with multiple groups had long been of interest in political sociology as well. Georg Simmel, for example, attributed great significance to the "web of affiliations" and cross-cutting social relationships, as contrasted with the highly homogeneous kinship-linked groups of an earlier era.10 Those exposed to a variety of different cues about appropriate social and political attitudes were assumed to experience discomfort as a result, though arguments about how people resolved this discomfort varied.

More specifically, these researchers surmised that personal associations that push individuals in opposite directions with respect to their vote choices cause a kind of paralysis with respect to political action. Given that most people have multiple roles and identities, perfect consistency in the social environment is unlikely, and citizens are likely to experience varying degrees of dissonance when their various group identities have contradictory implications for their political preferences. So, for example, a citizen who was white-collar and Catholic or Protestant and a member of a labor union was assumed to be crosspressured by this combination of religion and occupational status.

Switch side debate discourages political participation—exposure to opposite views causes quiescence and alienates others

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A careful reading of social movement research suggests that these connective structures encourage participation particularly when they form connections among those of similar opinion and experience. As Tarrow suggests, social networks "lower the costs of bringing people into collective action, induce confidence that they are not alone, and give broader meaning to their claims."[33] Thus it is not social networks per se that are implicated in stimulating collective action, but networks among those who are like-minded.

But how exactly do interpersonal networks draw people into political activism? And why might heterogeneous networks discourage participation as the cross-pressures hypothesis first suggested? The social movement literature casts this theory in a rational choice framework: "Refusing to respond to the call of network partners means the potential loss of all the benefits provided by that tie. These benefits may be social, such as friendship or social honor, but they may also be material. Network ties provide people with jobs, and people are tied, in network fashion, to those with whom and for whom they work."[34] Although one cannot deny that material benefits often flow from social networks, it requires a highly cynical disposition to believe that all or even the majority of people's social ties are formed on the basis of a desire for material gain. That people want to be liked by others and that they value their reputations are sufficient to explain why members of their social networks might be effective in recruiting them into participation.

Extending this argument about the social costs of not cooperating with a network partner to understand what happens when people are surrounded by those of opposing views provides a logical explanation for why heterogeneity in the network should promote avoidance of political involvement. Declaring one's self partisan in a politically mixed setting puts one in a position to potentially alienate others. Doing the same in a homogeneous environment does not incur these same risks.

Echo Chamber Good

Echo chambers are good—forcing us to debate alternative political perspectives undermines political participation and activism

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

If it were possible to control the characteristics of people's social environments in order to maximize democratic ends, what kind of political network would we ideally want them to have? Should the people in it be politically like-minded or have opposing political views? Those who are quick to jump to the conclusion that this network should be one that exposes people to as many oppositional political views as possible need to consider the quandary posed by the findings in Chapters 3 and 4: the kind of network that encourages an open and tolerant society is not necessarily the same kind that produces an enthusiastically participative citizenry. To be sure, some individual characteristics, such as levels of education and political knowledge, have uniformly positive implications for what is generally valued in democratic citizens. But the political diversity of people's face-to-face networks is unfortunately not one of these.

Political diversity poses a disturbing dilemma for images of the ideal citizen. There is a tendency to see the model citizen as a neat package of characteristics that all fit comfortably together into a single composite portrait. The problem is that for some very logical reasons these characteristics do not cohere. We want the democratic citizen to be enthusiastically politically active and strongly partisan, yet not to be surrounded by like-minded others.We want this citizen to be aware of all of the rationales for opposing sides of an issue, yet not to be paralyzed by all of this conflicting information and the cross-pressures it brings to bear. We want tight-knit, close networks of mutual trust, but we want them to be among people who frequently disagree. And we want frequent conversations involving political disagreement that have no repercussions for people's personal relationships. At the very least this is a difficult bill to fill.

I can offer no easy solution to this dilemma. No amount of torturing the data made it possible for me to explain away this contradiction, nor to contrive a reason why the practical impact of this contradiction should be benign. Nonetheless, if the nature of people's political networks involves important trade-offs, it seems incumbent upon political theorists to take this into account. How do we conceptualize a framework within which a diverse array of ordinary people can live their lives as both active citizens in a competitive political system and as compassionate fellow human brings? In particular, how do we accomplish this when one of these tasks appears to require strong partisanship and confident judgments about which political choices are right and which are wrong, while the other requires a tolerant, openminded, nonjudgmental nature, and an acceptance of people's worth on their own terms, however disagreeable we may find their political views?

There are, of course, times and places in which this determination is not so difficult. When politics becomes extreme enough or so clear-cut that even the most timid are enjoined to take sides, then it is easy to see the good citizen and the good human being as one and the same in their actions. But what is surprising in the United States, given our general lack of politically extreme groups, is just how difficult people nonetheless find it to negotiate their political and apolitical identities. When they are among like-minded others, this is not a problem. But in the company of strangers or those known to be of oppositional views, people find this quite difficult. A highly politicized mindset of "us" versus "them" is easy so long as we do not work with "them" and our kids do not play with their kids. But how do we maintain this same fervor and political drive against "them" when we carpool together?

For the most part, I think we do this by downgrading the importance of politics in our everyday lives. We reconcile these identities by pointing out that politics is merely one of many different

dimensions of who we are as human beings.We avoid head-to-head political discussions in order to maintain the kind of social harmony that we also value. We implicitly, nonconsciously choose a point along a scale forcing a trade-off between a strong political identity that silently (or not so silently) disparages those of opposing views and a more politically diverse social life that is made possible (in part) by its apolitical nature. Those whose identities are more explicitly political will tend to attract and seek out those of like mind. And this camaraderie will further encourage the kind of activism valued by enthusiasts of participatory democracy. Those who do not wear their politics on their sleeves will have more opportunities to hear the other side from others in their environments. But those mixed allegiances, cross-pressures, and (most likely) moderate political positions will come with a reduced likelihood of political activism. The voice of moderation is seldom very loud. And it is difficult, perhaps impossible, to foment political fervor over middle-of-the-road views. Further, although successful deliberation may elicit compromises, these will seldom elicit the cheers and enthusiasm that go along with "beating" the other side.

People within homogeneous networks encourage and reinforce one another in their viewpoints, and this tendency makes activism and fomenting of fervor far easier. Like-minded social environments are ideal for purposes of encouraging political mobilization. "Enclave deliberation," that is, conversation among like-minded people, promotes recognition of common problems and helps individuals spur one another on to collective action.1 For this reason, participation and involvement are best encouraged by social networks that offer reinforcement and encouragement, not networks that demand compromise or that raise the social costs of political engagement. Paradoxically, the prospects for deliberative democracy could be dwindling at the same time that prospects for participation and political activism are escalating.

Switch-Side Hurts Voting

The greater the exposure to the "other side," the less likely we are to vote

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Figure 4.2 summarizes the strength of the relationship between cross-cutting exposure and the likelihood of voting in presidential and congressional elections, after controlling for political interest, strength of partisanship (both Democratic and Republican), education, income, age, sex, frequency of political talk, and size of the person's political discussion network.59 In these data the likelihood of voting is a function of the usual predictors such as high levels of political interest, strong partisanship, education, and the frequency of political discussion. But as shown in Figure 4.2, there is also a sizable and significant negative influence that stems from the extent of cross-cutting exposure in one's personal network. Having friends and associates of opposing political views makes it less likely that a person will vote. This relationship is particularly pronounced for nonvoting in congressional elections, although it also applies to nonvoting in the presidential context. The greater the cross-cutting exposure in the person's network, the more likely he or she is to abstain from voting.

Cross-cutting exposure also demonstrated a negative influence on an index of six participation items similar to the American National Election Studies participation battery. Not surprisingly, a high frequency of talk and large network size encourage recruitment into activities such as donating money to candidates and putting up signs. But here again, as shown in Figure 4.3, cross-cutting exposure is negatively related to participation. The probability that an individual will report not participating in any of these activities steadily increases with higher levels of cross-cutting exposure; in contrast, the likelihood of participating in two or more activities steadily declines. Political activists are likely to inhabit an information environment full of like-minded others who spur them on to additional political activity.

No Spillover

Even if debate is awesome, structured deliberative fora are so rare that it won't spill over to policy change

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Given the difficulties in finding naturally occurring examples of political talk that live up to the high standards of deliberation, some might think it preferable to study carefully constructed public forums, town meetings, or deliberative polls in which the standards of deliberative encounters are at least approximated through extensive advance planning, discussion mediators, rules of engagement, a supply of information and expertise, and so forth. I do not question whether these events have beneficial consequences of various kinds; in fact, my presumption and the preponderance of evidence suggest that they do, particularly for levels of citizen information. But I do question whether such attempts could ever be successfully generalized to large numbers of people and issues. Some see such potential in the Internet, which provides a low-cost means of communicating, but the eventual impact of its use for these purposes remains to be seen.

For most of us, the ideal deliberative encounter is almost otherworldly, bearing little resemblance to the conversations about politics that occur over the water cooler, at the neighborhood bar, or even in our civic groups. The consequences of an ideal deliberative encounter will make little difference if there are few, if any, such exchanges. For this reason I concur with theorists who suggest that everyday talk should receive at least as much theoretical attention as formal deliberation in public arenas designed for these purposes.15

Normal people don't want to listen to your switch-side bullshit—there's no spillover

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

But if everyone is so deliriously enthusiastic about the potential bene- fits of exposing people to oppositional political perspectives, then what exactly is the problem? Given the unusually strong consensus surrounding its assumed value, one would assume this activity to be widespread. Why don't people go home, to church, or to work and discuss politics with their non–like-minded friends or acquaintances?

Social network studies have long suggested that likes talk to likes; in other words, people tend to selectively expose themselves to people who do not challenge their view of the world.30 Network survey after network survey has shown that people talk more to those who are like them than to those who are not, and political agreement is no exception to this general pattern.31 Moreover, many people do not have much desire to engage in political debate to begin with, even the informal variety. Exposure to diverse political viewpoints may be widely advocated in theory, but it is much less popular in actual practice.

In this sense, the extent to which people are exposed to oppositional views demonstrates some of the same patterns as exposure to diversity along other dimensions, such as race and class. While diversity is a much-lauded public goal in the aggregate, few individual people live their everyday lives so as to maximize their exposure to difference.

Discussion Solves

Political discussion solves our turns and the value of switch-side—it's the necessity of the ballot makes debate bad

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

To be fair, although Hibbing and Theiss-Morse make some strong statements about why deliberation per se is a waste of time, they never suggest that all of people's informal conversations about politics are similarly worthless, particularly conversations that take place among those of differing views. In their critique, they are referring primarily to situations in which people must reach a conclusion of some kind as a result of their interactions. In most real world scenarios, the group or dyad does not need to reach a consensus; the talk occurs for its own sake, without any end result in mind.5

SSD = Bad Arguments

Not everything has two sides—switch-side debate encourages unethical and bad arguments

Tannen 2013 (Deborah, University Professor in the Department of Linguistics at Georgetown University. Her recent books include You Were Always Mom's Favorite!: Sisters in Conversation Throughout Their Lives (2009), Talking Voices: Repetition, Dialogue, and Imagery in Conversational Discourse (2nd ed., 2007), and You're Wearing THAT?: Understanding Mothers and Daughters in Conversation (2006). She is currently a fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford University, the argument culture: agonism and the common good, http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00211, LB)

The second form of agonism that characterizes the press is the "everything has two sides" ethic. This sounds at first eminently reasonable. The problem, though, is that most issues have more than two sides–and some have only one. Religion scholar and historian Deborah Lipstadt experienced the fatuousness and destructiveness of this conviction when her book Denying the Holocaust was published. The producers of one television talk show invited her on, but only if she agreed to appear alongside Holocaust deniers. When Lipstadt refused, saying she did not want to provide a platform for the propagation of the very lies her book condemned, the producers challenged, "Don't you think viewers have a right to hear the other side?" Among the tactics deniers successfully employed was taking out ads in college newspapers. The editor of one such newspaper was explicit in explaining why he accepted the deniers' ad: "There are two sides to every issue and both have a place on the pages of any open-minded paper's editorial page." The ability to masquerade as the other side in a debate has resulted in Holocaust denial having more success in the United States than in any other country. This is just one of many problems that result from our overreliance on the "two sides" metaphor. Another is that it creates the impression that both sides are equally valid: for example, when one side, such as scientists providing evidence of global climate change, is "balanced" by a tiny minority of scientists (typically funded by the fossil fuel industry) who deny that claim. A recent interview with the Detroit TV reporter Charlie LeDuff highlighted how the commitment to providing "two sides" can give credence to false information. On the npr show Fresh Air, LeDuff, who had a successful career with both The Detroit News and The New York Times, was asked why he gave up writing for newspapers. Among his comments about the limits of print journalism, he said, "There's this construct, equal credence to what you think the truth is and what's probably false, but they both get some stature." The "two sides" metaphor also creates the appearance of moral equivalence, such as the case where the Unabomber's deranged manifesto was published side by side with the writings of a university professor who was maimed by a bomb he sent. Indeed, so immutable is the assumption that every story must have two sides that some journalists ½nd their stories rejected if they cannot ½nd an opposing side to provide "balance." This parade of agonism has many unfortunate effects on members of society and on the common good. Readers often throw up their hands, concluding that it is impossible to know where the truth lies. It becomes difficult for policy to be informed by research, because ½ndings seem to be questioned as quickly as they are reported. Perhaps most destructively, whereas democracy requires an informed electorate, the argument culture creates the opposite, as more and more people are so alienated by the agonistic rhetoric of political coverage that they cease to listen to it. Indeed, Dr. Andrew Weil recommends that people go on a "news fast" to preserve their equilibrium and mental health. The agonism in politics that I described in the late 1990s has now reached unforeseen heights. In 1996, fourteen senators left Congress voluntarily, an unprecedented event that Norman Ornstein documented in his book Lessons and Legacies: Farewell Addresses from the Senate, a collection of essays by thirteen of the departing senators. Many named the increasing agonism of the Senate as their reason for leaving. Senator Olympia Snowe of Maine, who had been one of the few remaining centrist Republicans, has recently left Congress. In explaining her reasons for leaving, she decried the destructive extremism that has made it impossible to craft legislation, because every vote has become "a take-it-or-leave-it showdown intended to embarrass the opposition." In other words, whereas political campaigns once were staged only in the run-up to elections, we now have campaign tactics year-round, and they

pervade the daily work of governance. The rise of the filibuster is often cited as evidence. In the 1950s, the use of this tactic averaged one per Congress. In the 110th Congress (2007– 2008), it was employed ½fty-two times. A supermajority is now required to pass almost any significant legislation.

A2: Empathy

Switch-side debate causes people to identify with their own side—researching both sides is not good

LILLY 2012 (Emily, Assistant Professor in Biology at the Virginia Military Institute. Her pedagogical research examines active learning strategies to increase student motivation and learning retention in science curricula, "Assigned Positions for In-Class Debates Influence Student Opinions," International Journal of Teaching and Learning in Higher Education 24.1)

In the first semester, most students (83%) agreed with their assigned positions when surveyed one week after the debate. Because pre-debate opinions were not surveyed in those classes, it was not possible to say whether the students just happened to be assigned positions that agreed with their original positions. In this study, the pre-debate surveys showed that the prior opinions of only 41% of students happened to agree with the positions they were later assigned to debate, while after the debates 77% of students agreed with their assigned position. Thus, after the debates students were significantly more likely ($p = 0.0000005$) to agree with their assigned positions. This indicates that some aspect of the debate assignment had a profound influence on their opinions.

The students' tendency to change their opinion to agree with an assigned position is troubling. One of my objectives in using debates was to enable students to make informed decisions on important issues. This may have been the influence behind some shifts in opinion, but the directionality of the shift toward agreement with the assigned position, as opposed to towards either the yes or no position, should not have been so strong were students simply moving to the more compelling argument.

One worry in debates is that students will devote more energy to researching the position with which they agree, and therefore create a stronger argument for themselves. Indeed, prior research has shown that when observing debates, opinions are likely to be strengthened (Sears, 1964), not change. When preparing for a debate in which they will participate, individuals are more likely to seek information that validates their own opinions (Turner et al., 2010), and may even ignore information that contradicts their personal opinions (Bell, 2004). Such behavior in debates serves to reinforce students' existing opinions (Kennedy, 2007). If that were the case in this exercise, students should have reinforced the positions that they held prior to the debate. Instead, they were likely to change positions.

It is possible that the students put more effort into researching the position they were assigned. To prevent this one-sided approach, students were forewarned of the debate format and of the opposing side's position, thus increasing their likelihood to thoroughly research both sides of the issue (Turner et al., 2010). Based on the written assignments they prepared in preparation for the debate, students did research both viewpoints. However, in a future debate, it might be advisable to not assign students to a position prior to the debate. Students would research both positions, and then be assigned to one team or the other only at the beginning of class. This would increase the chances that they would invest equally in their research for both positions.

It is also possible that it was not preparation, but the act of arguing for a certain position, that influenced the students' opinions. The act of debating has been shown to be slightly more effective in changing opinions than other discussion or role-play activities (D'Eon, 2007; Simonneaux, 2001). Additionally, watching peers on their team argue for the assigned position may have been influential as well. Research has shown that modeled opinions are likely to influence subjects to agree with those opinions when the subject sees him/herself as similar to the modeler (Hilmert, Kulik, & Christenfeld, 2006). Additionally, it has been shown that people are more likely to be swayed to agree with opinions that they hear from multiple individuals or that are repeated multiple times (Weaver, Garcia, Schwarz, & Miller, 2007). In our class activity, students spent considerable time (three 15-20 minute sessions) discussing their research and debate strategies within their assigned groups. In these discussions, the assigned position was voiced many times by several different students. When the teams presented their arguments during their debates, each student heard the opposing argument from only one student presenter on that team, and the presentation was typically less than one minute. Thus, students had more exposure in terms of time and numbers of students to their assigned position than to the alternate position. It seems possible that the

experience of arguing and defending a position during the in-class debate was the factor contributing to their opinion change.

Requiring people to switch sides undermines the benefits of debate—people are more likely to believe the side they're on

LILLY 2012 (Emily, Assistant Professor in Biology at the Virginia Military Institute. Her pedagogical research examines active learning strategies to increase student motivation and learning retention in science curricula, "Assigned Positions for In-Class Debates Influence Student Opinions," International Journal of Teaching and Learning in Higher Education 24.1)

Previous research has shown that students may change position after debate. One study found that 23 to 45% of students holding opinions contrary to their assigned debate position changed their views following in-class debates, compared to 22% of students who change opinion to agree with the professor's opinion after a lecture (Gervey, 2009). This indicates that debate could be useful in shaping student opinions. Ideally, after preparing material for both sides of the debate and participating in the two-sided debate, students would be better able to form their own, well-informed, opinions.

However, after one semester, surveys showed a very large portion (83%, n = 90) of students expressed views that agreed with the debate position to which they had been randomly assigned. This indicates that students were not forming new opinions based solely on new material learned during the debate. Instead, the data indicate that students were more likely to take on the position that they argued during the debate, regardless of their initial view.

To explore this finding, a study was conducted using a large lecture course (144 students) of Environmental Science, where student opinions before and after in-class debate were evaluated in light of the debate position to which the student was assigned.

A2: Deliberation Solves Violence

Exposure to differing political views only causes retrenchment and violence

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

And yet, when broadly considered, plenty of evidence points to the potential for negative outcomes as a result of communication across lines of political difference. Most often, this evidence is taken from studies of small groups in which polarization results from bringing those of opposing views together for discussion. If cross-cutting contact produces defensiveness or causes people to dig in their heels and counterargue, they may become all that much more strongly committed to their original positions, thus making further conversation and compromise even more difficult. This same "dark side" has been noted in considerations of the supposed benefits of "deliberation" variously defined. Still other scholars note that violence can and sometimes does erupt when those of differing views come into close contact. The threat of a violent outcome is particularly great when those who have been living in segregated settings are first exposed to those of differing views.

A2: Makes Better Activists

Partisanship and deliberation are mutually exclusive

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

The problem with much of what deliberative democracy asks of participatory democrats is that both of these tasks – activism and deliberation – have been embedded in a single model as simultaneous responsibilities of the individual. For example, Muirhead suggests it is inaccurate to separate the impassioned partisans and the disinterested observers as Mill does. Instead, a given person must serve as both partisan and disinterested observer: "One part of us gives ourselves over to what we intuit, feel, and know – which gives rise to our particular perspective on things. But the giving over might be less than complete, thus preserving an observing self that looks at our own commitment from a distance."13 While this is an extremely attractive possibility in theory, I am skeptical that it could ever occur on a meaningful scale. The detached perspective on one's own views is certainly possible, but its likelihood varies in inverse proportion to the extent of participation. It is important for citizens to have an understanding of the other side, to be aware of legitimate rationales for views other than their own. But is it realistic to expect activists to continually reconsider their preferences?

A2: Stasis

The resolution is not a stasis point—stasis is a retroactive judgment on what set of arguments is important, not a predetermined point of clash

ZEMLICKA AND MATHESON 2014 (Kurt; Calum; PhD candidates at the University of North Carolina at Chapel Hill, "To Make a Desert and Call it Peace: Stasis and Judgment in the MX Missile Debate," Argumentation & Advocacy, Summer)

Apart from our interest in the Reagan administration's justification for the MX program from an argument-level standpoint, the President's report on the topic is significant from a theoretical perspective in that it challenges an understanding of public deliberation that relies on an assumption of the fairly static nature of argumentative clash. Because Congress was both a stakeholder and ultimately the judge of this debate in that it had to authorize the MX program, this study problematizes a tripartite division of public debate constituted of two competitors and a separate judge. The rhetorical construction and presentation of arguments in the tripartite model conceives of a unidirectionality in the rhetorical act, from the stakeholders to the judge, with the former attempting to persuade the latter. Instead, the Congressional decision to approve the program demonstrates a necessary recursivity between the two parties, where the Reagan administration and Congress both acted as stakeholders, but Congress also arranged and invented a decision in its capacity as the agent of judgment. Demonstrating that the rhetoricity inherent in the public debate over the MX program stems from both the stakeholders and the adjudicating body is significant in that it alters what we normally perceive as the preconditions for public debate. Instead of establishing the materially relevant facts of the issue at hand in order to provide a point of stasis for formulating competing positions to facilitate argumentative clash, in this case weighing questions of national security against the goal of nuclear disarmament, the decision rendered by the Congress responds to justifications from both positions to formulate its policy. The strategic maneuver deployed in the MX report thus provides insight into the way stasis points are established in public debates by challenging the understanding that they are determined in advance of, and therefore become the precondition for, public debate. Throughout the course of an argument, a competing mass of issues and values arise. Debates are not organized around preexisting points of stasis but rather such a point is established retroactively by the agent of judgment ratifying a point of contact as if this point of stasis had organized the debate all along.

Stasis is a retroactive construct made in the judgment of a debate, not a preexisting point of contestation

ZEMLICKA AND MATHESON 2014 (Kurt; Calum; PhD candidates at the University of North Carolina at Chapel Hill, "To Make a Desert and Call it Peace: Stasis and Judgment in the MX Missile Debate," Argumentation & Advocacy, Summer)

The call for a renewal of stasis theory presented here implicates more than just debates about arms policy. With an increasingly polarized political climate in the United States' Congress, along with the prevalence of partisan-biased news commentary, it is essential that critics of public policy debates focus their attention not just on the arguments made for a particular policy proposal, but also how that proposal is framed within the American public imaginary. Instead of viewing the point of contestation over controversial policy decisions as a fixed, immutable starting point, scholars of argument would be well served in understanding the dynamic nature of the ways in which arguments are framed and judgment rendered. Most importantly perhaps, is resisting the urge to understand the justifications

for a particular policy as determined in advance of the merits policy itself. Rather, each level of argument is constantly evolving, oftentimes with the merits being used to frame the justification instead of the other way around. Argument scholars would thus be well served in exploring how points of stasis are not necessarily a precondition for policy debates, but rather, the debates themselves serve as the antagonistic grounding from which stasis points are developed.

***A2: More Debate Good ("Try or Die")

Deliberation is worse than no discussion at all—increasing debate leads to worse decisionmaking

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

The obvious inadequacies of voluntary groups have led many theorists to devise mechanisms through which potentially dissimilar people can get together to discuss political issues. We discussed several of these imaginative procedures, including policy juries and deliberative opinion polls, in Chapter 7. In light of the inability of volunteer groups to improve political capital due, we believe, to the fact that such groups do not help members appreciate and deal with diversity, it is perfectly reasonable to attempt to manufacture situations in which deliberation occurs among people who are not particularly alike. Participation in a discussion of policy issues with a random sample of fellow Americans should be a wonderful way to see the different concerns people hold as well as to see the difficulty of pleasing everyone in the group. The instincts of the people who propose such ideas are correct in the abstract. Unfortunately, in specific practice, getting people to participate in discussions of political issues with people who do not have similar concerns is **not a wise move**. The reasons are numerous and usually related to the **difference between deliberation in the ideal and the real worlds**.

To their credit, deliberation theorists are quite candid about the fact that they are describing something other than a realistic exchange. Habermas (1987) uses the phrase "ideal speech situation" and Gutmann and Thompson (1996: 3) explicitly state that "actual deliberation is inevitably defective." But at some point recognition alone becomes insufficient. What good does it do to describe a type of situation that everyone agrees never occurs in the real world?7 The assumption of these scholars seems to be that whereas less-than-ideal speech situations will generate fewer benefits than ideal speech situations, any verbal interaction, however imperfect, is better than nothing. In short, the prevailing assumption is that deliberation is a "no-lose" situation.8

We challenge this assumption and believe that deliberation in the real world can be and often is dangerous, a point recognized previ-ously by others (see Riker 1982; Ackerman 1989) but all too often ignored. As is indicated by the empirical evidence we are about to summarize, real-life deliberation can fan emotions unproductively, can exacerbate rather than diminish power differentials among those deliberating, can make people feel frustrated with the system that made them deliberate, is ill-suited to many issues, and can lead to **worse decisions than would have occurred if no deliberation had taken place**. While inconsistent with the expectations of theorists, all of these findings are right in line with what we reported in Part II. People dislike political disagreements or think them unnecessary. They would rather continue with their comfortable fantasy that all Americans pretty much have the same political interests and concerns than come face-to-face with someone who seems reasonable but who has different interests and concerns. People get frustrated by details and many simply tune out of the exchange because they feel uncomfortable or inadequate discussing politics.

Mutz Prodicts

Mutz uses good methods and accurate data

O'CONNOR 2005 (R.E., National Science Foundation, "Hearing the other side: deliberative versus participatory democracy" (Review), Choice, December)

Mutz (political science and communication, Univ. of Pennsylvania) uses survey data to show that people are most likely to participate in politics if they discuss issues only with people with whom they agree. The author's compelling analysis leads to this starling conclusion, that in practice two important democratic values-active participation and considered deliberation-are seemingly in conflict. The book creatively blends democratic theory with the analysis of national surveys, including data from the National Election Survey and an instrument Mutz designed to explore interpersonal political communications. The book is a primer on how to convey accurately and clearly the subtleties of empirical results. By using references to published articles to satisfy readers who want details of measurement and statistical methods, the author maintains the highest academic standards of transparent scholarship without ruining her engaging story. By exploring the complexities involved in reconciling desires for a tolerantly deliberative political culture with high levels of political participation, the book will stimulate a new research agenda. This is an important book accessible to all levels. Summing Up: Highly recommended. All readership levels.-R. E. O'Connor, National Science Foundation

Deliberative Democracy

Deliberation Hurts Government

Deliberation decreases government legitimacy

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

But Cohen discovers that as soon as the setting is shifted to one in which the decision maker, or allocator, might receive differentiated payoffs depending upon the decision rendered, any salubrious effects of voice vanish and are replaced by "frustration" effects (see also Folger 1977). The evidence is clear that when the allocator and the recipient are in more of a zero-sum relationship, a real danger exists that people will perceive a process permitting voice to be insincere. This only makes sense. Imagine two situations, both involving a person (A) making a decision that benefits A at person B's expense. In one situation, A makes the decision without any input from B. In the other situation, A makes the decision after B has made an impassioned plea for an outcome more beneficial to himself. Is it not likely that B would be less accepting of the outcome in the second situation? After all, B's opportunity to provide input into the decision makes it certain that A was aware of B's plight. A looked B right in the eye and decided against B and for A. Is there any reason to expect that such a situation would produce anything other than frustration effects? In the eyes of participants, the opportunity for voice was obviously nothing but a sham.13

These results are incredibly damaging to Lind and Tyler's (1988) contentions about the beneficial consequences of voice. They try to pass them off by claiming that if Cohen had permitted "stronger voice" in the process, subjects would have been happy. "Even under conditions of severe conflict of interest . . . any relatively strong procedural justice difference will produce higher satisfaction and distributive fairness" (183–4). But they offer no evidence for this contention and it seems more likely to us that stronger voice would lead only to stronger frustrations with a high-handed and selfish decision maker.

Lind and Tyler (1988) also try to refute Cohen's contentions by saying the frustration effect "is a very rare phenomenon indeed" (183) and that frustration effects tend to occur "only when there are other reasons to be suspicious of the procedure" (201). They further claim that people have a "tendency to believe that procedures function as they are said to function" (184). This is the key difference between our position and that of Lind and Tyler. Far from being "rare," we believe that such situations are the norm, certainly in the political arena. People are incredibly suspicious of the motivations of political decision makers. People believe almost every action by members of Congress is produced by selfish desires: to get reelected, to raise campaign money, to get a free trip overseas or some other gift, or to increase the chances of receiving a cushy, well-paying job upon leaving Congress. The accuracy of people's perceptions is not at issue here, only that these negative perceptions of politicians' motives are extremely common. People are always looking for ulterior reasons for the actions of decision makers, and unless heroic constraints are in place (such as those surrounding judges), they assume such base motives are present.

Evidence that voice in nonlegal political settings leads to feelings of less legitimacy can be found in several places, including Tyler's own research on politics. He hypothesizes that the perceived ability to "make arguments to" or to "influence decisions of" a political body (such as Congress) should lead an individual to be more favorable toward that body, but he finds that this relationship never materializes. In fact, the relationship is always negative and sometimes reaches statistical significance (see Tyler 1994; Tyler and Mitchell 1994), suggesting that the greater a person's perceived involvement with a political entity, the less that person tends to like or respect that entity. In standard political situations, then, the research indicates that participation generally leads people to be more frustrated and to view the process and outcome as being less legitimate, not more.

Further evidence that inclusive procedures do not increase and may decrease satisfaction in standard political situations can be found in recent experimental work. As mentioned above, Amy Gangl (2000) created an experimental setting by having respondents read passages describing different styles of congressional process. Some subjects read of a legislative process that was procedurally fair (neutral decision makers, balanced discussion of the issue, and a wide variety of voices included). Others read of a legislative process that was procedurally unfair (self-serving decision makers, combative discussion of the issue, and only one side included). Gangl's results show that, as she predicted, the "neutral, balanced" process markedly increased subjects' perceptions that

the process is legitimate, as did the "non-self-serving decision maker, combative" process.14 But Gangl was perplexed to find that the "people have voice" process elicited no significant increase in perceived legitimacy. In fact, the sign was usually negative. But such a result is perfectly consistent with mounting evidence that voice, whether it be weak (vote) or strong (deliberative), does not make people feel better about political processes. People want neutral, non-self-serving decision makers, and if they can get them without having to participate themselves, they will be happy.

Michael Morrell (1999) presents similar results employing a completely different experimental approach. Rather than having subjects read about a process, Morrell had them actually participate in one of two possible processes. His hypothesis was that "citizens participating in strong democratic procedures will have higher levels of collective decision acceptance than citizens participating in traditional [i.e., weaker] liberal democratic procedures" (302). But he was surprised to discover that the participatory decision-making process did not lead to heightened satisfaction or to perceptions that the process was more legitimate. In fact, in some manifestations of the experiment, the subjects involved in the participatory process saw the process as less legitimate and, accordingly, were less satisfied with it. Morrell accurately concludes that his results "do not support Barber's contention that strong democratic procedures will create greater collective decision acceptance" (310), because "the group using traditional liberal democratic procedures showed greater levels of collective decision acceptance, assumption reevaluation, and group satisfaction than the group using strong democratic procedures" (313). Morrell's attempted explanation for his findings is directly in line with our beliefs. Participatory procedures "require participants to open themselves up in ways with which they may not be comfortable" (317) and "can create an atmosphere of disconnection and dislike. Rather than bringing citizens together, these types of structures of participation can only exacerbate already present divisions" (318). Tali Mendelberg's extremely thorough literature review of the psychological research on the consequences of citizen deliberation in politics comes to a very similar conclusion. Noting that deliberation typically brings inequality and greater conflict, she characterizes the empirical evidence for the benefits of citizen deliberation as "thin or nonexistent" (2002: 4).

More deliberation makes government less efficient

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

On top of all this, people are frustrated by the plodding pace and inefficient nature of government, something largely attributable to deliberation. The central reason for inefficiencies is that democracy requires everyone to have their say. As Stark (1995: 96) puts it, "the more a system values giving everyone a voice . . . the less it can value speed and effectiveness. All those voices have to be heard." So in addition to the other delegitimizing elements of participation, it also is a direct contributor to the governmental inefficiencies people dislike so much.

More deliberation means less government legitimacy

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

Why do people approve of the Supreme Court more than any other political institution? Is it because people are routinely involved in Supreme Court decision making? No. The Court is more insular than any other political institution, and people like it for that very reason. People do not have to participate in or even see the

deliberations of the Court (Hibbing and Theiss-Morse 1995). From the standpoint of preserving public support, Chief Justices Warren and Rehnquist were quite right to fight to keep the press as far away from the Court as possible.15 If someone made a videotape of the justices vigorously debating in conference and showed it to everyone in the nation, people would not feel warmed by the frank sharing of views, whether the exchanges were characterized by reciprocity or not. If anything, deliberation reduces people's satisfaction; it does not increase it. This is true whether they are involved in the deliberation themselves or whether they observe others doing it. The relentlessly open quality of congressional procedures is one of the reasons Congress is among the least liked institutions, political or nonpolitical.

Exclusion Bad

Their attempt to exclude is reflects a sanitized version of the public sphere that can never exist—this myth sustains immense violence worldwide

DeLUCA 2013 (Kevin, Assoc. Prof at U of Utah, "PRACTICING RHETORIC BEYOND THE DANGEROUS DREAMS OF DELIBERATIVE DEMOCRACY: ENGAGING A WORLD OF VIOLENCE AND PUBLIC SCREENS," Argumentation and Advocacy, Winter 2013)

Additionally, this idealized public sphere that Gross (2012) valorizes has never and can never exist, despite the purported concern with "the world of our everyday experience" (p. 141). The mounting modifications of Habermas's work suggest this and Habermas (1989) himself admits as much in discussing the world of new media: "the world fashioned by the mass media is a public sphere in appearance only" (p. 171). [Schudson (1992) makes the case there never was an American public sphere.] There are many reasons for the impossibility of the Habermassian public sphere, with the outlawing of force and the privileging of purified rationality paramount. Gross laments "a public sphere in which rationality is sidelined in favor of alien components that undermine its force" (p. 142). Yet, what is alien? Who decides? The evidence of history, politics, experience, and neurobiology make clear that rationality is inextricably entwined with emotions, forces, violences, and any number of "alien" components. Phiflips (1996) makes the key point that such alien components as dissensus, resistance, and incivility are more vital than the imposed virtues of consensus, rationality, and civility. Finally, even if we grant Habermas that 1700s Europe enacted his public sphere, the historical judgment is grim. Ask the "irrational" indigenous peoples bereft of the benefits of the Enlightenment about the pacifistic nature of the rational West and its deliberative democracies over the past 300 years. Ask the "improper" citizens excluded via force from force-free public spheres. We have ignored Horkheimer and Adomo's (1972) cautionary tale about the dialectic of Enlightenment at the world's peril.

In proselytizing for Habermas's rational public sphere cleansed of rhetorical force. Gross sacrifices rhetoric on the altar of moral idealism. In trying to impose such a vision. Gross perforce performs and obscures the founding act of originary violence at the heart of all moralisms while simultaneously deploring violence. I take the opposite tack. Rhetoric is not a form of moral idealism. Ethics are irrelevant. Dreams of deliberative democracy are dangerous. Rhetoric is force. The rhetorician's task is to understand and deploy forces that transform worlds amidst the cataclysms of our times. It is not to promote a moral vision of an idealized past from which to decry a lacking present. In our essay, contra Gross's (2012) assertion, violence is not important simply because "it gamered media attention" (p. 142); rather, image events (violent or not) are central modes of discourse that work to shatter worldviews and transform conditions of possibflity, opening spaces for thinking and acting differendy (DeLuca & Peeples, 2002; DeLuca, Sun, & Peeples, 2011).

Beyond a shattered Starbucks, engaging violence undermines the comforting myth that violence is rhetoric's obscene Other. Violence is the heart of rhetoric. Blanchott (1992) declares, "All speech is violence, a violence all the more formidable for being secret and the secret center of violence" (p. 42). Zizek (2008) perversely echoes Isocrates, "What if, however, humans exceed animals in their capacity for violence precisely because they speak?" (p. 61). In seeing violence as opposite rhetoric, scholars smugly enable systemic violence, rendering invisible the catastrophic levels of violence inflicted upon plants, animals, people, and ecosystems as part of the normal processes of the techno-industrial capitalist juggernaut that ravages the earth.

A2: Portable Skills

Making our skills portable only further entrenches inequality and magnifies the relative privilege of people in debate—honing these skills disenfranchises and humiliates people who don't have access to them

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

A major problem with deliberation, as people see it, is the inequalities that quickly surface in public discussions, especially given some people's distaste for conflict. The best examples of this come from studies of direct deliberative democracy in action: New England town meetings. Mansbridge's (1983) fascinating account of the events and sentiments surrounding town meetings in the real but fictitiously named New England town of Selby is the most revealing. After observing town meetings, Mansbridge interviewed many of the par-ticipants and concluded that the face-to-face deliberative version of democracy actually "accentuates rather than redress[es] the disadvantage of those with least power in a society" (277). The major reason for this exacerbation is simply variation in people's communication skills. As a retired businessman from Selby put it, "some people are eloquent and can make others feel inferior. They can shut them down. I wouldn't say a word at town meetings unless they got me madder'n hell" (62). Another said, "[W]e have natural born orators, don't we? I think we do. It's just the same as anything else. They carry more than their share of the weight" (83). A farmer had similar sentiments: "There's a few people who really are brave enough to get up and say what they think in town meetings . . . now, myself, I feel inferior, in ways, to other people . . . forty percent of the people on this road that don't show up for town meeting – a lot of them feel that way" (60; see also Eliasoph 1998: ch. 2). All in all, it is difficult to dispute Mansbridge's conclusion that "participation in face-to-face democracies can make participants feel humiliated, frightened, and even more powerless than before" (7).

The fact that deliberation in real-world settings tends to disempower the timid, quiet, and uneducated relative to the loquacious, extroverted, and well schooled is particularly difficult for deliberation theorists to swallow, since much of the theory's original appeal was based on its radical elan. True justice and democracy, the claim went, is possible only with noncoercive public debate. In the real as opposed to theoretical world, this position is patently unrealistic. Nancy Fraser (1989, 1992) and others convincingly point out that Habermas's model of radical, deliberative democracy would produce serious negative consequences for the influence of women and the lower, less-educated classes. For example, drawing on the work of Margolis (1992) and Tannen (1994), Susan Hansen (1997: 75) notes that "the content and style of political discourse is alienating to many women." Habermas himself has realized the error of his ways. His more recent work (1996) supports representative democracy after his early work (1973) was dismissive of anything other than direct popular participation. The chorus in the interest-group pluralism heaven may sing with a decidedly upper-class accent, but in direct deliberation heaven it sings with a decidedly white, male, educated, confident, blowhard accent.

As a result of disparities in elocution and willingness to speak publicly, a widespread perception in Selby is that a small group of people control decisions in the town meetings. The interviewees made countless references to "they." The following remark is typical: "If you don't say what they want to hear you're not even acknowledged. . . . If you don't agree with them, they don't want to hear you" (Mansbridge 1983: 69). Needless to say, when deliberative democracy repeatedly fosters this kind of reaction, it is not increasing the tendency of the people to view the political system as legitimate. If anything, it makes matters worse than would be the case with representative democracy or nondeliberative direct democracy (ballot propositions). Seeing the process up close led people in Selby to conclude that "no one likes each other" or there are too many "personalities involved" or "they get so darned personal at town meeting" (63).

The unwillingness to get involved in conflict leads to a spiral of silence (Noelle-Neumann 1984) in which only a small group of people speaks and the others seem to give their assent but really are scared to participate. Soon, many decide they will not even attend the deliberative sessions. Though systematic figures are difficult to marshal, there is little dispute that attendance at New England town meetings is down sharply across the region. Hampson (1996) notes that in Hampton, Connecticut, there would be 900 people at town meetings in the old days, 200 even a few years ago, and now only 50, with nearly half of them town employees or school board members. He continues: "The highlight of the political year used to be the town meeting where the budget was voice-voted up or down. But for the past five years voters have insisted the Hampton budget be approved via referendum" (2A). It is important to note that it is the ordinary town residents who ended deliberation on this key matter. No evil, aggrandizing power structure took away their opportunity to assemble. Rather, the people of Hampton did not want to meet on this issue, probably for the same reasons the residents of Selby had such negative perceptions of deliberative democracy: too much inequity, too much time wasted, and too much group think. The people were not forced out of deliberative politics, they put themselves out.18

Ethics precedes political skills—teaching us to deliberate without making us better people just means we can manipulate democracy to our own ends

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

John Zaller's (1992) work on survey response casts further doubt on people's ability to give thorough, dispassionate consideration to issues. Zaller's findings follow those of Converse (1964) in suggesting that respondents typically are influenced by information that is most accessible in their minds – usually something that happened recently, not the most compelling and appropriate bit of evidence that may be buried deep in their brains. And there is little reason to believe such a pattern of relying on easily remembered but perhaps tangential information surfaces only when an interviewer happens to be on the telephone. In many circumstances, particularly deliberative ones, people are easily manipulated and are susceptible to points that are not relevant or logically consistent – especially if those events deal with the sensational.

Individual opinions do not become less problematic in the context of deliberative settings. Group environments may even lead to worse decisions (see Janis 1982). We fully agree with Lupia and McCubbins (1998: 226–7) when they write,

were persuasion and enlightenment the same things, deliberative environments would indeed be the ideal solution to the mischiefs of complexity. Regrettably, they are not the same. Deliberation differs from enlightenment when the most persuasive people in a group are not knowledgeable or . . . have an incentive to mislead. . . . The mere construction of a deliberative setting does not guarantee that the cream of the collective's knowledge will rise to the top.

Thoughtful adjustment to previously held beliefs is not common, and when it does happen it is often not the result of reasoned argument and relevant information. As our jury example illustrates, opinions are often altered by irrational, rather than rational, factors. And the example provided is not an aberration. The "most influential book ever written" on jury deliberations concludes that "deliberation changed votes less through the force of reason and more through peer pressure and intimidation" (Abramson 1994: 197, summariz-ing the findings of Kalven and Zeisel 1970: 488). This being the case, the edifying potential of deliberation is unrealized.

A2: Solves Groupthink

Deliberation doesn't solve groupthink

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

Research from Solomon Asch and Muzafer Sherif provides the psychological underpinnings of one problem with the deliberative setting: people's tendency to conform. Asch (1951) and Sherif (1935, 1937) discover in separate experimental studies that people have a strong urge to conform to the group even when minimal pressure is put on group members. Whereas Sherif finds that subjects conform to a group decision when there is no clear right answer, Asch shows that many people conform to a group's obviously wrong decision. Verba (1961: 22) summarizes their findings: "When the opinions of other group members are revealed to the individual, even if no other pressures are applied, he will change his views to conform more closely to that of the group. This takes place even in those cases where the group opinion is not objectively more correct than that of the individual *or is objectively wrong*" (emphasis added). Subsequent research has attempted to clarify how and why conformity works as it does, but the fact remains that people are readily willing to conform in group settings.

A2: Solves Extremism

Deliberation doesn't result in greater understanding or tolerance—it enhances preexisting views

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

Research on polarization effects suggests that group decisions can differ significantly from individual decisions, and not always for the better. According to Fiske and Taylor (1991: 498), "Many people think that groups represent the voice of reason and compromise; decisions made by committee are supposed to be safer than decisions made by individuals. A closer look at group decisions reveals that this is not at all the case." After group deliberation, individuals' attitudes become polarized toward more extreme alternatives. For example, individuals who have a tendency to take more risk will come to a much riskier group decision after discussion. This phenomenon is known as the "risky shift" (Stoner 1961, cited in Fiske and Taylor 1991). Similarly, individuals tending toward caution will make a much more cautious group decision (McCauley et al. 1973). A good example of polarization effects comes from Myers and Bishop (1970), who conducted an experiment on people's racial attitudes. They found that unprejudiced students became more unprejudiced after a group discussion (moving +0.47 on a seven-point scale), whereas prejudiced students became more prejudiced after a group discussion (moving a much greater -1.31 on a seven-point scale). Group discussions affect collective outcomes, but not always for the best.

A2: Better Debate Solves

Even the best debate is worse than no debate

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

Care must be taken not to place too much emphasis on the quality of debate in determining people's satisfaction with the process and outcome. While, as shown by Gangl and also by Funk (2001), people respond more favorably to balanced, civil, constructive debate than to shrill and unbalanced debate, the more interesting point is that when a group being exposed to no debate is included in the experiment, the subjects in that "no-debate" control group accord the greatest legitimacy to the process (Morris and Witting 2001). In other words, people respond more favorably to a process with no debate at all than to one with either civil or not-so-civil debate. People are sending the message that improving the level of political debate is a good idea but getting rid of political debate is a better one.

A2: Empathy

Deliberation makes us less tolerant of opposing views and creates interpersonal conflict

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

Are we as people improved when we deliberate with other people? There is one stream of empirical evidence that appears to be supportive of the argument that face-to-face interaction improves people – or at least makes them behave more sympathetically to others. In Stanley Milgrim's famous experiments on obedience, he found that people were less likely to administer what they thought to be a lethal dose of electricity to another person if they could actually see the person. Compliance was reduced even more if the experimental subject was required to physically push the "victim's" hand onto the electrode plate (Milgrim 1974; see also Tilker 1970). Similarly, Latane and Darley (1970) found that even a brief meeting with a person who later had a (simulated) epileptic fit greatly increased the likelihood that the new acquaintance would respond to cries of distress. While face-to-face interaction is likely to heighten positive emotions such as empathy, it is also likely to heighten negative emotions.

As Mansbridge (1983: 273) accurately points out, "in conditions of open conflict, the physical presence of one's opponent may . . . heighten anger, aggression, and feelings of competition." As a result,"assemblies designed to produce feelings of community can . . . backfire." Gutmann and Thompson (1996: 42) concede that a greater reliance on deliberation will bring "previously excluded voices into politics" and that this in turn brings the "risk of intensified conflict." Amazingly, they see this as an advantage. "The positive face of this risk is that deliberation also brings into the open legitimate moral dissatisfactions that would be suppressed by other ways of dealing with disagreement" (42). If igniting the people's dormant disagreements is the positive face of deliberative democracy, we hesitate to consider the negative face.

The truth of the matter is that, as we saw in Part II, most people do not react well when confronted with opposing views. We want people to agree with us, and deliberation makes it more difficult to think everyone does. As mentioned in Chapter 6, psychologists have convincingly demonstrated that humans have a strong desire to engage in false consensus, to project their positions onto others.16 After all, our positions seem sensible, so other sensible people must agree with us. When others disagree with us, we tend to denigrate their positions, to claim that their view is atypical and perhaps the result of some "special" interest rather than a true, real-American interest. Or else we harden our original stance. As Diana Mutz (1997: 107) discovered, "When exposed to the contradictory opinions of others, a person strongly committed to his or her viewpoint would be most likely to generate counter-arguments defending his or her initial position."17 MacKuen (1990) finds that people will usually just clam up when they sense that their interlocutor is not a kindred spirit (see also Noelle-Neumann 1984). Whatever our response, research demonstrates that disagreement creates a negative psychological tension (Petty and Cacioppo 1981; Eagly and Chaiken 1993).

Deliberation does not increase empathy and understanding—public involvement often results in more conservative policy

HIBBING AND THEISS-MORSE 2002 (John, Foundation Regents Professor of Political Science at the University of Nebraska-Lincoln; Elizabeth, Associate Professor of Political Science at the University of Nebraska-Lincoln, Stealth Democracy: Americans' Beliefs About How Government Should Work, ebook)

One final claim made by supporters of increased popular participation and deliberation is that interaction with other ordinary people will lead individuals to be more other-regarding. As Dryzek (2000: 21) puts it, through democratic participation people will become "more public-spirited, more tolerant, more knowledgeable, more attentive to the interests of others." Once again, however, empirical research casts doubt on the claim of theorists. Experiments by Adam Simon and Tracy Sulkin (2000) on people's generosity to others in small group settings confirm that "the presence of communication seems to encourage more exploitative outcomes" (16), a result directly at odds with the expectations of theorists. And reallife behavior seems consistent with these experimental tendencies. William Simonsen and Mark Robbins (2000) discuss the so-called "Eugene decisions," an effort to engage citizens in local decision making. They found that, contrary to expectations, the more citizens were involved in and knowledgeable about city decisions, the more they wanted to cut taxes and cut services, especially in planning, park maintenance, and building maintenance. They conclude that liberals should not support greater involvement by the public unless they are willing to see governmental programs cut. Presumably, if the study had been done in a city that was not so homogeneous (Eugene is 93 percent white), people would have been even more leery of government spending. In light of the findings reported by Simonsen and Robbins, one reviewer of their book wisely asks, "Do we really need more participation if it is going to result in policies that fail to take into account the common good?" (Kraus 2000: 955).22

Deliberation will not work in the real world of politics where people are different and where tough, zero-sum decisions must be made. Democracy in authentic, diverse settings is not enhanced by town-meeting-style participation; it is probably diminished. Given the predilections of the people, real deliberation is quite likely to make them hopping mad or encourage them to suffer silently because of a reluctance to voice their own opinions in the discussion. Representative democracy at least affords representation to those who shy away from the give and take of politics. The bigger the role deliberation plays, the less influence such people have. When deliberation alone is expected to produce a result (as Gutmann and Thompson advocate and as is illustrated by Etzioni's "Navajo democracy"), people who choose not to participate in deliberation would be left with no input whatsoever.23

A2: Galloway

refuse normativity/at:galloway

patberg 2015 (markus, faculty in the department of social science, Agonistic democracy: Constituent power in the era of globalization, http://www.palgrave-journals.com/cpt/journal/v14/n1/full/cpt20142a.html#aff1, LB)

According to Wenman, agonistic democracy must 'refuse all normativity' (p. 280). This claim is rooted in two of the aforementioned basic components of agonism: first, in the concept of 'constitutive pluralism' that describes modern societies as communities featuring an ineradicable pluralism of conflicting values for whose ordering we lack an objective standard and, second, in the 'tragic view of the world' according to which conflict, suffering and strife are inevitable phenomena of social and political life and may never be ultimately overcome. From this perspective, it seems that theoretical attempts to formulate normative requirements for legitimate political action represent unjustifiable impositions with exclusionary effects. Accordingly, Wenman tracks down and criticizes any trace of normativity in the accounts of agonistic democracy he discusses. For example, **Tully's concept of agonistic dialog, which demands reciprocity and mutual respect from the participants of political processes, is said to represent 'a dangerous digression from the properly tragic viewpoint of agonism'** (pp. 138–139). Although Wenman is keen to emphasize that agonism is a non-normative 'strategic and tactical doctrine' (p. 39), it seems that his own account of agonistic democracy cannot avoid drawing on certain minimal normative standards either. Of course, even the 'politics of militant conviction' (p. 265) he advocates is not supposed to proceed violently. While Wenman refuses to explicate normative requirements for legitimate agonistic politics, he clearly affirms 'aconstructive mode of contest and rivalry' (p. 46) and rejects forms of hostility. But how could we tell acceptable and unacceptable forms of conflict apart without a normative standard of some kind? What distinguishes the 'democratic actor' (p. 286) from, say, the fundamentalist, if not the normative quality of her political actions? The need for a corresponding standard shines through, for example, when Wenman suggests that agonistic political action should be guided by 'the public virtues associated with the art of persuasion' (p. 287). In light of this, however, the critique directed against Tully, among others, seems overstated. In general, doubts remain whether a convincing theory of agonistic democracy can really abstain from any normative elements making a claim to context-transcending validity.

A2: Big Impacts/Policy Skills

***A2: Learn about Gov't

Fiat doesn't teach portable skills—it miseducates us about the policy process

CLAUDE 1988 (Inis, Professor of Government and Foreign Affairs, University of Virginia, States and the Global System, pages 18-20)

This view of the state as an institutional monolith is fostered by the notion of sovereignty, which calls up the image of the monarch, presiding over his kingdom. Sovereignty emphasizes the singularity of the state, its monopoly of authority, its unity of command and its capacity to speak with one voice. Thus, France wills, Iran demands, China intends, New Zealand promises and the Soviet Union insists. One all too easily conjures up the picture of a single-minded and purposeful state that decides exactly what it wants to achieve, adopts coherent policies intelligently adapted to its objectives, knows what it is doing, does what it intends and always has its act together. This view of the state is reinforced by political scientists' emphasis upon the concept of *policy* and upon the thesis that governments derive policy from calculations of national interest. We thus take it for granted that states act internationally in accordance with rationally conceived and consciously constructed schemes of action, and we implicitly refuse to consider the possibility that alternatives to policy-directed behaviour may have importance–alternatives such as random, reactive, instinctual, habitual and conformist behaviour. Our rationalistic assumption that states do what they have planned to do tends to inhibit the discovery that states sometimes do what they feel compelled to do, or what they have the opportunity to do, or what they have usually done, or what other states are doing, or whatever the line of least resistance would seem to suggest. Academic preoccupation with the making of policy is accompanied by academic neglect of the execution of policy. We seem to assume that once the state has calculated its interest and contrived a policy to further that interest, the carrying out of policy is the virtually automatic result of the routine functioning of the bureaucratic mechanism of the state. I am inclined to call this the *Genesis* theory of public administration, taking as my text the passage: 'And God said, Let there be light: and there was light'. I suspect that, in the realm of government, policy execution rarely follows so promptly and inexorably from policy statement. Alternatively, one may dub it the Pooh-Bah/Ko-Ko theory, honouring those denizens of William S. Gilbert's Japan who took the position that when the Mikado ordered that something e done it was as good as done and might as well be declared to have been done. In the real world, that which a state decides to do is not as good as done; it may, in fact, never be done. And what states do, they may never have decided to do. Governments are not automatic machines, grinding out decisions and converting decisions into actions. They are agglomerations of human beings, like the rest of us inclined to be fallible, lazy, forgetful, indecisive, resistant to discipline and authority, and likely to fail to get the word or to heed it. As in other large organizations, left and right governmental hands are frequently ignorant of each other's activities, official spokesmen contradict each other, ministries work at cross purposes, and the creaking machinery of government often gives the impression that no one is really in charge. I hope that no one will attribute my jaundiced view of government merely to the fact that I am an American–one, that is, whose personal experience is limited to a governmental system that is notoriously complex, disjointed, erratic, cumbersome and unpredictable. The United States does not, I suspect, have the least effective government or the most bumbling and incompetent bureaucracy in all the world. Here and there, now and then, governments do, of course perform prodigious feats of organization and administration: an extraordinary war effort, a flight to the moon, a successful hostage-rescue operation. More often, states have to make do with governments that are not notably clear about their purposes or coordinated and disciplined in their operations. This means that, in international relations, states are sometimes less dangerous, and sometimes less reliable, than one might think. Neither their threats nor their promises are to be taken with absolute seriousness. Above all, it means that we students of international politics must be cautious in attributing purposefulness and responsibility to governments. To say the that the United States was informed about an event is not to establish that the president acted in the light of that knowledge; he may never have heard about it. To say that a Soviet pilot shot down an airliner is not to prove that the Kremlin has adopted the policy of destroying all intruders into Soviet airspace; one wants to know how and by whom the decision to fire was made. To observe that the representative of Zimbabwe voted in favour of a particular resolution in the United Nations General Assembly is not necessarily to discover the nature of Zimbabwe's policy on the affected matter; Zimbabwe may have no policy on that matter, and it may be that no one in the national capital has ever heard of the issue. We can hardly dispense with the convenient notion that Pakistan claims, Cuba promises, and Italy insists, and we cannot well abandon the formal position that governments speak for and act on behalf of their states, but it is essential that we bear constantly in mind the reality that governments are never fully in charge and never achieve

the unity, purposefulness and discipline that theory attributes to them–and that they sometimes claim.

Debate = Bad Decision Skills

Winning a debate relies on persuading someone to vote for you—the set of skills necessary for that rely on bad models of reasoning since persuasion is more important than truth

COHEN 2011 (Patricia, writer for the New York Times citing the work of cognitive social scientists Mercier and Sperber, "Reason Seen More as Weapon Than Path to Truth," New York Times, June 14)

Now some researchers are suggesting that reason evolved for a completely different purpose: to win arguments. Rationality, by this yardstick (and irrationality too, but we'll get to that) is nothing more or less than a servant of the hard-wired compulsion to triumph in the debating arena. According to this view, bias, lack of logic and other supposed flaws that pollute the stream of reason are instead social adaptations that enable one group to persuade (and defeat) another. Certitude works, however sharply it may depart from the truth.

The idea, labeled the argumentative theory of reasoning, is the brainchild of French cognitive social scientists, and it has stirred excited discussion (and appalled dissent) among philosophers, political scientists, educators and psychologists, some of whom say it offers profound insight into the way people think and behave. The Journal of Behavioral and Brain Sciences devoted its April issue to debates over the theory, with participants challenging everything from the definition of reason to the origins of verbal communication.

"Reasoning doesn't have this function of helping us to get better beliefs and make better decisions," said Hugo Mercier, who is a co-author of the journal article, with Dan Sperber. "It was a purely social phenomenon. It evolved to help us convince others and to be careful when others try to convince us." Truth and accuracy were beside the point.

Indeed, Mr. Sperber, a member of the Jean-Nicod research institute in Paris, first developed a version of the theory in 2000 to explain why evolution did not make the manifold flaws in reasoning go the way of the prehensile tail and the four-legged stride. Looking at a large body of psychological research, Mr. Sperber wanted to figure out why people persisted in picking out evidence that supported their views and ignored the rest — what is known as confirmation bias — leading them to hold on to a belief doggedly in the face of overwhelming contrary evidence.

Other scholars have previously argued that reasoning and irrationality are both products of evolution. But they usually assume that the purpose of reasoning is to help an individual arrive at the truth, and that irrationality is a kink in that process, a sort of mental myopia. Gary F. Marcus, for example, a psychology professor at New York University and the author of "Kluge: The Haphazard Construction of the Human Mind," says distortions in reasoning are unintended side effects of blind evolution. They are a result of the way that the brain, a Rube Goldberg mental contraption, processes memory. People are more likely to remember items they are familiar with, like their own beliefs, rather than those of others.

What is revolutionary about argumentative theory is that it presumes that since reason has a different purpose — to win over an opposing group — flawed reasoning is an adaptation in itself, useful for bolstering debating skills.

Mr. Mercier, a post-doctoral fellow at the University of Pennsylvania, contends that attempts to rid people of biases have failed because reasoning does exactly what it is supposed to do: help win an argument.

"People have been trying to reform something that works perfectly well," he said, "as if they had decided that hands were made for walking and that everybody should be taught that."

Better decisionmaking comes from better collaborative deliberation, not more competitive debate

COHEN 2011 (Patricia, writer for the New York Times citing the work of cognitive social scientists Mercier and Sperber, "Reason Seen More as Weapon Than Path to Truth," New York Times, June 14)

"At least in some cultural contexts, this results in a kind of arms race towards greater sophistication in the production and evaluation of arguments," they write. "When people are motivated to reason, they do a better job at accepting only sound arguments, which is quite generally to their advantage." Groups are more likely than individuals to come up with better results, they say, because they will be exposed to the best arguments.

Mr. Mercier is enthusiastic about the theory's potential applications. He suggests, for example, that children may have an easier time learning abstract topics in mathematics or physics if they are put into a group and allowed to reason through a problem together.

He has also recently been at work applying the theory to politics. In a new paper, he and Hélène Landemore, an assistant professor of political science at Yale, propose that the arguing and assessment skills employed by groups make democratic debate the best form of government for evolutionary reasons, regardless of philosophical or moral rationales.

How, then, do the academics explain the endless stalemates in Congress? "It doesn't seem to work in the U.S.," Mr. Mercier conceded.

He and Ms. Landemore suggest that reasoned discussion works best in smaller, cooperative environments rather than in America's high-decibel adversarial system, in which partisans seek to score political advantage rather than arrive at consensus.

Because "individual reasoning mechanisms work best when used to produce and evaluate arguments during a public deliberation," Mr. Mercier and Ms. Landemore, as a practical matter, endorse the theory of deliberative democracy, an approach that arose in the 1980s, which envisions cooperative town-hall-style deliberations. Championed by the philosophers John Rawls and Jürgen Habermas, this sort of collaborative forum can overcome the tendency of groups to polarize at the extremes and deadlock, Ms. Landemore and Mr. Mercier said.

Debate Won't Cause the Plan

Debate won't result in anything like the plan—switch-side debate doesn't resolve issues but requires structural dispute, which causes us to devalue the issues to maintain social harmony

MUTZ 2006 (Diana C. Mutz is Samuel A. Stouffer Professor of Political Science and Communication at the University of Pennsylvania, where she serves as Director of the Institute for the Study of Citizens and Politics at the Annenberg Public Policy Center, Hearing the Other Side: Deliberative versus Participatory Democracy, ebook)

There is already ample qualitative evidence in support of the idea that people avoid politics as a means of maintaining interpersonal social harmony. For example, in the mid-1950s, Rosenberg noted in his in-depth interviews that the threat to interpersonal harmony was a significant deterrent to political activity.48 More recent case studies have provided further support for this thesis. In her study of New England town meetings and an alternative workplace, Mansbridge observed that conflict avoidance was an important deterrent to participation.49 Still others have described in great detail the lengths to which people will go in order to maintain an uncontroversial atmosphere.50 Likewise, in focus group discussions of political topics, people report being aware of, and wary of, the risks of political discussion for interpersonal relationships.51 As one focus group participant put it, "It's not worth it . . . to try and have an open discussion if it gets them [other citizens] upset."52

In the early 1970s, Verba and Nie applied a similar theoretical logic to a quantitative analysis of political participation by differentiating activities on the basis of the extent to which conflict with others was involved. Their results were inconsistent on this finding,53 but in a more recent analysis of national survey data analyzed from this same theoretical perspective, people high in conflict avoidance were less likely to participate in some ways, particularly in more public participatory acts such as protesting, working on a campaign, and having political discussions.54

The idea that conflict avoidance discourages participation is also consistent with social psychological studies of how people handle nonpolitical interpersonal disagreements. When a person confronted with a difference of opinion does not shift to the other person's views or persuade the person to adopt his or her own views, the most common reaction is to devalue the issue forming the basis of the conflict.55 By devaluing politics and avoiding political controversy, people effectively resolve the problem.

One experiment aptly illustrates the problem of social accountability. Subjects were told they would be asked to justify their opinions either to a group that was in consensus on an issue or to a group with mixed views on the same issue. The subjects who anticipated the crosspressured group engaged in many decision-evasion tactics (including buckpassing, procrastination, and exit from the situation) in order to avoid accountability to contradictory constituencies.56 If we generalize these findings outside the laboratory, we would expect those with high levels of cross-cutting exposure in their personal networks to put off political decisions as long as possible or indefinitely, thus making their political participation particularly unlikely.

A2: Policy Debate Solves Impacts

There's no internal link between debate and any big impact—we can't identify explanations and solutions that work

BUCHANAN 2002 (Mark, Ubiquity: Why Catastrophes Happen, p. 62)

This book is not only about earthquakes. It is about ubiquitous patterns of change and organization that run through our world at all levels. I have begun with earthquakes and discussed them at some length only to illustrate a way of thinking and to introduce the remarkable dynamics of upheavals associated with the critical state, dynamics that we shall soon see at work in other settings. "When it comes to disastrous episodes of financial collapse, revolutions, or catastrophic wars, we all quite understandably long to identify the causes that make these things happen, so that we might avoid them in the future. But we shall soon find power laws in these settings as well, very possibly because the critical state underlies the dynamics of all of these different kinds of upheaval. It appears that, at many levels, our world is at all times tuned to be on the edge of sudden, radical change, and that these and other upheavals may all be strictly unavoidable and unforeseeable, even just **moments before they strike**. Consequently, our human longing for explanation may be terribly misplaced, and **doomed always to go unsatisfied**.

Violence is not rational—our theory is the only one that accounts for any of their impacts so offense only goes one way—the realization that our "portable skills" don't really save the world is more likely to result in violence than the failure of policy debate is

BAUMEISTER et al 1996 (Roy F. Baumeister Department of Psychology, Case Western Reserve University; Laura Smart Department of Psychology, University of Virginia Joseph M. Boden Department of Psychology, Case Western Reserve University, Relation of threatened egotism to violence and aggression: The dark side of high self-esteem. By: Baumeister, Roy F., Smart, Laura, Boden, Joseph M., Psychological Review, 0033295X, 1996, Vol. 103, Issue 1)

Only a minority of human violence can be understood as rational, instrumental behavior aimed at securing or protecting material rewards. The pragmatic futility of most violence has been widely recognized: Wars harm both sides, most crimes yield little financial gain, terrorism and assassination almost never bring about the desired political changes, most rapes fail to bring sexual pleasure, torture rarely elicits accurate or useful information, and most murderers soon regret their actions as pointless and self-defeating (Ford, 1985; Gottfredson & Hirschi, 1990; Groth, 1979; Keegan, 1993; Sampson & Laub, 1993; Scarry, 1985). What drives people to commit violent and oppressive actions that so often are tangential or even contrary to the rational pursuit of material self-interest? This article reviews literature relevant to the hypothesis that one main source of such violence is threatened egotism, particularly when it consists of favorable self-appraisals that may be inflated or ill-founded and that are confronted with an external evaluation that disputes them.

The focus on egotism (i.e., favorable self-appraisals) as one cause of violent aggression runs contrary to an entrenched body of wisdom that has long pointed to low self-esteem as the root of violence and other antisocial behavior. We shall examine the arguments for the low self-esteem view and treat it as a rival hypothesis to our emphasis on high self-esteem. Clearly, there are abundant theoretical and practical implications that attend the question of which level of self-esteem is associated with greater violence. The widely publicized popular efforts to bolster the self-esteem of various segments of the American population in recent decades (e.g., see

California Task Force, 1990) may be valuable aids for reducing violence if low self-esteem is the culprit—or they may be making the problems worse.

Curtail

Curtail =/= Abolish

Curtailment is not abolishment or suspension

O'Neill '45 [February 19 1945, O'Neill was the Chief Justice of the Supreme Court of Louisiana, "STATE v. EDWARDS", Supreme Court of Louisiana 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783]

The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Curtail = Shorten Duration

Curtail means to shorten

Abbot 92 [January 23 1992, John Abbott "GM To Assemble Pickups In China"" The Daily Yomiuri January 23, 1992, Friday]

"Coalition" means "a group of persons who agree to act together temporarily for a single purpose," and "hard-line" means "unyielding, not flexible." "Curtail" means "to shorten, to make less."

Our interpretation is the most etymologically correct

Abbot 92 [January 23 1992, John Abbott "GM To Assemble Pickups In China"" The Daily Yomiuri January 23, 1992, Friday]

Words can be tricky and sometimes they are not what they appear. "Curtail" originally meant "to cut an animal's tail," so that's where the tail of "curtail" comes from, right? Wrong. "Curtail" goes back to a Latin word meaning "short," which is also the source of "curt."

Curtail means imposing restrictions, which limit the topic

Han, 2, Ph.D., patent lawyer (Sam S., February 19, ANALYZING THE PATENTABILITY OF "INTANGIBLE" YET "PHYSICAL" SUBJECT MATTER, Columbia Science and Technology Law Review, Vol. 3, p. 5-6//RF)

In brief, this approach suggests that §§ 112, 102, and 103, instead of § 101, should be used to curtail patent scope. Commingling the § 101 analysis with the §§ 112, 102, and 103 analysis provides a less systematic approach. Thus, in analyzing whether or not a particular subject matter is within § 101, the subject matter analysis should be wholly separate from other questions related to patentability, such as enablement, novelty, or obviousness. A sample analysis for examining the scope of patent protection is provided wherein enablement, novelty, and obviousness restrictions are invoked to curtail the somewhat broad scope afforded by subject matter alone. The advantage of this approach is shown as compared to the artificial constraining of the scope of patentable subject matter.

Restriction means to limit the duration of

Perzanowski, 2009 (Aaron K.; "Article: Rethinking Anticircumvention's Interoperability Policy"; Lexis; Court Case; 42 U.C. Davis L. Rev. 1549; 6/27/15 || NDW)

To disaggregate the legitimate copyright interests reflected in TPMs from their potential to restrict interoperability for purposes unrelated to infringement, a revised § 1201(f) should be conditioned on [*1614] compliance with those restrictions that do not directly implicate interoperability. Such restrictions include limits on the duration of access, instances of access, and number of copies a user is entitled to make. If interoperable developers respect such restrictions, copyright holders and TPM providers should have no power to tether works to approved software or hardware. n266

Restriction includes limiting the duration of an activity

Johnson, 2007 (Judith J.; "ARTICLE: Rescue the Americans With Disabilities Act from Restrictive Interpretations: Alcoholism as an Illustration"; Lexis; Court Case; 27 N. Ill. U. L. Rev. 169;)

n166 Id. at 564 (citing Kirkingburg v. Albertson's, Inc., 143 F.3d 1228 (9th Cir. 1998) (emphasis added). The Supreme Court said that the lower court had cited the EEOC definition of "substantially limits," which requires a "significant restriction as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." Id. at 563-64 (citing 29 C.F.R. § 1630.2(j)(ii) (2000)).

Restrictions can be temporal

Bush '82 [October 1982,Tom Bush B.A. 1982, University of Notre Dame; M.A. 1984, Claremont Graduate School; J.D. 1987, Boalt Hall School of Law, University of California, Berkeley.,"COMMENT: A Privacy-Based Analysis For Warrantless Aerial Surveillance Cases." California Law review 75 Calif. L. Rev. 1767]

Nevertheless, the Court recognized that the special nature of such searches allowed for the issuance of warrants on less than probable cause. Of crucial importance in mitigating the effect on privacy rights was the existence of "reasonable legislative or administrative standards for conducting an area inspection." n232 Such standards guard against the arbitrary exercise of the authority to search by regulating the manner and scope of surveillance. Restrictions include requiring searches to be conducted at a convenient time of day, n233 delineating the specific places that can be searched, **n234** severely constricting the time within which the warrant must be executed, **n235** and prohibiting forcible entry of homes except in special cases. n236

Curtail includes the imposisiton of sunsets

Koch '10 [October 29, 2010 Robert Koch is a reporter for the hour , "Committed to fiscal responsibility" Lexis]

To curtail spending, Cafero said, the state should impose a two-year sunset on proposed programs and keep programs that work and eliminate those that fail; eliminate earmark expenditures; borrow only for public works projects, school construction and rails, and limit debt service payment to 10 percent of the overall state budget.

Curtail includes sunset provisions

Coploff, 2010 – (Reid; "Article: Exploring Gender Discrimination in Coaching"; Lexis; Court Case; 17 Sports Law. J. 195; 6/27/15 || NDW)

Another nonlegal way to curtail discrimination in coaching would be for the NCAA to adopt a sunset provision for men coaching women. This would essentially have the same result as statutorily making it a BFOQ to coach either men or women, except it would slowly phase out male coaches of women's teams. Though this proposal would create a fair field of single gender coaches for each sport, it would not eliminate discrimination under Title VII and if the courts do not adopt single-gender coaching as a BFOQ, forcing men out of women's positions would still create a cause of action for employment discrimination under Title IX and Title VII. n226

Domestic

Precision Good

We are a pre-requisite to any meaningful analysis of the topic – identifying and describing key threshold questions like what constitutes foreign and domestic surveillance is key

Marko **Milanovic** (Lecturer, University of Nottingham School of Law; Visiting Professor, University of Michigan Law School, Fall 2013; Secretary-General, European Society of International Law) **2014** "Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2418485

The primary purpose of this article is to advance this conversation by looking at one specific, threshold issue: whether human rights treaties such as the ICCPR and the ECHR even apply to foreign surveillance. I will use the term 'foreign surveillance' very loosely, as an umbrella term encompassing a wide range of activities conducted for the purpose of gathering intelligence, ranging from audio-visual observation or surveillance in a narrower sense, the interception of communications, electronic and otherwise, to the collection, storage, processing, and transfer of personal data to third parties. Note also how the term foreign surveillance or intelligence can be understood in at least three different ways: as activities undertaken by a state that are directed against individuals who are officials, members or agents of foreign governments or organizations, or those targeted against individuals who are foreign nationals, or as such activities targeted against individuals who are located outside the state's territory, who may or may not be its nationals.19 We will see throughout the article how thPese three elements – agency, nationality, and location – frequently interact with one another in the regulation of surveillance activities. While states increasingly engage in mass extraterritorial surveillance,20 clarifying the threshold question of applicability, as this article attempts to do, is the necessary first step in any human rights analysis of the topic.

"Domestic" requires purely internal communications – interpreting it differently would gut all judicial and legal clarity

Shane **Harris** (senior correspondent at The Daily Beast, where he covers national security, intelligence, and cyber security. He is also an ASU Future of War Fellow at New America, senior writer at Foreign Policy magazine and, before that, at the Washingtonian magazine, where he was part of the team that won the publication its 2011 award for Excellence in Writing from the City and Regional Magazine Association. In 2012) February **2006** "Spying 101: A Legal Primer" National Journal 38.5, ProQuest

Foreign Versus Domestic FISA doesn't apply to the NSA's activities conducted entirely outside the United States. Administration officials call the NSA program a "foreign-intelligence" activity that targets only those communications in which one party is outside the U.S. But how does a communication qualify as "international" or "foreign" when the other party is within the nation's borders? According to a White House statement in late January, "domestic calls are calls inside the United States," but "international calls are calls either to or from the United States." Even when one party to a monitored communication is inside the country, this definition classifies the conversation as "international"-thus putting such calls in the NSA's foreign-intelligence domain, where FISA does not reach. This assertion that a call partially based in the United States can be categorized as "international," and therefore be monitored, "blows a giant hole in the Fourth Amendment," which protects against unreasonable searches and seizures, Turley contends.

Treating domestic communication as foreign intelligence "would effectively gut decades of federal statutory laws and case decisions."

Domestic US Persons = Corporations

Domestic US persons include corporations

U.S. Code No Date

(Title 26, Subtitle F, Chapter 79, 7701, Legal Information Institute, https://www.law.cornell.edu/uscode/text/26/7701)//WB

(a)When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof— (1) Person The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. (2) Partnership and partner The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization. (3) Corporation The term "corporation" includes associations, joint-stock companies, and insurance companies. (4) Domestic The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations. (5) Foreign The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

Domestic - Includes Territories

Domestic includes Territories, airspace, and territorial waters

Code of federal regulations 78

(14 CFR 239,"REPORTING DATA PERTAINING TO FREIGHT LOSS AND DAMAGE CLAIMS BY CERTAIN AIR CARRIERS AND FOREIGN ROUTE AIR CARRIERS", p. 233, https://play.google.com/store/books/details?id=rS09AAAAIAAJ&rdid=book-rS09AAAAIAAJ&rdot=1)//WB

Definitions. Operations, domestic means traffic among the 50 States of the United States and the District of Columbia. Operations, international means traffic among the 50 States of the United States and the District of Co- lumbia, on the one hand, and all points outside the 50 States and the District of Columbia, on the other hand. United States as defined in the Fed- eral Aviation Act of 1958, means the several States, the District of Columbia, and the several Territories and possessions of the United States, in- cluding the territorial waters and the overlying airspace thereof.

Foreign = Content, Not Location or Nationality

FISA is the controlling legislation on surveillance – "foreign" applies to the content of information, NOT location or nationality

Cardy, Law degree from Boston University Law School, **2008**

(Emily, Boston University Public Interest Law Journal 18 B.U. Pub. Int. L.J. 183 2008-2009, "Unconstitutionality of the Protect America Act of 2007", https://www.bu.edu/law/central/jd/organizations/journals/pilj/vol18no1/documents/18-1CardyNote.pdf)//WB

1. Foreign Intelligence Defined The definition of "foreign intelligence" is critical to the constitutional analy- sis of the Protect America Act. The Act does not provide a different definition of "foreign intelligence" from the one provided in FISA; thus in interpreting the Protect America Act, FISA's definition of "foreign intelligence" applies.84 In FISA's definition, "foreign" applies to the content of the information gathered, and not to the location in (or from) which the information is gathered, or the nationality of the sources from which it is gathered.5 Instead, "foreign intelli- gence" means "information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against... " harms or clandestine operations against the United States.

Domestic—US Persons, Not Location

Domestic means US citizens—doesn't matter if they are outside the US

Jordan 6—David Alan is a Professor at Boston College Law LL.M., New York University School of Law (2006); cum laude, Washington and Lee University School of Law (2003). Member of the District of Columbia Bar, ("Decrypting the Fourth Amendment: Warrantless NSA Surveillance and the Enhanced Expectation of Privacy Provided by Encrypted Voice Over Protocol" May 2006 http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2330&context=bclr)//JLee

FISA maintains a strict distinction between purely domestic calls between U.S. persons, and purely foreign communications between non-U.S. persons outside the United States. 1 Surveillance of the former always requires approval from the Foreign Intelligence Surveillance Court, whereas surveillance of the latter never requires such approval. 12 A substantial gray area exists when calls are placed from within the United States to non-U.S. persons abroad. Non-U.S. persons outside the United States may be freely surveilled by the NSA without even a FISA warrant; therefore, when an unidentified U.S. person places a call to an alien outside the United States who is being surveilled by the NSA lawfully without a warrant, the NSA then automatically and inadvertently surveils that U.S. person. In such a situation, serious questions arise as to the extent to which information gained from such efforts may be used subsequently against that U.S. person.

Domestic/Foreign = Location

Geographic limitations are best – the majority of courts and treaties determine domestic and foreign surveillance by location

Ashley **Deeks** (Associate Professor of Law at the University of Virginia, Senior Fellow, Center for National Security Law J.D., University of Chicago Law School, 1998) **2015** "An International Legal Framework for Surveillance" 55 VA. J. INT'L L. 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2490700

The concept of peacetime espionage or spying encompasses a wide range of clandestine government activities.8 It includes the use of human sources to obtain information of interest to the governments for which those sources work. It includes the wiretapping of the cell phones of foreign nationals suspected of terrorist activity. It includes the use of satellite imagery to detect activities at another state's nuclear facilities or mass atrocities during a civil war. And it includes efforts to obtain greater knowledge about other states' military capabilities.9 Electronic surveillance has a decades-long history, and from its inception it was used both to facilitate war-fighting and to assist diplomats in assessing each other's plans.10 As early as 1950, the United States undertook electronic surveillance not just against foreign governments but also against foreign nationals.11 Nevertheless, a survey of the subjects of collection until recently seems heavily weighted toward governmental actors.12 Although "espionage" in the colloquial sense encompasses a wide range of collection activity, it is in the area of electronic surveillance that international law is most under pressure, and in which we are most likely to witness developments. The idea that one state sends undercover operatives overseas to spy on foreign government actions and to recruit foreign officials is not of particular interest to the general public or human rights and civil liberties advocates, although it is of intense interest to governments themselves. And because human intelligence collection is more costly, time-intensive, and detectable, there is a lower likelihood that international law will begin to regulate human intelligence collection. As a result, this Article is focused on the category of spying that consists of foreign surveillance. "Foreign surveillance" here refers to the clandestine surveillance by one state during peacetime of the communications of another state's officials or citizens (who are located outside the surveilling state's territory) using electronic means, including cyber-monitoring, telecommunications monitoring, satellites, or drones. Foreign surveillance is comprised of two types of surveillance: "transnational surveillance" and "extraterritorial surveillance."13 Transnational surveillance refers to the surveillance of communications that cross state borders, including those that begin and end overseas but incidentally pass through the collecting state. Extraterritorial surveillance refers to the surveillance of communications that take place entirely overseas. For example, if Australia intercepted a phone call between two French nationals that was routed through a German cell tower, this would be extraterritorial surveillance. In contrast, surveillance that takes place on the surveilling state's territory ("domestic surveillance") against either that state's nationals or any other individual physically present in that state generally would be regulated by the ICCPR, as discussed below.14 This Article focuses predominately on transnational and extraterritorial surveillance, arguing that states should close the gap between the ways in which they regulate the two. This taxonomy of communications is not the only possible way to think about the issue. This Article's approach focuses on the location of the individuals who are engaged in the communications. An alternative approach could focus on the place at which the communication itself is intercepted. Under that approach, communications that incidentally pass through a state would be treated as "domestic

communications" if the state intercepted them in its own territory, even though the sender and recipient of the communications are located overseas. Some of the human rights bodies currently seized with surveillance questions may begin to use the communication itself as the unit of analysis, rather than the location of the communicators. I use the individual as the unit of analysis because courts and treaty bodies to date primarily have focused on the location of the individual claiming a particular human right.15 Nevertheless, it is worth recognizing that states and human rights bodies may eventually abandon this approach because they decide it is hard to reconcile with the nature of electronic communications and their interception.

Citizenship shouldn't base our understanding of surveillance and the right to privacy – geography is key

Marko **Milanovic** (Lecturer, University of Nottingham School of Law; Visiting Professor, University of Michigan Law School, Fall 2013; Secretary-General, European Society of International Law) **2014** "Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2418485

We can accordingly draw two basic lessons from the preceding discussion for the applicability of human rights treaties to foreign surveillance programs: First, the threshold question of whether individuals enjoy human rights generally, and the right to privacy specifically, vis-à-vis a particular state should in principle not depend on whether they have that state's nationality. When it comes to the interpretation of the jurisdiction clauses in human rights treaties, to which I will come in a moment, an individual cannot be within the jurisdiction of a state party merely because he or she is a national of that state.59 In other words, if the UK at the same time intercepts the electronic communication of one UK national and one non-UK national living outside the UK, either both or neither have human rights vis-à-vis the UK. The citizen cannot be treated preferentially. Second, if human rights treaties do apply to a particular interception or some other surveillance activity, and the intercepting state draws distinctions on the basis of nationality (as many of them do), this potentially implicates not only the privacy guarantees in the treaties, but also those on equality and non-discrimination. A nationality-based distinction would be justified only if it pursues a legitimate aim (such as the protection of national security) and the measures taken serve that aim and are proportionate.60 If the rationale for protecting privacy interests is the value of the autonomy and independence of individuals, of enabling them to lead their lives without state intrusion, then distinctions based on nationality alone would seem hard to justify.61 This is particularly so because it simply cannot be reasonably argued that non-citizens are as a class inherently more dangerous to the security of a state than its own citizens or permanent residents (viz. the 7 July 2005 London tube terrorist bombings, conducted by UK nationals, the 5 November 2009 mass shootings at Fort Hood, Texas, by Nidal Hasan, a US national and then a major in the US Army, or the 15 April 2013 Boston Marathon bombings, perpetrated by the Tsarnaev brothers, one of whom was a US citizen and the other a US permanent resident).62 This is not to say, on the other hand, that no distinctions may be drawn at all on the basis of the location or type of surveillance or other individual characteristic of the target. But it would be difficult for the UK to justify, say, having one surveillance regime for its own citizens living in the UK, and another for foreign nationals who are also in the UK, or to treat citizens and non-citizens radically differently in an extraterritorial context.63 Thus, for instance, in the Belmarsh case the House of Lords struck down the UK government's post 9/11 order derogating from Article 5 ECHR, which allowed for the preventive security detention of foreign nationals, on the grounds that distinguishing between nationals and foreigners in the counter-terrorism context was

disproportionate, discriminatory and irrational.64 This was also the conclusion of a unanimous Grand Chamber of the European Court of Human Rights, despite the fact that it was prepared to pay the UK significant deference in determining whether an emergency threatening the life of the nation in the sense of Article 15 ECHR existed and what measures were appropriate to deal with that emergency: The Court, however, considers that the House of Lords was correct in holding that the impugned powers were not to be seen as immigration measures, where a distinction between nationals and non-nationals would be legitimate, but instead as concerned with national security. Part 4 of the 2001 Act was designed to avert a real and imminent threat of terrorist attack which, on the evidence, was posed by both nationals and non-nationals. The choice by the Government and Parliament of an immigration measure to address what was essentially a security issue had the result of failing adequately to address the problem, while imposing a disproportionate and discriminatory burden of indefinite detention on one group of suspected terrorists. As the House of Lords found, there was no significant difference in the potential adverse impact of detention without charge on a national or on a non-national who in practice could not leave the country because of fear of torture abroad. ... [T]he Court notes that the national courts, including SIAC, which saw both the open and the closed material, were not convinced that the threat from non-nationals was more serious than that from nationals. In conclusion, therefore, the Court, like the House of Lords, and contrary to the Government's contention, finds that the derogating measures were disproportionate in that they discriminated unjustifiably between nationals and non- nationals.65 In sum, one cannot escape the conclusion that under the moral logic of human rights law citizens and non-citizens are equally deserving of protection for their rights generally, and privacy specifically. In the counterterrorism and surveillance context, non-citizens neither inherently pose a greater threat to a state's security than its citizens, nor is their private information of inherently greater value or interest to the state.66 If citizenship is normatively irrelevant for the threshold question of whether a human rights treaty applies to a particular act of surveillance, and may be relevant only for the substantive merits question of whether the right to privacy or the prohibition of discrimination have been violated, then the truly critical question becomes the territorial scope of human rights treaties on the basis of the location of the individual and/or the interference with his rights, regardless of that person's nationality. With this in mind, let us look at whether the text of ICCPR can allow for its extraterritorial application.

Title III and FISA are the controlling pieces of surveillance legislation – domestic surveillance should be interpreted as locations carried on WITHIN the US

Elizabeth B. **Bazan and** Jennifer K. **Elsea** (Legislative Attorneys, American Law Division, Congressional Research Service) January **2006** "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information" https://www.epic.org/privacy/terrorism/fisa/crs_analysis.pdf

Electronic Surveillance: The Current Statutory Framework The interception of wire, oral, or electronic communications is regulated by Title III 57 of the Omnibus Crime Control and Safe Streets Act of 1968 ("Title III"), as amended.58 Government surveillance for criminal law enforcement is permitted under certain circumstances and in accordance with the procedures set forth in Title III. Government surveillance for the gathering of foreign intelligence information is

covered by FISA. These statutes are relevant to the analysis of the legality of the reported NSA surveillance to the extent that their provisions are meant to cover such surveillance, prohibit it, or explicitly exempt it from requirements therein. If Congress meant for FISA to occupy the entire field of electronic surveillance of the type that is being conducted pursuant to the President's executive order, then the operation may fall under the third tier of Justice Jackson's formula, in which the President's "power is at its lowest ebb" and a court could sustain it only by "disabling the Congress from acting upon the subject." In other words, if FISA, together 59 with Title III, were found to occupy the field, then for a court to sustain the President's authorization of electronic surveillance to acquire foreign intelligence information outside the FISA framework, FISA would have to be considered an unconstitutional encroachment on inherent presidential authority. If, on the other hand, FISA leaves room for the NSA surveillance outside its strictures, then the claimed power might fall into the first or second categories, as either condoned by Congress (expressly or implicitly), or simply left untouched. Title III. Title III provides the means for the Attorney General and designated assistants to seek a court order authorizing a wiretap or similar electronic surveillance to investigate certain crimes (18 U.S.C. § 2516). Most other interceptions of electronic communications are prohibited unless the activity falls under an explicit exception. Under 18 U.S.C. § 2511, any person who "intentionally intercepts . . . any wire, oral, or electronic communication" or "intentionally uses . . . any electronic, mechanical, or other device [that transmits a signal over wire or radio frequencies, or is connected with interstate or foreign commerce] to intercept any oral communication," without the consent of at least one party to the conversation, is subject to punishment or liability for civil damages. The statute also prohibits the intentional disclosure of the contents of an intercepted communication. It prohibits attempts to engage in the prohibited conduct as well as solicitation of other persons to carry out such activity. Certain exceptions in Title III apply to federal employees and other persons "acting under color of law," including exceptions for foreign intelligence acquisition. Section 2511 60 excepts officers, employees, and agents of the United States who, in the normal course of their official duty, conduct electronic surveillance pursuant to FISA (18 U.S.C. § 2511(2)(e)). Furthermore, Congress emphasized in § 1511(2)(f) that Nothing contained in [chapters 119 (Title III), 121 (stored wire or electronic surveillance or access to transactional records) or 206 (pen registers and trap and trace devices) of title 18, U.S. Code], or section 705 of the Communications Act of 1934, shall be deemed to 61 affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter [119] or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire, oral, and electronic communications may be conducted.62 Title III does not define "international or foreign communications" or "domestic." It is unclear under the language of this section whether communications that originate outside the United States but are received within U.S. territory, or vice versa, were intended to be treated as foreign, international or domestic. Recourse to the plain meaning of the words provides some illumination. Webster's New Collegiate Dictionary (1977), in pertinent part, defines "international" to mean "affecting or involving two or more nations" or "of or relating to one whose activities extend across national boundaries." Therefore, "international communications" might be viewed as referring to communications which extend across national boundaries or which involve two or more nations. "Foreign" is defined therein, in pertinent part, as "situated

outside a place or country; esp situated outside one's own country." Thus, "foreign communications" might be interpreted as referring to communications taking place wholly outside the United States. "Domestic" is defined, in pertinent part, in Webster's to mean "of, relating to, or carried on within one and esp. one's own country." Therefore, "domestic communications" may be defined as communications carried on within the United States. The phrase "utilizing a means other than electronic surveillance [under FISA]" could be interpreted as modifying only the clause immediately before it or as modifying the previous clause as well. If it is read not to pertain to the clause regarding acquisition of intelligence from foreign or international communications, then Title III and the other named statutes would not affect the interception of foreign and international communications, whether they are acquired through electronic surveillance within the meaning of FISA or through other means. The legislative history does not support such a reading, however, for two reasons. First, the second clause, relating to intelligence activities involving foreign electronic communications systems, was inserted into the law in 1986 between the first 63 clause and the modifying phrase. It is thus clear that the modifier initially applied to the 64 first clause, and nothing in the legislative history suggests that Congress intended to effect such a radical change as exempting any electronic surveillance involving communications covered by FISA from the procedures required therein. Second, this conclusion is bolstered by the last sentence of the subsection, which specifies that the methods authorized in FISA and the other statutes are to be the exclusive methods by which the federal government is authorized to intercept electronic communications. Whether given communications are covered by the exclusivity language would require an examination of the definitions of covered communications in Title III and in FISA.65

Domestic – 4th Amendment

Domestic Surveillance specifically targets US Persons -4th amendment

Freiwald 8—Susan is a Professor, University of San Francisco School of Law ("ELECTRONIC SURVEILLANCE AT THE VIRTUAL BORDER" Winter 2008 LexisNexus)//JLee

By viewing the Fourth Amendment regulation of electronic surveillance as "on" for surveillance of people on the domestic side of the virtual border and "off" for those on the foreign side of the border, one can get a clearer view of how much is at stake in the "exiling decision." With that in mind, one can appreciate the importance of judicial oversight of the executive's decision to exile and can assess the rules governing that decision by how well they protect against improper exile.35 Again, while one may view judicial review in these cases as quasi-constitutional Fourth Amendment protection,36 one should also evaluate the judiciary's performance of its responsibility to oversee the exiling decision. As mentioned, FISA contains the rules that determine the amount of review provided by a judge over the exiling decision.37 As will be discussed in Part II, those rules permit the executive branch to use special procedures that accord meaningfully fewer rights to foreign targets.38 Foreign targets include those who are neither American citizens nor resident aliens (which together constitute "U.S. Persons"). But such targets also include those U.S. Persons who have effectively become foreigners through virtual exile. To exile a U.S. Person across the virtual border, high level executive branch officials must have probable cause to believe that the U.S. Person targeted for exile works as an "[a]gent of a foreign power,"39 and the officials must seek "foreign intelligence information"40 about that agent. If a reviewing judge approves the executive branch's showing, agents may conduct surveillance of the exiled target without according her the full Fourth Amendment rights granted to domestic targets.4

Difference between domestic and foreign surveillance is domestic requires a warrant

Norvell 9—Blake Covington is a J.D., UCLA School of Law (2007); B.A., summa cum laude (Phi Beta Kappa) Southern Methodist University (2004). ("THE CONSTITUTION AND THE NSA WARRANTLESS WIRETAPPING PROGRAM: A FOURTH AMENDMENT VIOLATION?" http://heinonline.org/HOL/Page?handle=hein.journals/yjolt11&div=11&g_sent=1&collection=journals Pg.240-241)//JLee

Proponents of the expansive model of the NSA program would assert the distinction is of great significance, as the President needs broad discretion to conduct foreign affairs and protect the nation from terrorists.39 Proponents would say the distinction between foreign and domestic surveillance takes the NSA program outside the ambit of the Fourth Amendment warrants requirement.40 When read together, Katz and United States v. U.S. Dist. Court arguably stand for the proposition that government surveillance programs, aimed at either protecting national security or enforcing the criminal law, must comply with the warrants requirement of the Fourth Amendment when one party to the conversation is within the United States, if the party in the United States is the target of the search. Indeed, every time the government has utilized a highly invasive surveillance program to eavesdrop on private conversations, but bypassed the critically important protection of the neutral judge, the government has lost in the Supreme Court. The Court has made clear that it believes the neutral judge, who only issues a warrant upon a finding

of probable cause, is essential to upholding the Fourth Amendment. Both domestic terrorism and international terrorism pose about the same threat level to the United States. People who place international phone calls from the United States have an expectation that the United States government will not monitor their international phone calls because it does not monitor domestic phone calls without a **warrant.** The same type of governmental abuse that is present if the government is allowed to wiretap domestically **without** a warrant for national security purposes is present if the government is allowed to wiretap international phone calls placed from the United States for national security purposes without a warrant. Therefore, a very strong argument can be made that Katz and United States v. U.S. Dist. Court would apply to the expansive model of the NSA program and the expansive model of the program violates the Fourth Amendment. Allowing NSA officials to conduct searches by wiretapping without the approval of a neutral judge, who will only issue the warrant based upon probable cause, is equivalent to handing the NSA official, who operates the expansive model of the program, a general warrant, the very type of warrant the Fourth Amendment was authored to destroy.

Domestic Surveillance = Purely Domestic

Domestic surveillance excludes everything associated with the foreign surveillance

U.S Court of Appeals 76 [December 30, 1976, United States Court of Appeal for the District of Columbia Circuit, "UNITED STATES OF AMERICA v. AMERICAN TELEPHONE AND TELEGRAPH COMPANY ET AL. JOHN E. MOSS, MEMBER, UNITED STATES HOUSE OF REPRESENTATIVES, APPELLANT , No. 76-1712" , online, http://openjurist.org/567/f2d/121, RaMan]

Foreign intelligence surveillances are surveillances of the communications of foreign governments, political parties or factions, military forces, agencies or enterprises controlled by such entities or organizations composed of such entities whether or not recognized by the United States, or foreign-based terrorist groups or persons knowingly collaborating with any of the foregoing; domestic surveillance include all other surveillances.

Domestic means United States citizens not connected to a foreign power

St. Johns Law Review 12

(August 2012, "The Court and Electronic Surveillance: To Bug or Not to Bug--What Is the Exception?", St. John's Law Review: Vol. 47: Iss. 1, Article 4, http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2892&context=lawreview)//WB

The Court's most recent dicta on electronic surveillance invite¶ speculation that a more expansive view of foreign surveillance may be taken in the future. Speaking for the Court in Eastern District, Mr. Justice Powell noted that the decision did not address "issues which¶ may be involved with respect to activities of foreign powers or their agents."' ' In discussing domestic surveillance, Justice Powell distin- guished a "domestic organization" from one that might be subject to foreign intelligence surveillance by stating that the former is "a group or organization (whether formally or informally constituted) composed of citizens of the United States and which has no significant connection with a foreign power, its agents or agencies."'169 Thus, Mr. Justice Powell might well conclude that a citizen or group of citizens having significant connections with a foreign power would qualify as the agent of such power.

Communications between a Non-U.S individual and a U.S individual is considered foreign.

Jordan '06 [2006, David Alan Jordan is a professor at the New York University School of Law, "DECRYPTING THE FOURTH AMENDMENT: WARRANTLESS NSA SURVEILLANCE AND THE ENHANCED EXPECTATION OF PRIVACY PROVIDED BY ENCRYPTED VOICE OVER INTERNET PROTOCOL" http://iilj.org/documents/Jordan-47_BC_L_Rev_000.pdf]

FISA maintains a strict distinction between purely domestic calls between U.S. persons, and purely foreign communications between non-U.S. persons outside the United States.11 Surveillance of the former always requires approval from the Foreign Intelligence Surveillance Court, whereas surveillance of the latter never requires such approval.12 A substantial gray area exists when calls are placed from within the United States to non-U.S. persons abroad. Non-U.S.

persons outside the United States may be freely surveilled by the NSA without even a FISA warrant; therefore, when an unidentified U.S. person places a call to an alien outside the United States who is being surveilled by the NSA lawfully without a warrant, the NSA then automatically and inadvertently surveils that U.S. person. In such a situation, serious questions arise as to the extent to which information gained from such efforts may be used subsequently against that U.S. person. The NSA's attempt to answer these questions can be found in the agency's minimization procedures, which are detailed in United States Signals Intelligence Directive 18 ("USSID 18").13 Under most circumstances, the directive requires the NSA to destroy information gained inadvertently from unsuspecting U.S. persons without a warrant;14 however, section 7.2(c)(4) allows the agency to disseminate such "inadvertently acquired" information to U.S. law enforcement if it appears to implicate the U.S. person in criminal conduct.15 This Article discusses this loophole in light of recent advancements in encrypted Voice over Internet Protocol ("VoIP") technology. It concludes that the minimization procedures set forth in USSID 18 are constitutionally deficient because they fail to take into account the growing expectation of privacy that has resulted from advancements in encryption technology. The directive should be redrafted to mandate greater consideration of an individual's reasonable expectation of privacy when determining how information collected without a warrant may be disseminated and used by the agency.

FISA doesn't apply to surveillance that simply "passes through" the US domestically

Lewis '07 [November 7 2007, James Andrew Lewis is a senior fellow and program director at the Center for Strategic and International Studies (CSIS). Before joining CSIS, he worked at the Departments of State and Commerce as a Foreign Service officer and as a member of the Senior Executive Service, "Domestic Surveillance, FISA, and Terrorism" http://csis.org/files/media/csis/pubs/071107_lewis.pdf]

The distinction between foreign and domestic communications was a linchpin of the 1978 act, but unfortunately, technology has eroded that distinction. FISA was careful to carve out intelligence collection of radio signals (an NSA mission) from court oversight. As telecommunications moved from satellites (a radio signal) to fiber optic cables (which the law defined as a wire and subject to the court), more foreign intelligence activities became subject to FISA than were originally intended. The Protect America Act helped to fix this problem by making clear that FISA does not apply when foreign persons outside of the United States are under surveillance, even if the communication passes through (and is intercepted) domestically. FISA should be drafted to be technologically neutral and to carefully clarify that protections apply to citizens and residents of the United States, not communications that are just passing through.

Foreign surveillance includes contact with US-citizens

Taylor '14[February 13 2014, Nick Taylor is a professor of Law at the University of Leds, "To find the needle do you need the whole haystack? Global surveillance and principled regulation" The International Journal of Human Rights

Volume 18, Issue 1, 2014]

It was not until the 1972 decision in the United States v. US District Court (Keith) 58 that the Fourth Amendment's warrant procedure for wiretapping was extended to domestic national

security surveillance. According to the court in Keith: ‘security surveillances are especially sensitive because of the inherent vagueness of the domestic security concept, the necessarily broad and continuing nature of intelligence gathering, and the temptation to utilise such surveillance to oversee political dissent’.59 Whilst recognising the concerns of secret surveillance, the court emphasised that the ruling was not to apply to foreign intelligence surveillance.60 Only after concerns were raised that foreign intelligence was being inappropriately used to target US citizens was legislation introduced. FISA became the exclusive means of conducting foreign intelligence surveillance targeting US citizens. A panel of federal judges (FISA Court) was established to review warrant requests. It has been argued that an overcautious approach to surveillance of US citizens following FISA was one reason behind the failure to detect the 9/11 terrorists.61 The response was a presidential order which permitted the NSA to conduct warrantlesssurveillance of US citizens believed to be in contact with terrorists. The revelation of this secret order in 2006 led to considerable debate about the ability and legality of the president's power to issue such secret and far-reaching orders. As a result, amendments to FISA were enacted that extended the Act to include the regulation of surveillance of US citizens overseas. This means all US citizens subject to foreign intelligence surveillance are protected by law.62 The surveillance activities carried out as part of the PRISM and UPSTREAM programmes are authorised under s. 702 of FISA, which permits the attorney general and the director of national intelligence to authorise jointly, without a warrant, the targeting of persons outside the US who are not US citizens, with the object of gaining foreign intelligence information. The definition of foreign intelligence information is therefore crucial. In s. 702 it includes ‘information with respect to a foreign power or foreign territory that relates to … the conduct of the foreign affairs of the United States’. Foreign power is defined broadly and includes not only foreign governments or entities directed or controlled by foreign governments, but also ‘foreign-based political organisations’. This is broad in itself, but when one considers that it covers the communications of private persons with any political organisations about matters in any way connected to US foreign policy the ‘limitations’ of this type of surveillance take on an almost token appearance. There are some limits applicable under s. 702(b), namely, that the acquisition of material must not intentionally target US persons inside or outside the US; persons outside the US with a view to targeting persons known to be in the US; or acquire intentionally any communication where the sender and all intended recipients are known at the time to be the US. The key words ‘intentionally target’ allow the possibility that the communications of US persons can be collected and stored where that communication is with a foreign ‘target’. The obvious drawback is that all the limitations apply only to US persons. The factsheet on PRISM issued by the director of national intelligence states that the collection of data under FISA s. 702 is ‘overseen and monitored by the FISA Court [which] must approve targeting and minimization procedures under section 702 prior to the acquisition of any surveillance information’.63This nod to proportionality is not all it seems. Targeting procedures simply refer to the targeting of non-US persons believed to be outside the US. Similarly minimisation only applies to the treatment of data of US persons incidentally intercepted. The mass surveillance of potentially millions of communications of non-US citizens, including documents, emails, photographs, videos and so forth, without the need to identify a target or a specific location for the surveillance (s. 702(g)(4)), amounts to the authorisation of considerable surveillance powers with little judicial oversight, save that the secret FISA Court oversees the process.64 To ensure the surveillance operations take place with a minimum of interference (to the NSA) s. 702 also directs the collaboration of all telecommunications providers subject to US jurisdiction. In sum, the legislative framework is not particularly robust in its protection of US persons – as far as foreign nationals are concerned it is

non-existent. Though it is stated that the manner of the surveillance under FISA must be consistent with the Fourth Amendment, again, this protection is not available to non-US persons oversees. The American Civil Liberties Union claims that 'the statute allows the government to sweep up essentially every foreigner's communications, including those with Americans'.65

Foreign includes information with respect to foreign powers and organizations-that includes unintentional data collection on u.s individuals within foreign groups

Taylor '14[February 13 2014, Nick Taylor is a professor of Law at the University of Leds, "To find the needle do you need the whole haystack? Global surveillance and principled regulation" The International Journal of Human Rights]

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Clear Distinction between Foreign and Domestic Surveillance is central to the discussion of privacy

Norvell '09 [2009, Blake Norvell: J.D., UCLA School of Law (2007) "ARTICLE: THE CON STITUTION AND THE NSA WARRANTLESS WIRETAPPING PROGRAM: A FOURTH AMENDMENT VIOLATION?" Yale Journal of Law & Technology 11 Yale J. L. & Tech. 228]

In United States v. United States District Court, n34 the Court considered a case in which a warrantless search was utilized only to advance national security. The case exclusively pertained to domestic terrorism rather than foreign surveillance of international terrorism. The Court held that the Fourth Amendment requires prior judicial approval for domestic surveillance, even though the surveillance was conducted exclusively for national security purposes. n35 The Court ruled that the liberty interest guarded by the [*239] Fourth Amendment cannot adequately be protected if domestic national security surveillances are conducted solely at the discretion of the President or other members of the Executive Branch without the approval of a neutral judge. n36 Hence, the Court held that the warrant requirement of the Fourth Amendment applies to the government, even when the government is conducting the surveillance solely for national security purposes. The Court observed the following: The Government argues that the special circumstances applicable to domestic security surveillances necessitate a further exception to the warrant requirement . . . .But we do not think a case has been made for the requested departure

from Fourth Amendment standards. The circumstances described do not justify complete exemption of domestic security surveillance from prior judicial scrutiny. . . Official surveillance, whether its purpose be criminal investigation or ongoing intelligence gathering, risks infringement of constitutionally protected privacy of speech. n37 While in United States v. U.S. Dist. Court, the Court held that the warrants requirement applies in cases in which the government seeks wiretaps for purely domestic communications relating to terrorism, the Court stressed that holding in the case did not apply to cases involving international communications relating to terrorism. By contrast, the surveillance ordered under the NSA program involves a conversation between one party in the United States and another abroad. Therefore, the question remains whether the distinction between domestic and foreign surveillance matters for Fourth Amendment purposes. An opponent to the expansive model of the NSA program would argue that the distinction between wiretapping, without a warrant, a conversation between two individuals in the United States versus one individual in the United States and another in a foreign country is of little significance. The President or Executive Branch officers are not less likely to conduct unreasonable searches just because one party happens reside in another country. After all, the need for a neutral judge still exists with the same force because people who conduct international phone calls from the United States are entitled to the same expectation of privacy as [*240] those who only conduct domestic telephone calls within the United States. On the other hand, it is not clear that people who speak on international phone calls are entitled to the same privacy expectations as people placing domestic calls in the United States. People speaking on international phone lines arguably lack the privacy expectations of people placing domestic calls in the United States because it is legal for governments in most countries, including every country outside of Europe and most European countries, to tap phones since they lack a Fourth Amendment equivalent. This issue is very relevant today, as the United States moves toward a global economy, with international telephone conversations becoming a part of the daily routine of many Americans. n38 Proponents of the expansive model of the NSA program would assert the distinction is of great significance, as the President needs broad discretion to conduct foreign affairs and protect the nation from terrorists. n39 Proponents would say the distinction between foreign and domestic surveillance takes the NSA program outside the ambit of the Fourth Amendment warrants requirement. n40

Domestic – Includes Foreign Intelligence

FISA authorizes domestic surveillance if the target is an agent of a foreign power

Cole and Lederman 6—David and Martin S. are Professors of Law, Georgetown University Law Center ("The National Security Agency's Domestic Spying Program: Framing the Debate" 2006 http://heinonline.org/HOL/Page?handle=hein.journals/indana81&div=61&g_sent=1, Pg. 1356)//JLee

It is important to clarify, as well, what the debate is not about-namely, whether the President should be able to intercept phone calls made between al Qaeda members abroad and persons within the United States. There is broad consensus that federal authorities should monitor calls involving al Qaeda. Indeed, FISA does not prohibit such surveillance. For one thing, the statute has no application at all to surveillance targeted at persons abroad and collected overseas. 5 And it authorizes domestic surveillance **targeted at U.S. persons** in the United States, as long as a court finds probable cause to believe that the target of the surveillance is an agent of a foreign power and that the facilities or places at which the electronic surveillance is directed are being used by such an agent of a foreign power.6 Moreover, FISA permits surveillance to be initiated before court approval so long as approval is sought within seventy-two hours, 7 and it also permits surveillance without court approval during the first fifteen days of a war, during which time Congress can consider proposals for wartime statutory amendments. 8

Domestic surveillance includes foreign agents within the US

Plummer, 6, Mississippi College School of Law, J.D., (Brooke, Domestic Spying: A Necessity in a Post-9/11 America or an Abuse of Presidential Power?, Mississippi College Law Review, 26 Miss. C. L. Rev. 303//RF)

Nonetheless, a recent revelation has lead many to question whether the President of the United States has exceeded the limits of his authority in his pursuit to win the war on terror. In December of 2005, it was revealed that President Bush, soon after 9/11, issued an executive order authorizing the National Security Agency [hereinafter NSA] to carry out warrantless electronic surveillance of the communications of individuals located inside the United States who are suspected of having ties to al Qaeda. n2 This surveillance, now commonly deemed domestic spying, has sparked an enormous amount of controversy and a flurry of debate over whether such surveillance is legal

Domestic surveillance includes foreign agents within the US

Stabile, 2014 (Emily; "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa"; Lexis; Law review; 102 Calif. L. Rev. 235; 6/28/15 || NDW)

Guidelines outline the rules the FBI should follow in undercover investigations involving informants, which include documenting new informants and recording agreements made. ... Executive Order No. 12,333 essentially paved the way for the FBI's use of informants to conduct **domestic surveillance of foreign agents, including members of foreign terrorist organizations**, without adhering to the restrictions inherent in the use of informants in domestic criminal investigations. ... Changes to the S-6 visa program that provides material witness visas to

informants with intelligence about terrorist activities could formalize the use of immigration rewards for terrorism intelligence in ways that would benefit the FBI and potential informants, and could help reduce the unnecessary and harmful surveillance of Muslim and Middle Eastern communities.

Domestic Surveillance - Excludes Section 702

Section 702 isn't topical

NSA 14—National Security Agency ("NSA's Implementation of Foreign Intelligence Surveillance Act Section 702" April 16, 2014
https://www.nsa.gov/civil_liberties/_files/nsa_report_on_section_702_program.pdf)//JLee

Section 702 of FISA was widely and publicly debated in Congress both during the initial passage in 2008 and the subsequent re-authorization in 2012. It provides a statutory basis for NSA, with the compelled assistance of electronic communication service providers, to target non-U.S. persons reasonably believed to be located outside the U.S. in order to acquire foreign intelligence information. Given that Section 702 only allows for the targeting of non-U.S. persons outside the U.S., it differs from most other sections of FISA. It does not require an individual determination by the U.S. Foreign Intelligence Surveillance Court (FISC) that there is probable cause to believe the target is a foreign power or an agent of a foreign power. Instead, the FISC reviews annual topical certifications executed by the Attorney General (A G) and the Director of National Intelligence (DNI) to determine if these certifications meet the statutory requirements. The FISC also determines whether the statutorily required targeting and minimization procedures used in connection with the certifications are consistent with the statute and the Fourth Amendment. The targeting procedures are designed to ensure that Section 702 is only used to target non-U.S. persons reasonably believed to be located outside the U.S.

Section 702 is strictly foreign surveillance—Director National Surveillance says it is foreign—this card wrecks

Logiurato 13—Brett is Business Insider's politics editor. He graduated from Syracuse University in 2011 with degrees in newspaper and online journalism and political science. ("Here's The Law The Obama Administration Is Using As Legal Justification For Broad Surveillance" June 7, 2013
http://www.businessinsider.com/fisa-amendments-act-how-prism-nsa-phone-collection-is-it-legal-2013-6#ixzz3eAxE4cm7)//JLee

"Section 702 is a provision of FISA that is designed to facilitate the acquisition of foreign intelligence information concerning non-U.S. persons located outside the United States," Clapper said. "It cannot be used to intentionally target any U.S. citizen, any other U.S. person, or anyone located within the United States." FISA, which was first signed into law in 1978, has been repeatedly amended since the Sept. 11, 2001, terrorist attacks. In December, President Barack Obama signed an extension of the FISA Amendment Acts, which were set to expire at the end of last year and include some of the most controversial warrantless interception programs. Section 702 of the act raised concerns among members of the Senate Intelligence Committee during discussion of the act's renewal last year. The section allows the Attorney General and Director of National Intelligence, for a period of up to one year, to engage in "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information." There are limits to the section. No one inside the United States and no U.S. citizens currently in or out of the country may be "intentionally" targeted. The Attorney General and DNI must submit to the FISA Court an application for an order (termed a "mass acquisition order") for the surveillance of the target either before their joint authorization or within seven days. Sens. Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) last year raised alarm at the possibility of a loophole in section 702 that "could be used to circumvent traditional warrant protections and search for the communications of a potentially large number of American citizens." This is because the FISA Amendments Act does not require the government to identify targets of their

surveillance. "Information collected under this program is among the most important and valuable foreign intelligence information we collect, and is used to protect our nation from a wide variety of threats," Clapper said on Thursday.

NSA cannot use Section 702 on US persons

NSA 14—National Security Agency ("NSA's Implementation of Foreign Intelligence Surveillance Act Section 702" April 16, 2014
https://www.nsa.gov/civil_liberties/_files/nsa_report_on_section_702_program.pdf)//JLee

NSA cannot intentionally use Section 702 authority to target any U.S. citizen, any other U.S. person, or anyone known at the time of acquisition to be located within the U.S. The statute also prohibits the use of Section 702 to intentionally acquire any communication as to which the sender and all intended recipients are known at the time of acquisition to be located inside the U.S. Similarly, the statute prohibits the use of Section 702 to conduct "reverse targeting" (i.e., NSA may not intentionally target a person reasonably believed to be located outside of the U.S. if the purpose of such acquisition is to target a person reasonably believed to be located inside the U.S.). All acquisitions conducted pursuant to Section 702 must be conducted in a manner consistent with the Fourth Amendment. NSA's FISC-approved targeting procedures permit NSA to target a non-U.S. person reasonably believed to be located outside the U.S. if the intended target possesses, is expected to receive, and/or is likely to communicate foreign intelligence information concerning one of the certifications executed by the AG and DNI. Although the purpose of Section 702 is to authorize targeting of non-U.S. persons outside the U.S., the statute's requirement for minimization procedures recognizes that such targeted individuals or entities may communicate about U.S. persons or with U.S. persons. For this reason, NSA also must follow FISC-approved minimization procedures that govern the handling of any such communications.

Domestic means both territory and US persons
Bloch-Wehba J.D. from New York University School of Law 1/14/15

(Hannah, "FBI failed to disclose violations of surveillance statute, watchdog report shows", Reporters Committee For the Freedom of Press, https://www.rcfp.org/browse-media-law-resources/news/fbi-failed-disclose-violations-surveillance-statute-watchdog-report-)//WB

Section 702 only allows the government to collect the communications of foreign persons "reasonably believed" to be located outside the United States. Under 702, the government is explicitly barred from collecting communications on "United States persons" -- citizens, aliens or even domestic organizations -- or those inside the United States. The section requires the Attorney General and Director of National Intelligence to adopt "targeting procedures" designed to ensure that collection of communications only takes place outside of the United States.¶ But the OIG report illustrates that FBI amassed information on persons inside the United States under 702, and failed to report this violation of the statute as required. These particular violations by the FBI were not discussed in detail in the Privacy and Civil Liberties Oversight Board's July 2014 Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act.¶ The FBI began its collection activities under 702 in September 2008. One of the FBI's roles under 702 is to approve the NSA's "selectors," or identifiers for online communications, for targeting. A core aspect of the FBI's function is to approve the NSA's "foreignness determination" regarding whether the persons targeted under 702 were either in the United States or U.S. persons. If the NSA learned that the communications of a person in the United States were being collected in error, NSA was supposed to inform the FBI.

The NSA defers to both citizenship and geography when determining domestic authority

Bloch-Wehba J.D. from New York University School of Law 1/14/**15**

(Hannah, "FBI failed to disclose violations of surveillance statute, watchdog report shows", Reporters Committee For the Freedom of Press, https://www.rcfp.org/browse-media-law-resources/news/fbi-failed-disclose-violations-surveillance-statute-watchdog-report-)//WB

It is essential that collection of foreign intelligence information under Section 702 be conducted in a way that protects US persons and US soil, because collection activities can impact the exercise of free expression. Section 702 provides the legal rationale for the much-discussed PRISM program authorizing bulk collection of communications content from service providers such as Google and Yahoo. Last week, PEN America issued a report showing that mass surveillance like that conducted under PRISM induces self-censorship among writers worldwide and "has gravely damaged the United States' reputation as a haven for free expression at home, and a champion of free expression abroad." As Charlie Savage of The New York Times noted, many aspects of PRISM have been declassified. Nonetheless, there is very little unredacted discussion of the program in the newly released report.¶ The violations discussed in the report illustrate a clear breach of the targeting procedures, required by Section 702, that ensure that acquisition is limited to non-U.S. persons outside the United States. Of course, those targeting procedures are lax, and questions have long been raised about the procedures' adequacy; the PCLOB wrote that the scope of incidental collection of U.S. persons' information under 702 "push[es] the entire program close to the line of constitutional reasonableness." Documents provided to The Guardian by whistleblower Edward Snowden showed that the NSA presumes that people "reasonably believed to be located outside the United States" are not considered U.S. persons unless they can be "positively identified as a United States person." It remains unclear how the FBI and NSA determine that a person is "reasonably believed to be located outside the United States." But the OIG report illustrates that the process for determining that a person is outside the United States is far from error-free and confirms the problem of overcollection of information under existing foreign intelligence statutes.

Domestic Surveillance Includes Dual Citizenship

Domestic Surveillance is only to US persons—Includes people with Dual Citizenship

Young 11—Mark D. is a Special Counsel for Defense Intelligence, House Permanent Select Committee on Intelligence. The views expressed in this article are those of the author and do not reflect the official policy or position of any members or staff of the House Permanent Select Committee on Intelligence or any part of the U. S. government. This article is derived entirely from open source material and contains no classified information. ("SYMPOSIUM: DEFENSE POLICY: Electronic Surveillance in an Era of Modern Technology and Evolving Threats to National Security" Stanford Law & Policy Review 22 Stan. L. & Pol'y Rev 11 2011, LexiisNexus)//JLee

The electronic surveillance authorities discussed above are relevant to national security investigations because computer servers and ISPs are provided privacy protections under U.S. law and there is an expanding possibility that terrorists will hold dual citizenship. An example of the unique circumstances under which federal law enforcement and the American intelligence community must now operate is the status of Anwar al-Awlaki. This radical Muslim cleric was born in New Mexico in 1971. As an illustration of the significance of the dual citizenship issue, there has been recent debate about the Obama administration's authorization for the targeting and killing of al-Awlaki. n57 These statutes are also relevant to U.S. cyber activities because of the definition of electronic surveillance: The acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes. n58 The definition also includes the collection of communications content if it occurs within the United States. n59 Thus, if the government wanted to see the content of an e-mail sent from al-Awlaki to a recipient in Saudi Arabia, but collected the e-mail from somewhere within the United States, the collection is electronic surveillance and subject to the limitations of electronic surveillance law. The definition means that national security and law enforcement investigations, which include online monitoring, are subject to the Fourth Amendment and the regulations that have evolved with electronic surveillance [*20] authorities.

Domestic/Foreign Distinction = Impossible

Impossible to distinguish Domestic and Foreign Surveillance

Freiwald 08—Susan is a Professor at the University of San Francisco School of Law ("ELECTRONIC SURVEILLANCE AT THE VIRTUAL BORDER" 2008 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1404864, pg. 333)//JLee

That a member of the judiciary must be intimately involved in purely domestic surveillance for violations of domestic crimes and that the executive branch has discretion over purely foreign surveillance of foreign people in foreign places seems clear.22 But many, if not most, surveillance operations are neither purely domestic nor purely foreign, which substantially complicates the analysis. In fact, regulation of government surveillance of communications depends on so many factors that the rules Congress has formulated to handle them seem almost impenetrably complex.23

Domestic Surveillance is impossible to define as foreign or domestic – too many variables

Jacoby, Vice admiral US Navy, **07**

(Lowell, 83 Int'l L. Stud. Ser. US Naval War Col. 51, "Global Commons and the Role for Intelligence",https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCoQFjAA&url=https%3A%2F%2Fwww.usnwc.edu%2Fgetattachment%2Fc3bd1922-25fd-4a7d-9b75-4fb4ab0414b2%2FVol--83---Global-Commons-and-the-Role-for-Intellig.aspx&ei=fkGPVdWuPMrTUYymmtAJ&usg=AFQjCNFA7ykgZr8J80RueOhZNxSu5nxZDA&sig2=1QJ1P8MHfKpEio9r_whFvA)//WB

The information age has had a tremendous effect. Cyberspace is a difficult-to- define, but an absolutely essential element of the global commons with great potential for both good and evil. It's a largely ungoverned space apparently devoid of strong international conventions, an extensive body of legal opinion and precedence, and effective enforcement mechanisms. The debate within the United States over domestic surveillance is a manifestation of the issues concerning cyberspace and its position as the nexus of the commons and threats in the infor- mation age.¶ The components of the global commons are interconnected, interdependent and mutually reinforcing, making the associated issues very complex. Consider the following illustrative example. The threat is terrorist use of weapons of mass de- struction (WMD) and the coordination of the planned operations occur over the Internet using advanced commercial technologies combined with use of multiple obscure dialects by a security conscious group with haven in ungoverned space. The movement of associated personnel is through established smuggling routes, the transportation of components for the weapon is facilitated by a narcotics net- work and the final movement of WMD to the planned attack location takes advan- tage of containers embedded in legitimate maritime trade. When viewed in this context, both the scope of the problem, and the need to master the global com- mons situation, come into focus. This scenario also captures the difficulties at- tached to the intelligence problem-a problem of scale, scope, complexity and the challenges presented by a highly accomplished foe.

Domestic surveillance is defined based on citizenship, not geography

Freiwald 08—Susan is a Professor at the University of San Francisco School of Law ("ELECTRONIC SURVEILLANCE AT THE VIRTUAL BORDER" 2008 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1404864, pg. 350)//JLee

U.S. citizens enjoy some Fourth Amendment protection of their communications even when they are outside the physical confines of the United States.106 This further illustrates the virtual, rather than physical, nature of the border that separates the area in which targets are subject to the protections of the Fourth Amendment from the foreign space in which they are not. In one case, Berlin Democratic Club v. Rumsfeld, the court considered the Fourth Amendment rights of "a number of American citizens and organizations and one Austrian citizen" living in Berlin who claimed they were subject to an extensive campaign of illegal electronic surveillance and harassment by the U.S. Army.107 Based on the Keith decision, the court found that the Fourth Amendment compelled government investigations to obtain judicial authorization prior to conducting electronic surveillance of the Americans living in Berlin.108 It is important to note that the court found that even though the American citizens and their organizations were overseas, there was "no evidence of collaboration with or action on behalf of a foreign power."109 Thus, when U.S. agents monitor "domestic" U.S. citizens abroad, they do so subject to the protections of the Fourth Amendment.110 **By leaving U.S. territory, American citizens do not automatically leave the protections of the Fourth Amendment behind.**

There is no clear distinction between foreign and domestic surveillance if it begins and ends in the United States – Rapid technological development

Barr, 2000 (The Honorable Bob; "LEGISLATIVE REFORM COMMENTARIES: A Tyrant's Toolbox: Technology and Privacy in America"; Lexis; Case review; 26 J. Legis. 71; 6/28/15 || NDW)

[*77] Generally, the types of activity classified under the rubric of foreign intelligence surveillance include activities such as taking satellite photographs of activities in other countries, listening to foreign radio or electronic traffic, or monitoring cables to and from foreign embassies. However, the rapid development of technology in recent years has largely obliterated what used to be a clear distinction between foreign and domestic surveillance. Years ago, a call from New York to Los Angeles would travel across exclusively domestic wires. Now, the same call may be relayed through one or more satellite or ground facilities, all or some of which may be "international" telecommunications networks, thereby exposing the call to surveillance by American intelligence agencies. Similarly, other communications, such as e-mail, faxes, and data transfers that begin and end in the United States may also be classified as "foreign," simply by crossing international borders at some point or points during their transmission, or by having the misfortune of being relayed over an "international" telecommunications satellite.

Any legal distinction between foreign and domestic affairs is useless

Smith, 1971 (John Lewis; District Judge; "UNITED STATES v. Abbott HOFFMAN"; Lexis; Court Case; 334 F. Supp. 504; 1971 U.S. Dist. LEXIS 10652; 6/28/15 || NDW)

The government contends that foreign and domestic affairs are inextricably intertwined and that any attempt to legally distinguish the impact of foreign affairs from the matters of internal subversive activities is an exercise in futility. That argument is not compelling, however, after an examination by the Court of the five surveillance authorizations involved in this case. Further, in

view of the important individual rights protected by [*507] the Fourth Amendment, any such difficulty in separating foreign and domestic situations should be resolved in favor of interposing the prior warrant requirement. The government has apparently chosen to deal with dissident domestic organizations in the same manner as it does with hostile foreign powers.

Foreign and domestic surveillance are inseparable

Noland, 1976 (James E.; "District Judge; AMERICAN CIVIL LIBERTIES UNION, et al., Plaintiffs-Appellees, v. HAROLD BROWN"; Lexis; Court Case; 609 F.2d 277; 1979 U.S. App. LEXIS 14186; 27 Fed. R. Serv. 2d (Callaghan) 1062; 6/28/15 || NDW)

Unlike Halkin v. Helms, 194 U.S. App. D.C. 82, 598 F.2d 1 (D.C.Cir. 1978), on which the Government so heavily relies, these documents do not strictly concern past and ongoing foreign intelligence gathering. The Government asserts that although the plaintiffs are interested only in domestic surveillance of domestic activities, the procedures described by the regulations and manual at issue also applied [**22] to foreign intelligence conducted both in this country and abroad. To that extent, the purely domestic surveillance involved in this case may not be completely segregable from foreign intelligence gathering. Unlike the situation in Halkin, however, the documents at issue here involve only very general intelligence [*285] techniques and could not reveal to any foreign power the fact that surveillance of its activities occurred, the targets and extent of such surveillance, or the means by which it was accomplished.

Domestic Surveillance - Primary Purpose

Third party intelligence is peripheral surveillance – not the central, primary role – this distinction is best for debate

Gary **Marx** (Professor Emeritus from M.I.T. He has worked in the areas of race and ethnicity, collective behavior and social movements, law and society and surveillance studies, received the Distinguished Scholar Award from its section on Crime, Law and Deviance, the Silver Gavel Award from the American Bar Association, the Bruce C. Smith Award for research achievement, the W.E.B. Dubois medal, and the Lifetime Achievement Award from the Society for the Study of Social Problems, Ph.D. from the University of California at Berkeley) and Glenn W. Muschert (Miami University, Department of Sociology and Gerontology) March **2007** "Desperately Seeking Surveillance Studies: Players in Search of a Field" http://web.mit.edu/gtmarx/www/seekingstudies.html

The surveillance function may be central to the role (detectives, spies, investigative reporters and even some sociologists) 19 or peripheral (e.g., check-out clerks who are trained to look for shop lifters, dentists who look for signs of child abuse). A distinction rich with empirical and ethical implications is whether the situation involves those who are a party to the generation and collection of data (direct participants) or instead involves third parties.

The primary purpose of the type of surveillance that is curtailed must be domestic – incidental or peripheral doesn't count

Sputnik International June 24, **2015** "NSA Chief Denies US Government Mass Domestic Surveillance" http://sputniknews.com/military/20150624/1023810247.html

The US National Security Agency (NSA) agency does not violate the law that prohibits conducting mass surveillance against US citizens, NSA Chief and head of US Cybercommand Adm. Michael Rogers said on Wednesday. WASHINGTON (Sputnik) — The NSA was revealed to routinely engage in dragnet, bulk data collection on US citizens in a series of leaked documents from NSA whistleblower Edward Snowden. "We do not conduct intelligence against US persons. We do not do massive surveillance in the United States. That is illegal," Rogers said at the 2015 Geospatial Intelligence Symposium when asked to defend NSA's reputation. US Government Responsible for Protecting Americans' Personal Data The agency has acknowledged the existence of programs like Operation Stellar Wind, which was responsible for collecting US signals intelligence from phones, emails, and online data. Rogers insisted that the NSA applies signal intelligence "in a foreign intelligence mission," stressing that its primary purpose is foreign surveillance.

The primary purpose of FISA is the collection of foreign intelligence

Pamela **Hobbs** (Lecturer in Communication Studies at the University of California, Los Angeles, Ph.D. in Applied Linguistics, attorney licensed to practice in Michigan) **2013** "The Invisible Court: The Foreign Intelligence Surveillance Court and its Depiction on Government Websites" in Law, Culture and Visual Studies, Edited by Anne Wagner and Richard Sherwin, p. 707

The second and third paragraphs then state that the FISA Court's "job is to review applications for governmental surveillance," and that L 'the primary purpose of FISA is to assist the government, specifically the Executive Branch with gathering foreign intelligence...." Again, this (re)statement of the court's purpose implicitly negates the checks-and-balances function propounded in the first paragraph; however, the information necessary to reach this conclusion is not access. ble to the uninformed reader, who will accordingly conclude that the statements are not contradictory. In addition, the "primary purpose" language of the third paragraph and the accom- panying explanation—that obtaining evidence of criminal activity can be only "a secondary objective" of FISA surveillance—omit any discussion of the PATRIOT Act amendment and the massive controversy that ensued, leading to the government's first-ever appeal from a FISA Court ruling.

Domestic Surveillance – Significant Purpose

Primary Purpose distinction is legally incorrect – the Patriot Act altered it to simply having "a significant purpose" – which is much weaker – This interpretation is the most legally accurate

Sashimi, Northwestern University School of Law, Abdo, Harvard Law School, **2011** (Hina, Alex, "Privacy and Surveillance Post-9/11", 38 Hum. Rts. 5 (2011), http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/privacy_and_surveillance_post_9-11.html)//WB

FISA was enacted in 1978, after two congressional investigations, the Church and Pike Committees, found that the executive branch had consistently abused its power and conducted domestic electronic surveillance unilaterally and against journalists, civil rights activists, and members of Congress (among others) in the name of national security. Mindful of these abuses, Congress originally strictly limited FISA's scope so that it could only be used if "the primary purpose" of government surveillance of Americans was foreign-intelligence gathering. After 9/11, however, Congress passed the USA PATRIOT Act, which amended FISA and significantly weakened this limitation. Now the government needs only to show that "a significant purpose" of domestic surveillance is to gather foreign intelligence, dismantling the wall that has historically safeguarded Americans from the reduced constitutional protection applicable in foreign intelligence investigations.

The policymaking definition of foreign intelligence is the following- surveillance is the collection of that information

Alhogbani '14 [2014 Abdulmajeed Alhogbani is a J.D. Candidate, The Catholic University of America, Columbus School of Law, 2016, "ARTICLE: GOING DARK: SCRATCHING THE SURFACE OF GOVERNMENT SURVEILLANCE" 23 CommLaw Conspectus 469] (Card Cred to Hali Kim)

Shortly after the decision in Katz, courts continuously held that warrantless surveillance is constitutional as long as it was for foreign intelligence, while warrantless domestic surveillance is unconstitutional. n39 The difficulty is determining what constitutes foreign surveillance versus domestic surveillance, as this distinction is often ambiguous. n40 Intelligence surveillance also became a major area of concern, which led to the enactment of Foreign Intelligence Surveillance Act (FISA) in 1978. n41 FISA allows the U.S. government to conduct warrantless searches if the agency has reasonable grounds to believe the targeted individual is an agent of a foreign power. n42 It defines foreign intelligence as: [*474] (1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against-- (A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or (2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to-- (A) the national defense or the security of the United States; or (B) the conduct of the foreign affairs of the United States. n43 Along with the

definition of a foreign power, FISA grants the government broad power to conduct surveillance on foreign agents. n44 Moreover, FISA establishes a separate court, the FISA court, to process warrants for the surveillance of foreign and domestic intelligence. n45 The FISA court has been dubbed [*475] "the most secret court in America." n46 This Comment will discuss the FISA court in a later section.

Primary intent standard was altered to "a significant purpose" – blurring the line between domestic and foreign surveillance

Hansen '14[Spring 2014,Chris J Hansen is Research and Bluebook Editor, Volume 162, University of Pennsylvania Law Review; J.D. Candidate, 2014, University of Pennsylvania Law School; B.A., Haverford College "ARTICLE: THE REVOLUTION WILL BE TWEETED, BUT THE TWEETS WILL BE SUBPOENAED: REIMAGINING FOURTH AMENDMENT PRIVACY TO PROTECT ASSOCIATIONAL ANONYMITY" University of Illinois Journal of Law, Technology & Policy 14 U. Ill. J.L. Tech. & Pol'y 1]

While the ECPA governs law enforcement access to domestic electronic content for purposes of criminal prosecution, the Foreign Intelligence Surveillance Act (FISA) governs domestic and foreign surveillance against the agents of foreign powers. n165 While ECPA applications are based on probable [*24] cause to believe that the target of surveillance has committed a crime, FISA searches are based on probable cause that the target of the surveillance application is a foreign power or the agent of a foreign power. n166Applications for surveillance or communications contents under FISA are processed through the Department of Justice, and approved by a specially constituted FISA Court, while stored content may be acquired without judicial oversight through a variant of the administrative subpoena known as a National Security Letter. n167 Domestic and foreign surveillance were originally intended to exist as wholly separate spheres. Prior to September 11, FISA conditioned the issuance of national security warrants on the absence of intent to collect evidence for possible criminal prosecution because such intent would indicate that the warrant was being used for domestic criminal enforcement purposes as opposed to national security purposes. n168 The Patriot Act, however, significantly relaxed this standard to require only that a "significant purpose" of the surveillance be the acquisition of foreign intelligence and to allow for broader collaboration (and thus information sharing) with federal law enforcement officers. n169 The separation between domestic and foreign surveillance has also been eroded by executive orders authorizing the interception of international communications by United States citizens without the requisite legal procedure. n170 Although FISA exists as a parallel to ECPA, FISA-obtained materials are admissible in domestic criminal prosecutions, subject only to challenges based on the legality of the acquisition, challenges often decided through in camera, ex parte hearings. n171 Prior to 2013, former NSA officials reported that the NSA was eavesdropping on domestic as well as international phone calls and e-mails and that at the program's outset it intercepted 320 million calls a day. n172 The Edward Snowden leaks dramatically confirmed the substance of these reports, revealing massive surveillance efforts targeting domestic communications [*25] being carried out under the FISA statute. n173 While the prior "rumors" of foreign surveillance left the FISA foreign surveillance-domestic surveillance distinction intact, the Snowden revelations have shown disconcerting blurring of the foreign-domestic dichotomy. The loss of this distinction can bring the full chilling force of foreign surveillance efforts to bear on situations where domestic surveillance would be minimally justified. Although FISA and foreign intelligence gathering fall

outside the scope of this Article, their extension into domestic surveillance activities has a clear chilling effect on speech, and as awareness of government surveillance increases, the impact of that chilling effect on domestic surveillance governed by ECPA will undoubtedly increase as well.

PRISM = Foreign

PRISM is foreign surveillance

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First, news reports suggest that since 2009, the U.S. Government has had the capacity to record all of the phone calls that occurred within a particular foreign state and replay those calls up to thirty days after they occur.142 The U.S. Government reportedly sends millions of voice clippings from those calls for analysis and storage.143 Second, news reports revealed that the United States engages in an "upstream" collection of communications passing through fiber optic cables en route to U.S. servers.144 Because the United States has such a robust internet and telephonic infrastructure, foreign calls and emails intended for foreign recipients often travel through U.S. servers and hubs because that offers the fastest route for a given data packet at a given time.145 Third, the United States, in a program called PRISM, obtains the content of electronic communications from U.S. internet service providers.146 The targets of this program are non-U.S. persons outside the United States. Fourth, the United States, using section 215 of the PATRIOT Act, obtains from various phone companies access to all of their bulk telephone metadata, which the government may query when it has a reasonable articulable suspicion that a phone number is associated with one of several specified foreign terrorist organizations.147

A2 International Definitions Bad

Even if the international law literature is not perfect – IR theory provides a sound basis for examining the relationship between foreign and domestic surveillance

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A. Theories of International Law Creation In light of the looming shift away from international agnosticism about foreign surveillance, how should we think about the relationship between changing (international and domestic) political landscapes and the power and purposes of international law? One rich source of analysis is international relations (IR) theory. Many international legal scholars have drawn from IR theory in an effort to provide plausible, coherent accounts — including predictive accounts — of how and why states employ international law. Although the international law literature in this vein has not developed a satisfying theory of the precise conditions under which states specifically decide to turn to international law to address discrete problems, the literature usefully addresses conditions of international law-making generally.96

International definitions and norms for surveillance are based on key agreements between the US and other countries – Prefer our narrower interpretation******

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I previously have argued that domestic laws can and do serve as the basis for international legal developments, particularly in the face of highly politicized issues, non-reciprocal incentive structures, issue complexity, and different conceptions of the proper legal framework that should govern.205 Each of those factors is present in the surveillance debate. The revelations about various states' technological capabilities and the uses to which they have put those capabilities have rendered the issue highly sensitive politically among allies. States possess widely varied capabilities to conduct surveillance, and therefore are likely to confront different incentives when considering whether and how to regulate such surveillance. Further, the issue is complex: Not only is it difficult to know precisely what types of surveillance each state is conducting, what technologies they are using, and what their targets are, but the issue also implicates concepts of personal privacy. Different cultures have widely disparate views on what privacy entails and the grounds on which it is legitimate for a state to surmount that privacy.206 Finally, various states view existing treaty provisions as more or less relevant to regulating privacy. These states also perceive security threats differently. All of these factors suggest that commonalities found in domestic laws will be an important source of norms in the surveillance area. In the context of the

evolution of international humanitarian law ("IHL"), I argued that contemporary conflicts pose new challenges to the existing body of international law, such that there is a non liquet in the law governing certain kinds of non-international armed conflicts. I further argued that new domestic rules emanating from courts, legislatures, and executive branches will have a significant effect on future IHL developments — affecting the likelihood of a future international agreement on those rules; the substance of those future rules in the event such an agreement emerges; the way in which states interpret certain existing treaty provisions; and the content of state practice that contributes to the formation of new rules of customary international law.207 The same can be said for the evolution of international norms on espionage: domestic laws, which continue to evolve but which provide at least basic substantive and procedural rules about domestic and transnational surveillance, will affect the way in which those international norms develop. These laws have proven to work effectively in practice (at least as far as they govern domestic and transnational surveillance); have been the subject of public debates during which legislators have considered how to balance privacy and security; and (mostly) are publicly accessible. Further, to the extent that general international norms track common concepts reflected in states' domestic laws, external observers may have greater confidence that states will comply with the international norms, because governments tend to comply more rigorously with domestic laws than international law.208 The following norms derive primarily from the domestic laws of five Western states: the United States, United Kingdom, Canada, Germany, and Australia.209 I selected these states because they have some of the most extensive laws regulating surveillance. These states therefore have given extensive attention to the appropriate balance between privacy and national security; effective ways to monitor and counter-balance the executive's surveillance power; and the need for the executive to adopt internal protections for handling the data that it collects. These laws admittedly are not necessarily representative of domestic laws across various regions.210 Further, the norms draw from the laws as they appear on the books, rather than as they apply in practice. Governments may interpret and apply published laws in ways that are not obvious to the average citizen.211 That said, the existence of a published law makes it harder politically for that state's government to resist principles drawn from that law. The bulk of these domestic laws focus on regulating the executive's electronic surveillance of its own citizens or residents, as well as collection that takes place on the state's territory — that is, domestic and some transnational surveillance. Very few laws around the globe regulate purely extraterritorial collection.212 One reason for this is sensible: domestic surveillance laws primarily are intended to prevent individuals in government from abusing or manipulating that very system of government. Improper surveillance of the citizenry (based on political views or associations, for example) might corrupt that political system by allowing those currently holding power to suppress the opposition and unlawfully remain in power.213 Another reason relates to the set of tools that states have in their domestic and international toolboxes. States arguably need greater flexibility to collect communications intelligence overseas because they have fewer alternative tools to use there than they do domestically (where states can rely on police investigations, warrants, national security letters, and so on). As a result, it is important to be cautious about drawing principles from statutes directed at domestic or transnational surveillance (which often implicates the state's own citizens) to regulate extraterritorial surveillance (which usually implicates only the citizens of other states).214 But the communications of some foreign nationals already incidentally receive some procedural protections, by virtue of the fact that their communications happen to transit — say — the United States or occur between that national and a U.S. citizen.215 That is, although not protected by the same types of minimization procedures that the communications of U.S. nationals are, these communications of foreign nationals are

subject to statutory regulation in the form of the Foreign Intelligence Surveillance Act ("FISA") and judicial oversight by the Foreign Intelligence Surveillance Court.216 Even if there are creditable political and practical reasons to prioritize the privacy of citizens, there is little conceptual reason not to accord similar protections to the communications of all foreign nationals.217 Governments know how those rules work in practice; they have established frameworks of oversight that in many cases could be extended quite easily to purely extraterritorial surveillance; and they understand what they have to gain or lose by expanding existing protections and procedures. Existing domestic laws related to transnational surveillance therefore provide important foundational concepts from which states can derive additional, extraterritorially-directed norms. Although domestic law is the most likely source of ideas for international surveillance norms, there is some limited international practice that also might provide guidance.218 Most famously, five Englishspeaking democracies have entered into an arrangement by which they share electronic surveillance duties and products. The Five Eyes agreement structures intelligence cooperation and establishes accepted behavioral norms and practices among the allied intelligence services of the United States, United Kingdom, Canada, Australia, and New Zealand. Although this arrangement, the contents of which are not public, may not contribute heavily to the creation of international norms regarding foreign surveillance, the original UK-U.S. Agreement ("UKUSA") from which the Five Eyes agreement derives details the types of communications that each state is to collect and treats as impermissible some uses of those communications.219 For example, UKUSA defined "foreign communications" somewhat more narrowly than the United States did domestically at the time. UKUSA stated that "foreign communications" constituted "all communications of the government or of any military, air, or naval force, faction, party, department, agency, or bureau of a foreign country, or of any person or persons acting or purporting to act therefor, and shall include communications of a foreign country which may contain information of military, political or economic value."220 This provision excludes foreign nationals as a general category of individuals who may be subject to surveillance. Further, UKUSA requires the parties to ensure that without prior notification and consent of the other party, "no dissemination derived from Communication Intelligence sources is made to any individual or agency, governmental or otherwise, that will exploit it for commercial purposes."221 UKUSA also envisions that the parties will establish identical security regulations to protect communications intelligence. While not particularly useful as an international norm, it indicates advantages in harmonizing rules in this area.222

Surveillance

Limits Good

Narratives and arcane facts about surveillance make the topic unmanageable without overall conceptual clarity

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This volume is a most welcome factual cornucopia and even a kind of atlas informing us of rarely documented topics from the colonial identification policies of Belgium to the latest privacy–by-design policies of the UK. When editors Boersma, Van Brakel, Fonio and Wagenaar asked me to write an afterword, I was pleased because of the importance of the topic and the scarcity of historical work, but I was also apprehensive because of the vastness of the topics covered. What could possibly be added in a succinct fashion that would do justice to the sweeping and twirling contours of history and to the varied techniques, uses, contexts, outcomes, national cultures and disciplinary perspectives the book offers? What themes could unify this farrago? But fortunately as the Bible wisely instructs, "It shall be given you in that same hour what ye shall speak." (Matthew 10:19) And so it was. Almost at once the problem became having too much, rather than too little to say. The articles in this volume in drawing upon history, sociology, political science and law richly describe the variation in surveillance (whether across centuries or only recent decades) for 11 countries and help avoid the creeping myopia and unwarranted ethnocentric generalizations that disproportionate research on anglophone countries brings. These histories show variation as well as commonality. The former cautions us against making unduly sweeping generalizations, even as the latter calls out for ordering that which makes so much ordering in the modern world possible. But however important it is to get empirical, facts without a conceptual structure are like Jello without a mold. Just as we see much variety in the ordering modern surveillance makes possible, the multiplicity of practices and ideas that encompass the broad notion of surveillance need to be abstractly ordered within conceptual frameworks. To be sure, the editors' introduction to the volume and the informative general articles by Higgs and Lyon deal with very broad factors that help locate the data, but these are in narrative form. Important sensitizing concepts such as surveillance society, the new surveillance, surveillance assemblage (Haggerty and Ericson 2000), social sorting (Lyona 2003) nd sousveillance Mann, Nolan and Wellman 2003) are the same. Yet an additional approach focusing on concept definition and measurement can bring greater precision to the discussion and can offer another way of knowing. Coming to Terms The empirical needs to be parsed into elements that can be systematically measured. Going beyond the description of a narrative permits more logically derived and empirically informed answers to big questions such as where society is headed and in what ways this is good and bad. This also permits replication across observers and makes possible the development of guidelines for studying the topic. In what follows I briefly consider some aspects of conceptualization, illustrate one form with respect to the big questions regarding implications of surveillance developments for the dignity of the individual and a democratic society. I then

draw some lessons consistent with the articles in this volume for advancing surveillance research. In recent work I have suggested an encompassing framework for thinking about how and why surveillance is neither good nor bad, but context and comportment make it so (Marx, forthcoming 2011a, 2007 and related work at www.garymarx.net). The basic structures and processes of surveillance must be named and their correlates discovered. This involves a conceptual map of new (as well as traditional) ways of collecting, analyzing, communicating and using personal information One part of this identifies attributes (structures) such as the role played e.g., agent or subject; the rules governing information e.g., voluntary or involuntary collection; characteristics of the tool and its application e.g., visible or invisible; qualities of the data; e.g., sensitive, unique identification, private; goals e.g., control, care, curiosity; .and mechanisms of compliance e.g., coercion, deception, engineering, contracts). Another part locates basis processes such as surveillance phases and cycles, the softening of surveillance, and neutralization and counter-neutralization efforts. Much disagreement in the surveillance debate is about what the varied empirical contours mean in some overall sense for the individual and society –whether involving the state (as the articles in this volume do), hybrid public-private forms or corporate and interpersonal uses. At the extremes are the utopians with their cotton candy promises and the dystopians with their gloomy disaster predictions –whether these apply to the latest widget or practice or to long term trends. Neither perspective describes social change well; in the past or, I suspect for the near future. There is a path, however twisting, changing and bramble and illusion filled somewhere between Tennyson's early 19th century optimism "For I dipt into the future, far as human eyes could see, saw the world, and all the wonders that would be" (Ricks, 1990) and Einstein's 20th century worry that technological progress can become like an axe in the hand of a pathological criminal (Folsing 1998). Improved conceptualization and subsequent measurement can result in more logically derived and empirically informed answers to big questions such as what are the legacies of an authoritarian past and where is the surveillance society of control and care headed? Over decades, scores and even centuries, is there a move toward a uniform world-surveillance society driven by a common ethos, problems, and technologies with a decline in the local distinctiveness documented by the articles in this volume?

Surveillance should start with an empirical topic, not methods – the field is too disorganized and diffused without conceptual limits - even if they win their impact claims, our interpretation is a necessary condition for societal justice

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How does the emerging field of surveillance studies compare to other fields preceded by an adjective? Social studies of surveillance start with an empirical topic,—that is different from

beginning with a research question, theory or method. The focus on a kind of behavior necessarily calls for breadth and crosses disciplines, institutions, methods and places. This catholicity is furthered because there is no formal organization for surveillance studies, unlike for the established disciplines and many other studies fields. This gives the field egalitarian openness, energy, and contemporaniety and the ability to incorporate rapid changes and new ideas. Fields with more established cultures and formal gatekeepers vigilantly patrolling their intellectual borders are more prone to ossification. This openness is a source of the field's strength and energy. Yet it can also be seen as a source of weakness—-the field is diffuse, scholars lack agreement on many important issues and knowledge is not very cumulative. The field's openness harks back to 19th century generalists such as Karl Marx, Max Weber and Georg Simmel who looked broadly across areas to understand the big changes associated with modernization. They considered social change from historical, economic, social, legal and cultural perspectives. Today, specialization is hardly in danger of being replaced, nor should it be. Yet surveillance studies in focusing on substantive topics in their richness and in bringing perspectives and findings from various fields together has an important role to play. The area is so far best characterized as multi-disciplinary rather than inter-disciplinary. In an inter-disciplinary field the distinct ideas and levels of analysis from various disciplines are integrated, rather than being applied in a parallel fashion. Illustrative of the former would be finding that workers of a particular personality type respond positively (in terms of attitude and productivity) to intensive work monitoring, while those with a different personality respond in an opposite fashion, showing how concepts from geography can inform the ethical, legal and popular culture labeling of places (whether physical or cyber) as public or private, or demonstrating how the different historical experience of Europe relative to the United States led to the former's greater concern and different policies over private sector surveillance as against that of government, while in the United States that pattern was reversed. Surveillance studies as a growing epistemic community is unlike most other "studies" fields. It is not based on a geographical region, ethnicity, gender or life style (e.g., as with urban or women's studies.) Nor is it based on a single disciplinary, theoretical or methodological perspective (e.g., sociology, post-modernism or survey research.) Rather it is based on a family of behaviors all dealing in some way with information about the individual (whether uniquely identified or not) or about groups. The social significance of the activity is in crossing or failing to cross the borders of the person—factors which can be central to life chances, self-concept and democracy. Such activity also defines and can redefine what the borders of personhood are. The field overlaps several related areas. It shares with technology and society studies an interest in the social impacts of (and upon) tools, but is restricted to one class of tool defined by its information function. It shares an interest in surveillance technology with many fields such as engineering and computer and forensic science, but it is concerned with the social and cultural, not the technical elements. Some of the forms studied do not even involve technical hardware (e.g., social technologies such as reading lips, facial expressions and body language.) By far the largest number and methodologically most sophisticated studies preceded by the adjective surveillance are in the area of public health. Foucault (1986) analyzes power and the mapping of the plague in the 17th century as a precursor to modern surveillance. The epidemiological studies of disease and epidemics however reflect only one of many strands in studies surveillance. The field also overlaps some of the topical interests of management information, library science and criminal justice studies, but it is decidedly not a policy, applied or managerial field. While it tends to share value concerns with civil liberties, privacy and human rights studies, most researchers begin with the values and norms of scholarship in order to advance knowledge, rather than beginning with policy, reform or activism. Social studies of

surveillance share with global studies an interest in the causes and consequences of increased world interdependence and cooperation; in the standardization of techniques and policies, new trans-border organizations; and in cross border flows of data and persons. Relative to most study fields it is (and should be) more international with respect to its practitioners and its subject matter. The journal and web resource Surveillance and Society has editors and advisors across western societies. The Canadian New Transparency and the European Living in Surveillance Societies projects also have participants from many countries—although English is the dominant language which tilts toward an over-representation of Anglo-phone scholars and few comparative studies. Any generalizations from the English speaking world to the world must be empirically grounded—not to mention the need to be aware of differences between (and within) English speaking countries. More work has been done in western than in eastern Europe and little is available on other countries. An important question is the extent to which we are moving toward a pretty uniform world surveillance society driven by a common ethos, problems, and technology developed in Western societies—as against a commonality based on convergence and amalgamation, or will we see a world of uncommonality where local differences in narratives and uses remain strong even as common technologies are adopted? The field departs from global studies in the many non-global aspects it is concerned with. Much scrutinizing is at the local level and is strongly influenced by the particular cultural context—whether involving parents and children, friends, workers or shoppers and society's with democratic or authoritarian traditions. Across countries the local language used to justify or challenge a tactic may reflect different value assumptions, priorities and models of society e.g.,—the welfare state, the threatened state, the religious state, the libertarian state. Social studies of surveillance are university based and bound by norms of scholarship involving logic, method, awareness of prior research, evidence and civility. These norms prescribe fairness and objectivity in the conduct of research; listening carefully to those we disagree with; and continually reflecting on the positions we hold. Value neutrality is necessary for reasons of principle and of strategic legitimacy. The topic however does have great moral bite and scholars are drawn to it because they are concerned over its implications for the kind of society we are, are becoming or might become, as technology and changing life conditions alter the crossing of personal and group informamaskingtion borders. Perhaps to a greater degree than for most fields, the social issues driving researchers are manifest (e.g., autonomy, fairness, privacy and transparency.)These value concerns are not easily characterized in conventional terms as liberal or conservative and there are conflicting legitimate goals (e.g., between the rights of the individual and the needs of the community, the desire to be left alone and to be noticed, rights to privacy and to information.) A concern with underdogs and the negative aspects of inequality is present, but so too is awareness of the interconnected parts of the social order which brings cautiousness about social change introduced too quickly and without adequate discussion. Genuine informed consent and level playing fields are issues shared across most conflicting ideologies. An overarching value in much research is the Kantian idea of respect for the dignity of the person and the related factor of respect for the social and procedural conditions that foster fair treatment, democracy and a civil society. After so little scholarly interest in the field for so long, the insights and sustained and focused intellectual energy reflected in this volume are most welcome! This book fills a need. While the last decade has seen many studies of surveillance, there has been little work seeking to define and present the broad field of surveillance studies and to create an empirical knowledge base. The game has many players. This comprehensive handbook by leading scholars, in offering an introduction, mapping and directions for future research provides a field for them to play on. Scholars as well as computers need platforms. The book serves as a reminder that while they (whether the state,

commercial interests or new, expanding public-private hybrid forms) are watching us, we are watching them. Surveillance studies have an important role to play in publicizing what is happening or might happen, ways of thinking about this and what is at stake. Making surveillance more visible and understandable hardly guarantees a just and accountable society, but it is surely a necessary condition for one.

Surveillance studies is a massive research area spanning huge, unrelated academic niches

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Mapping the vast field of Surveillance Studies is not easy, since Surveillance Studies is one of those fields that represents a colorful pastiche of intersections of rather unrelated areas of computer science, electrical and electronics engineering, information technology, law, psychology, criminology, medical research, sociology, history, philosophy, anthropology, political science and, last but not least, media and communication studies. As an academic discipline, media and communication studies itself is a— relatively speaking—"young" field of inquiry, sometimes described to look "something like a gestating fetus, whose hovering relatives worry over health, body parts, gender, size, facial features, hair color, and other attributes yet to be displayed at the end of a full-term pregnancy" (Zelizer 2009: 173); and frequently criticized for myopia which prevents it from "grasping the broader landscape of how media do, and do not, figure in people's lives" (Couldry 2004: 177). So, rather than thinking of it only as a subfield of media research, it is more appropriate to consider Surveillance Studies as one of the frontiers of media and communication—with vague rather than clearly defined terrain, simultaneously connecting and dividing the field—since what are of most interest for media scholars are the contributions that these wild grounds, this terra incognita, make to our research, and the contributions we make back to them. At first glance it may seem that the scholarly interest of someone conducting research within the intersections of media and communication field with Surveillance Studies is limited to only the small proportion of this terrain, since, as an academic field, Surveillance Studies itself looks to be fragmented into several subfields—such as the ones fully evident in medical research (as in the surveillance of patients, diseases and epidemics), or the those more oriented towards economics and business administration (as in the surveillance of clients, bank accounts, financial transactions and market price fluctuations). But the illusion of media scholars being forced into enjoying someone else's leftovers could not be more deceptive.

The surveillance literature base is not easily classifiable – it spans dozens of huge research areas that each contain several topics

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Muschert (Miami University, Department of Sociology and Gerontology) **2007** "Personal Information, Borders, and the New Surveillance Studies"
http://web.mit.edu/gtmarx/www/anrev.html

There is no commonly held view of how to classify this research. One broad approach involves the discipline of the researcher. Among the most commonly represented fields: law, sociology, criminology, communications, cultural studies, science and technology studies, geography, planning, political science/international relations, psychology, history, economics, organization and management studies, business and philosophy. Perhaps the largest single category of "surveillance research" involves public health efforts. While much of this is biologically focused, there are also social and legal elements involving the spread of disease and control efforts mandating testing and quarantine. Foucault in a number of places wrote about control efforts with respect to the plague and other forms of illness (Elden 2003). For law the emphasis is on constitutional, legislative and regulatory questions. A sampling of the voluminous literature with social science implications: (Froomkin 2000, Sharpe 2000, Slobogin 2002, Turkington and Allen 2002, Solove et al. 2006, Bharucha et al. 2006, Harcourt 2007, Mair 2006). With respect to the privacy component, this work stands on foundations suggested by Warren and Brandeis (1890), Dash, Schwartz, and Knowlton (1959), Prosser (1960), Westin (1967), Fried (1968), Miller (1971), Bloustein (1979), and Gavison (1980). Illustrative books in a sociological tradition with respect to historical developments and change include: Rule (1974), Cohen (1985), Beninger (1986), Dandeker (1990), Giddens (1990), Bauman (1992), Nock (1993), Lyon (1994), Bogard (1996), Ericson and Haggerty (1997), Brin (1998), Glassner (1999), Staples (2000), and Garland (2001). Classic studies such as Ellul (1964) and Mumford (1934) help ground the role of technology in society and society in technology. Central topics for economics are the implications of information asymmetry for markets, new kinds of intellectual property and regulation (Stigler 1980, Noam 1997, Hermalin and Katz 2004). For geography new virtual space issues are prominent as well as new means of tracking and displaying data (Holmes 2001, Graham and Marvin 1996, Curry 1997, and Monmonier 2004). In communications studies, researchers often focus on the increasingly mass mediated nature of social interactions and the meanings of this cultural shift (e.g., Loader & Dutton 2005), the asymmetrical nature of much supposedly interactive communications technology (Andrejevic, forthcoming), the cultural construction and marketing of fear and risk with surveillance offered as the solution (Altheide 2006). The increase in the use of media-related techniques in policing practices, such as phone taps and data mining has also been a focus in communications research (e.g., Fitsinakis 2003; Wise 2004). Studies can be classified according to their level of attention to the presumed dystopic dangers or utopic promises of the technology and whether, when a problem is identified, it involves using or failing to use the technology. In the background here is literary work such as by Anthony Burgess, Aldous Huxley, Thomas More, George Orwell, and Yevgeny Zamyatin. Engineers, computer scientists, and business scholars are more likely to reflect optimism (e.g., Rushkoff 1999; Negroponte 1995; De Kerckhove, 1997; Mitchell 2003), while social scientists and artists, pessimism. Inquiries can also be organized according to their substantive topics. A frequently studied topic is individual privacy (Bok 1978 & 1982; Schoenman 1984; Barendt 2001; Nissenbaum 2004; Nissenbaum & Price 2004). But as the social fallout from unrestrained computerization has become clearer, studies considering implications for social stratification, consumption, discrimination, democracy, citizenship, identity, representation, and society more broadly have appeared (Gandy 1993, Agre and Rotenberg 1997, Gilliom 2001, Lyon 2003b, Regan 1995, Alpert 2003, Monahan 2006, Phillips 2006). Research can be categorized based on

particular techniques such as biometrics (Nelkin and Tancredi 1994), RFID chips (Garfinkle 2000) or cultural expression in art, film, drama, music, and landscape architecture (Marx 1996; Groombridge 2002; Pecora 2002; McGrath 2003; Gold & Revill 2003). The field can also be organized around institutional areas beyond public health such as work (Sewell and Wilkinson 1992; Jermier 1998; Maxwell 2005; Weckert 2005), consumption (Gandy 1993; Lace 2005), criminal justice (Brodeur & Leman-Langlois 2006; Elden 2003; Goold 2004), libraries (Minow & Lipinski 2003), military (Donahue 2006; Haggerty & Gaszo 2005), education (Webb et al. 2004), health (Nelkin & Tancredi 1994; Ghosh 2005), spatial design (Curry 1997; Flusty 2001; Monmonier 2004) and domestic and international security (Della Porta 1998, Cunningham 2004, Varon 2004, Davenport et al. 2005, Boykoff 2006, Bigo 2006; Cate 2004; Lyon 2003a; Monahan 2006). There is also work on particular subgroups such as children (Penna 2005; Mirabal 2006), the elderly (Kinney et al. 2003; Kinney & Kart 2006), and the ill (Timmermans & Gabe 2002; Stephens 2005). The primary goal of the scholar can be considered. Is it to advance basic knowledge (and then to document, explain or both), evaluate impacts, or to analyze legal and regulatory issues for public policy purposes? Such research contrasts with the generally descriptive, non-analytic work of most journalists (e.g., Davis 1990, Sykes 1999, O'Harrow 2005, Garfinkle 2000, Parenti 2003). Within the basic research category we can often separate conceptual and theoretical efforts from those that involve systematic (or unsystematic) empirical research. Much of the empirical research is of the case study variety, relying on observation, interviews and the analysis of documents (McCahill 2002, Tunnell 2004, Gilliom 1994 & 2001). There is also a small quantitative evaluation literature on Closed Circuit Television [CCTV] use (particularly in the UK - e.g., Norris et al 1998; Newburn and Hayman 2002; Goold 2004; Hempel and Töpfer 2004; Welsh and Farrington 2004). However, relative to the ubiquity of, and vast expenditures on, CCTV there has been very little evaluation, particularly in the United States. The same holds for the paucity of independent studies of the impact of drug testing. Ball and Haggerty (2005) edited a volume considering some methodological issues unique to a field that is often reliant on data from the shadows. These may vary depending on the kind of society studied. Contrast the conditions for Samatras (2004) research in Greece, with its legacy of authoritarian surveillance, with that in the United States or Britain. Observing the watchers and the watched can be an inherently political act and continual skepticism is required with respect to the meaning of the data. With respect to more theoretical, or at least conceptual, efforts the field has offered an abundance of similar concepts that seek to label the essence and/or account for the arrival of the new surveillance. Much of this work is in essay form and broadly in the tradition of Bentham and Foucault, as well as Taylor, Weber, Durkheim Nietzsche, Marx, Hobbes and Machiavelli. C. Surveying the Needs of the Field Most surveillance essays illustrate their claims by reference to historical examples, newsworthy events and secondary empirical data. In an effort to be inclusive they generally sweep across technologies and contexts in offering macro-theoretical accounts. There is generally a failure to deal with variation or to indicate just what it is that is being explained beyond an implicit contrast between the earlier and new forms. In most cases we are offered little guidance with respect to how the ideas might be assessed or contrasted with alternative approaches. There is need for more operationalized approaches which permit finer-grained contrasts and seek to explain diverse organizational and institutional settings, goals, technologies and varied national and cross cultural responses. As well we need to go beyond static structural approaches to studies of process, interaction, implementation, and diffusion and (sometimes) contraction in the careers of surveillance activities.

We control uniqueness – surveillance studies is rapidly expanding – publications are multiplying – creating some organizational limit is good

Gary **Marx** (Professor Emeritus from M.I.T. He has worked in the areas of race and ethnicity, collective behavior and social movements, law and society and surveillance studies, received the Distinguished Scholar Award from its section on Crime, Law and Deviance, the Silver Gavel Award from the American Bar Association, the Bruce C. Smith Award for research achievement, the W.E.B. Dubois medal, and the Lifetime Achievement Award from the Society for the Study of Social Problems, Ph.D. from the University of California at Berkeley) and Glenn W. Muschert (Miami University, Department of Sociology and Gerontology) March **2007** "Desperately Seeking Surveillance Studies: Players in Search of a Field"
http://web.mit.edu/gtmarx/www/seekingstudies.html

Now there is a vibrant and growing international network of scholars interested in surveillance questions. (Monaghan 2006) There are new journals, special issues of, and many articles in, traditional journals and frequent conferences. 1 Between 1960-69 Sociological Abstracts listed just 6 articles with the word "surveillance". Between 1990-99, 563 articles were listed and if current trends continue, there will be well over 1000 articles for the decade ending 2009. In 2005-06 alone, five significant edited sociological books were published with scores of contributors (Zuriek and Salter 2005, Lace 2005, Haggerty and Ericson 2006, Lyon 2006, Monahan 2006), and many more monographs and edited volumes are on the way. Yet a boom in research does not necessarily mean an equivalent boon.

No consensus on executive/congressional surveillance authority – presidents will assert broad authority

Elizabeth B. **Bazan and** Jennifer K. **Elsea** (Legislative Attorneys, American Law Division, Congressional Research Service) January **2006** "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information"
https://www.epic.org/privacy/terrorism/fisa/crs_analysis.pdf

A review of the history of intelligence collection and its regulation by Congress suggests that the two political branches have never quite achieved a meeting of the minds regarding their respective powers. Presidents have long contended that the ability to conduct surveillance for intelligence purposes is a purely executive function, and have tended to make broad assertions of authority while resisting efforts on the part of Congress or the courts to impose restrictions. Congress has asserted itself with respect to domestic surveillance, but has largely left matters involving overseas surveillance to executive self-regulation, subject to congressional oversight and willingness to provide funds.

The field of surveillance is in need of well-articulated disagreements based on definitional precision and conceptually organized research and debate – reactionary case studies rely on buzzwords and non-falsifiable claims that make the topic too broad

Gary **Marx** (Professor Emeritus from M.I.T. He has worked in the areas of race and ethnicity, collective behavior and social movements, law and society and surveillance studies, received the Distinguished Scholar Award from its section on Crime, Law and Deviance, the Silver Gavel

Award from the American Bar Association, the Bruce C. Smith Award for research achievement, the W.E.B. Dubois medal, and the Lifetime Achievement Award from the Society for the Study of Social Problems, Ph.D. from the University of California at Berkeley) and Glenn W. Muschert (Miami University, Department of Sociology and Gerontology) March **2007** "Desperately Seeking Surveillance Studies: Players in Search of a Field" http://web.mit.edu/gtmarx/www/seekingstudies.html

The field is strongest in its' historical and macro accounts of the emergence and changes of surveillance in modern institutions and in offering an abundance of nominal (if rarely operationalized) concepts. 3 Terms such as surveillance, 4 social control, privacy, anonymity, secrecy and confidentiality tend to be used without precise (or any) definition and are generally not logically linked. There are also case studies, usually at one place and time, involving only one technology and often with a policy evaluation (particularly of CCTV) component. 5 To marketing, law enforcement and national security critics, sociological surveillance research tends to be seen as coming from left field (in both senses). Surveillance writing often shows sympathy for underdogs and suspicion of overdogs, indignation over flagrant violations and concern for the future of personal dignity, equality and democracy. Yet beyond the newsworthy horror stories, 6 we have little quantitative data on the frequency and correlates of abuses or trend data on the individual's overall ability to control personal information. Replicable empirical research and hypothesis testing on contemporary forms lags, (although surprisingly, perhaps less so in Europe than in North America). For the systematic, comparative, context and empirically focused social analyst, much of the current work, while often elegantly phrased, exploratory 7 and useful in offering background knowledge, raising issues and sounding alarms, remains conceptually undernourished, non-cumulative and non-explanatory (at least in being conventionally falsifiable) and is either unduly abstract and broad, or too descriptive and narrow. Consider for example the nominal concepts noted in footnote 3. These are each part of the story about the Hindu elephant whose varied, and sometimes conflicting, elements can be hazily seen through the pixilated shadows and fog of the present. However for systematic empirical assessment, naming names is not enough. We need to break down the named into their multi-dimensional components, locate connections among seemingly disparate phenomena and use a more variegated conceptual framework in our data collection and analysis. Terms such as "the new surveillance" and "surveillance society" (Marx 1985 a,b), which I used to label emerging trends illustrates this problem. These general terms served well in effecting broader climates of public opinion and in calling attention to the issues. 8 Yet we need to get beyond buzzwords and the simple, "just say 'yes' or 'no' Professor" responses desired by the media. In reflecting on just what is new, I identify 27 dimensions by which any surveillance means can be contrasted. I use this as the bases for contrasting the new surveillance with traditional surveillance. 9 (Marx 2004) A further weakness of the field involves omission. Most studies deal with contexts of conflict, domination and control involving surveillance agents and organizations (almost all of the books chosen for review in this symposium). The extensive use of surveillance in other settings for goals involving protection, management, documentation, strategic planning, ritual or entertainment is ignored. Goals are too often simply assumed. Their frequent lack of clarity and their multiplicity are ignored. 10 The very word surveillance evokes images of conflict spies skulking in the shadows, rather than of cooperation with reassuring life guards or parents in the sunshine. Surveillance as a fundamental social process is about much more than modernism, capitalism, bureaucracy, computer technology and the aftermaths of 9/11, however important those are. A zero-sum, social control, conflict game involving the unilateral, effective and unchallenged power of the hegemons does

not define the universe. Surveillance subjects and uses by individuals (e.g., in a familial contexts or by voyeurs) are neglected, as is the interaction between agents and subjects. 11 Surveillance culture, which so envelops and defines popular consciousness, also tends to be under-studied. 12 The sum of sociological surveillance studies is unfortunately not yet greater than the individual parts. To take topics studied by the reviewers, it is not initially apparent how research on undercover police, passports (Torpey 2000), political repression (Cunningham 2003), work monitoring (Zureik 2003), mobile telephony (Lyon 2006), constitute a field, let alone studies of welfare eligibility (Gilliom 2001), anonymity (Frankel and Teich 1999, bots (Kerr 2004), the internet and political polls (Howard et al 2005), e-government (Ogura 2006), cardiac patients (Dubbeld 2006), abandoned DNA (Joh 2006) or reality television (Andrejevic 2004). With respect to theory and method, established fields of political sociology, stratification, organizations, social psychology, deviance and social control, science, technology and society and social problems are more helpful than an autonomous surveillance subfield. A field needs greater agreement (or well articulated disagreements) on what the central questions and basic concepts are, on what it is that we know empirically and what needs to known, and on how the empirically documented or documentable can be ordered and explained, let alone some ability to predict the conditions under which future developments are to be expected. Reaching these objectives should be the next steps for the field. The multi-dimensional nature of personal information and the extensive contextual and situational variation related to this are often found within dynamic settings of social conflict. This rich brew prevents reaching any simple conclusions about how crossing or failing to cross personal informational borders will, or should, be explained and judged. Such complexity may serve us well when it introduces humility and qualification, but not if it immobilizes. An approach that specifies the contingent factors offers us a situational, rather than an absolutist approach. A compass is not a map, but it is better than being lost without one.

Including international communications makes the topic massive – the literature base is constantly expanding – prefer wholly domestic communication

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https://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf

Technological changes also have expanded the amount of information about Americans the government can acquire under FISA. For one thing, globalization and advances in communications technology have vastly increased the volume — and changed the nature — of international communications. The cost and technological difficulties associated with placing international calls during the era of FISA's passage meant that such calls were relatively rare. In 1980, the average American spent less than 13 minutes a year on international calls.111 Today, the number is closer to four and a half hours per person — a thirty-fold increase.112 That number does not include the many hours of Skype, FaceTime, and other Internet-based voice and video communications logged by Americans communicating with family, friends, or business associates overseas. And, of course, the advent of e-mail has removed any barriers to international communication that may have remained in the telephone context, such as multi-hour time

differences. Worldwide e-mail traffic has reached staggering levels: in 2013, more than 182.9 billion e-mails were sent or received daily. 113 As international communication has become easier and less costly, the content of communications is much more likely to encompass — and, in combination, to create a wide-ranging picture of — the intimate details of communicants' day-to-day lives. Technology and globalization also have led to much greater mobility, which in turn has generated a greater need to communicate internationally. Foreign-born individuals comprised around 6 percent of the U.S. population when FISA was enacted but account for more than 13 percent today.114 Immigrants often have family members and friends in their countries of origin with whom they continue to communicate. Similarly, there has been a sharp increase in Americans living, working, or traveling abroad, creating professional or personal ties that generate ongoing communication with non-citizens overseas. The number of Americans who live abroad is nearly four times higher than it was in 1978 and the number of Americans who travel abroad annually is nearly three times higher.115 The number of American students who study abroad each year has more than tripled in the past two decades alone.116 These trends show no signs of abating, suggesting that the volume of international communications will only continue to expand. In addition, technological changes have made it likely that government attempts to acquire international communications will pull in significant numbers of wholly domestic communications for which Congress intended the government to obtain a regular warrant rather than proceeding under FISA. For instance, a recently declassified FISA Court decision shows that when the NSA taps into fiberoptic cables, it pulls in some bundles of data that include multiple communications — including communications that may not involve the target of surveillance. The NSA claims that it is "generally incapable" of identifying and filtering out such data bundles.117 The result is that the agency routinely collects large numbers of communications — including "tens of thousands of wholly domestic communications" between U.S. persons — that are neither to, from, or about the actual "target."118 For all of these reasons, the collection of foreign intelligence surveillance today involves Americans' communications at a volume and sensitivity level Congress never imagined when it enacted FISA. If the government wished to acquire the communications of a non-citizen overseas in 1978, any collection of exchanges involving Americans could plausibly be described as "incidental." Today, with international communication being a daily fact of life for large numbers of Americans, the collection of their calls and e-mails in vast numbers is an inevitable consequence of surveillance directed at a non-citizen overseas. The volume of information collected on U.S. persons makes it difficult to characterize existing foreign intelligence programs as focused solely on foreigners and thus exempt from ordinary Fourth Amendment constraints

Domestic surveillance has been talked about in an uncountable number of fields --- a limited definition is required

Boersma, Associate Professor at the Faculty of Social Sciences, 2014 (Kees, "Histories of State Surveillance in Europe and Beyond", http://cryptome.org/2014/06/histories-state-spying-eu-plus.pdf, p. 1)//roetlin

Research into surveillance has grown rapidly over the past decades. Scholars have studied surveillance in the context of democracy and democratization, confronting its practices with power, politics and decision making (Haggerty and Samatas 2010). They have sought attention for phenomena such as social sorting, namely the mechanism that sorts people into categories (Gandy 1993; Lyon 2003a), systematic monitoring of people's behavior and communication through information technology (Poster 1990); they have discussed surveillance in the context of privacy (Bennett 2008) and studied the places where surveillance occurs, such as in the

workplace (Ball 2010), airports (Klauser 2009; Salter 2008), schools (Warnick 2007; Taylor 2009; Monahan and Torres 2009), megaevents (Samatas 2007; Bennett and Haggerty 2011) and the urban space (Norris and Armstrong 1999; Koskela 2000; Gray 2002). They have also demonstrated that the outcome of surveillance can be a commodity and may result in an economy of personal information (Gandy 1993; Andrejevic 2002; Pridmore and Zwick 2011) and that we can contribute to our own surveillance by posting personal information on the internet (Albrechtslund 2008).

Precision Good

Popular language and contextual evidence distorts analysis of surveillance – intent to define and conceptual clarity is key

Gary **Marx** (Professor Emeritus from M.I.T. He has worked in the areas of race and ethnicity, collective behavior and social movements, law and society and surveillance studies, received the Distinguished Scholar Award from its section on Crime, Law and Deviance, the Silver Gavel Award from the American Bar Association, the Bruce C. Smith Award for research achievement, the W.E.B. Dubois medal, and the Lifetime Achievement Award from the Society for the Study of Social Problems, Ph.D. from the University of California at Berkeley) **2002** "What's New About the "New Surveillance"? Classifying for Change and Continuity" http://www.surveillance-and-society.org/articles1/whatsnew.pdf

To note that the above are examples of new forms of surveillance tells us rather little, even if such laundry lists drive journalistic engines. Nor is the most commonly used form of classification based on the type of technology (e.g., electronic location monitoring) very helpful. Such general terms can mask differences found within the same family of technologies. This also does not help us see elements that may be shared or absent across technologies – whether traditional or new. Descriptive terms are often emotionally laden (e.g., persons have strong feelings of support or aversion to terms such as drug testing or video surveillance) and that can distort analysis. The social analyst needs frameworks for locating variation which go beyond popular language, even if some call it jargon. Let us move from these descriptive terms to some more abstract and analytic concepts. There is need for a conceptual language that brings some parsimony and unity to the vast array of both old and new surveillance activities. The logic of explanation proceeds best when it accounts for systematic variation.

Surveillance – Directed and Intrusive

Surveillance must be defined as both directed and intrusive

Philip **Gounev et al.** (Tihomir Bezlov, Anton Kojouharov, Miriana Ilcheva, Mois Faion, Maurits Beltgens, Center for the Study of Democracy, European Commission) **2015** "Part 3: Legal and Investigative Tools" http://ec.europa.eu/dgs/home-affairs/e-library/docs/20150312_1_amoc_report_020315_0_220_part_2_en.pdf

7.7.1. Definition There is no universal definition of surveillance. The various definitions for surveillance generally depend on whether it is used as an umbrella term or it is more narrowly defined. Advances in technology appear to be a factor in defining what surveillance is, as they hold the potential to periodically enable previously unavailable methods, techniques and tools for conducting surveillance operations (i.e. geolocation/tracking, electronic surveillance, cloud technologies, storage capacities). Analysis of information in the questionnaires indicates that MS use different approaches in defining surveillance in their legislation. Some MS differentiate between simple observation conducted without technical means and surveillance utilizing technical tools (AT, BE, FI, FR DE, LU). In other MS legislation distinguishes short-term and long-term surveillance, wherein the defined periods may vary from state to state (AT, DE, BE). The significance of making a distinction in the periods for which surveillance is authorised is that most often short-term surveillance is regulated more loosely and/or does not require a judicial oversight. Some MS definitions isolate surveillance conducted on the premises of private homes as a special circumstance, whereby it requires additional judicial authorisation and oversight (AT, CZ, LU, UK). Overall, MS definitions may be grouped into two main categories:120 General / broad definitions. In these instances surveillance is more broadly defined as a special investigative tool that may be executed through the utilisation of various technical and other means (BG, EE, HU, LT, SI, FI, SK, SE). Specific examples include: - The method of intelligence data gathering, when information collected identifying, recognizing and (or) watching an object (LT). - Covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things… the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way (EE). - Secret observations made of a person with the purpose of retrieving information (FI). Technically specific definitions. Some MS have opted for a more detailed and specific approach to defining surveillance in their legislations. In such instances, legal provisions often define surveillance along the logic of the types of technical means and/or outcome from surveillance activities (BE, AT, FR, DE, LU, PT, SK, SE). In general, the different types of surveillance methods, such as video surveillance, photographic imaging, bugging, audio surveillance and geo-tracking may be separately detailed in the definition of surveillance. For example, in France geolocation/tracking and video-surveillance are regulated separately (FR). This is because different types of surveillance are deemed to have potentially varied levels of intrusion and may be regulated with differentiated criteria, e.g. period for surveillance, authorisation procedure, crime threshold (FR, SI). Surveillance conducted using technical means is difficult to define as it covers a wide array of activities and capabilities, as well as methods and techniques. A breakdown of some the most used methods may help illustrate what is contained in the term.

Table 7.4: Electronic surveillance methods.

Audio surveillance	Visual surveillance	Tracking surveillance	Data surveillance
Phone-tapping Voice-over-Internet-Protocol (VoIP) Listening devices (room bugging)	Hidden video surveillance devices In-car video systems Body-worn video devices Thermal imaging / (forward-looking infrared) CCTV	Global Positioning Systems (GPS) / Transponders Mobile phones Radio frequency identification devices (RFIDs) Biometric information technology (e.g. retina scans at airports	Computer / Internet (Spyware / Cookies) Blackberries / Mobile phones Keystroke monitoring

Source: Current practices in electronic surveillance in the investigation of serious and organised crime, UNODC[121]

There is a notable variation of approach in defining surveillance in the United Kingdom. In that country surveillance is generally defined as 'directed' and 'intrusive' as per the level of potential interference into the lives of its targets: Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle (and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device). Directed surveillance is covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a way as is likely to result in obtaining private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under the 2000 Act) (UK). 7.7.2. Scope The rationale behind using surveillance (and all special investigatory techniques) in investigations has always been one of necessity and of opportunity. On the one hand, concerns about privacy and misuse mean that most jurisdictions have installed a system of legal constraints, wherein surveillance (and other special investigative means) may only be used when all other tools have either been exhausted or proven inefficient. But on the other hand, the overall consensus among respondents was that surveillance provides invaluable information that illuminates the secretive nature of criminal activities, especially organised crime. This makes this instrument paramount in collecting evidence which can be presented at the judicial stage. The limits on the maximum allowed periods for surveillance serve as an additional tool for control, evaluation and verification of the necessity criteria. The scope of surveillance as a special investigative tool may be viewed from several angles: who can perform surveillance, for how long, and in what circumstances can surveillance be authorised. Who performs surveillance Surveillance, as is the case with other special investigative techniques, may be performed only by authorised organisations or structures within a state's law enforcement system, including intelligence, counter-intelligence and military intelligence structures. Generally the units in charge of investigating the respective criminal activities are involved in the surveillance activities. Some states however, utilise specialised institutions, separate from police, which perform surveillance, in addition to other investigating structures (FI, IE, LT, BG). In Ireland, only An Garda Siochana, the Defense Forces and the Revenue Commissioners may carry out surveillance (IE), while in Portugal the Polícia Judiciária is authorised to conduct surveillance activities in cases of serious organised crime (PT). In Greece surveillance is carried out by personnel of the State Security Division of Hellenic Police and by subdivisions investigating organised crime, drug trafficking, and economic crime (EL). In one instance the decision authority on surveillance activities lies with the organisation that is authorised to make an arrest (FI).

Surveillance—"Technical Means"

Surveillance is the use of technical means to extract data – excludes unaided senses and voluntary reporting

Marx 2 Professor Emeritus, Massachusetts Institute of Technology (gary t., Surveillance & Society , "What's New About the "New Surveillance"? Classifying for Change and Continuity∗ " 2002, http://www.surveillance-and-society.org/articles1/whatsnew.pdf //SRSL)

A better definition of the new surveillance is the use of technical means to extract or create personal data. This may be taken from individuals or contexts. In this definition the use of "technical means" to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples extend the senses by using material artifacts or software of some kind, but the technical means for rooting out can also be deception, as with informers and undercover police. The use of "contexts" along with "individuals" recognizes that much modern surveillance also looks at settings and patterns of relationships. Meaning may reside in cross classifying discrete sources of data (as with computer matching and profiling) that in and of themselves are not of revealing. Systems as well as persons are of interest. This definition of the new surveillance excludes the routine, non-technologic al surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a cooperative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.

Surveillance is distinct from observation

Marx 2 Professor Emeritus, Massachusetts Institute of Technology (gary t., Surveillance & Society , "What's New About the "New Surveillance"? Classifying for Change and Continuity∗ " 2002, http://www.surveillance-and-society.org/articles1/whatsnew.pdf //SRSL)

The term "close observation" also fails to capture contemporary practices. Surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and work. Nor need it be close as in detailed – much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail. The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in "observation". The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (e.g., saying "I see" for understanding or being able to "see through people"). Indeed "seeing through" is a convenient short hand for the new surveillance. To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (e.g., written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to "observe" a text or a printout is in many ways different from a detective or supervisor directly observing behavior. The eye as the major means of direct surveillance is increasingly joined or replaced by hearing, touching and smelling. The use of multiple senses and sources of data is an important characteristic of much of the new surveillance.

Including observation explodes the topic

Marx 2 Professor Emeritus, Massachusetts Institute of Technology (gary t., Surveillance & Society , "What's New About the "New Surveillance"? Classifying for Change and Continuity∗ " 2002, http://www.surveillance-and-society.org/articles1/whatsnew.pdf //SRSL)

I do not include a verb such as "observe" in the definition because the nature of the means (or the senses involved) suggests subtypes and issues for analysis and ought not to be foreclosed by a definition, (e.g.: how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity?). If such a verb is needed I prefer "attend to" or "to regard" rather than observe with its tilt toward the visual. While the above definition captures some common elements among new surveillance means, contemporary tactics are enormously varied and would include: a parent monitoring a baby on closed circuit television during commercials or through a day care center webcast; a data base for employers containing the names of persons who have filed workman compensation claims; a video monitor in a department store scanning customers and matching their images to those of suspected shoplifters; a supervisor monitoring employee's e-mail and phone communication; a badge signaling where an employee is at all times; a hidden camera in an ATM machine ; a computer program that monitors the number of keystrokes or looks for key words or patterns ; a thermal imaging device aimed at the exterior of a house from across the street analyzing hair to determine drug use ; a self-test for level of alcohol in one's system; a scanner that picks up cellular and cordless phone communication; mandatory provision of a DNA sample ; the polygraph or monitoring brain waves to determine truthfulness; Caller ID.

Surveillance =/= "Technical Means"

Surveillance includes low-tech or no-tech methods

Lyon, 14, directs the Surveillance Studies Centre, Professor of Sociology, Queen's Research Chair (David, 'Situating Surveillance: history, technology, culture', Histories of State Surveillance in Europe and Beyond, p. 39-40, http://cryptome.org/2014/06/histories-state-spying-eu-plus.pdf)

Thus new technology is significant but may easily be overrated. The main argument of The Electronic Eye in this regard was that information technologies enhance – sometimes massively – the capacities of surveillance systems. Today, organizations of all kinds have access to large quantities of all sorts of personal data that they can store, retrieve and transmit globally, and that can be processed for multiple purposes, many well beyond the original intent of the initial collection. But surveillance itself may still be considered in ways that can encompass low- tech or no- tech methods, and sometimes the meaning of those earlier versions are easier to grasp. After all, the word means to "watch over", a concept that has numerous everyday meanings.

Surveillance – Laundry List

The aff explodes limits—"surveillance" includes too much to be reasonable—tech advancement proves

Marx 2 Professor Emeritus, Massachusetts Institute of Technology (gary t., Surveillance & Society , "What's New About the "New Surveillance"? Classifying for Change and Continuity∗ " 2002, http://www.surveillance-and-society.org/articles1/whatsnew.pdf //SRSL)

Note*** this can be used as a "surveillance includes" aff card

The social causes and consequences of this are profound and only beginning to be understood. These involve broad changes in economic and social organization, culture and conceptions of freedom and constraint. In the overcrowded and overlapping worlds of academic journals, one focusing on Surveillance and Society has a most welcome niche. The last half of the 20th century has seen a significant increase in the use of technology for the discovery of personal information. Examples include video and audio surveillance, heat, light, motion, sound and olfactory sensors, night vision goggles, electronic tagging, biometric access devices, drug testing, DNA analysis, computer monitoring including email and web usage and the use of computer techniques such as expert systems, matching and profiling, data mining, mapping, network analysis and simulation. Control technologies have become available that previously existed only in the dystopic imaginations of science fiction writers. We are a surveillance society. As Yiannis Gabriel (forthcoming) suggests Weber's iron cage is being displaced by a flexible glass cage. Three common responses to changes in contemporary surveillance technology can be noted. One general historical and functional view holds that there is nothing really new here. All societies have certain functional prerequisites which must be met if they are to exist. These include means for protecting and discovering personal information and protecting social borders. Any changes are merely of degree, not of kind. An opposing, less general view is that we live in a time of revolutionary change with respect to the crossing of personal and social borders. There are two variants of this. One is that the sky is indeed falling and, "you never had it so bad". Some journalists and popular writers claim "privacy is dead".

Surveillance =/= Persons

Surveillance is not limited to closely observing a suspected person, it extends to places, spaces, networks, and categories of people

Marx, 2 Professor Emeritus, Massachusetts Institute of Technology (Gary T., Surveillance & Society, What's New About the "New Surveillance"? Classifying for Change and Continuity http://www.surveillance-and-society.org/articles1/whatsnew.pdf //RF)

A critique of the dictionary definition of surveillance as "close observation, especially of a suspected person" is offered. Much surveillance is applied categorically and beyond persons to places, spaces, networks and categories of person and the distinction between self and other surveillance can be blurred. Drawing from characteristics of the technology, the data collection process and the nature of the data, this article identifies 28 dimensions that are useful in characterizing means of surveillance. These dimensions highlight the differences between the new and traditional surveillance and offer a way to capture major sources of variation relevant to contemporary social, ethical and policy considerations. There can be little doubt that major changes have occurred. However the normative implications of this are mixed and dependent on the technology in question and evaluative framework. The concept of surveillance slack is introduced. This involves the extent to which a technology is applied, rather than the absolute amount of surveillance. A historical review of the jagged development of telecommunications for Western democratic conceptions of individualism is offered. This suggests the difficulty of reaching simple conclusions about whether the protection of personal information is decreasing or increasing.

Surveillance includes the nonhuman

Marx 2 Professor Emeritus, Massachusetts Institute of Technology (gary t., Surveillance & Society , "What's New About the "New Surveillance"? Classifying for Change and Continuity⁎ " 2002, http://www.surveillance-and-society.org/articles1/whatsnew.pdf //SRSL)

One indicator of rapid change is the failure of dictionary definitions to capture current understandings of surveillance. For example in the Concise Oxford Dictionary surveillance is defined as "close observation, especially of a suspected person". Yet today many of the new surveillance technologies are not "especially" applied to "a suspected person". They are commonly applied categorically. In broadening the range of suspects the term "a suspected person" takes on a different meaning. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular time periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand.

Surveillance Includes Public Health

Surveillance includes public health

Arana 09 [December 13, 2009, Dr. Carolina Arona (DMD and Phd in Epidemiology), "Definition of Surveillance System", Obtained online, http://publichealthobserver.com/definition-of-surveillance-system/, RaMan]

Over the years the concept of surveillance has been changed. However, this system will always have a practical value as it can be used in designing new surveillance systems as well as understanding or evaluating currently operating ones. Current concepts of surveillance systems evolve from public health actions to control disease outbreaks in the population. Nowadays, surveillance extends far beyond the narrow confines of communicable disease reporting and vital statistics to include surveillance of chronic diseases, environmental factors, behavioral risk factors, health care quality and utilization, adverse events from drugs and medical devices, knowledge, attitudes, and beliefs concerning health, occupational diseases and outcomes of pregnancy and childbirth. Surveillance systems are extending its services to the entire population in a more public health context including collection and analysis of surveillance data to assess public health status, identifying priorities, evaluating and monitoring programs, and conducting research. In addition, surveillance system is being useful in detecting epidemics and changes in health practice, documenting the distribution and spread of a health event, estimating the magnitude of a health problem, and delineating the natural history of disease.

Surveillance is the collection of data to prevent the onset diseases or injuries

Halperin 96 [December 6, 1998, William E. Halperin (M.D, Dr.P.H, M.P.H.), "The role of surveillance in the hierarchy of prevention", Obtained online from Wiley Online Library, http://onlinelibrary.wiley.com/doi/10.1002/(SICI)1097-0274(199604)29:4%3C321::AID-AJIM8%3E3.0.CO;2-R/abstract, RaMan]

Surveillance is the collection, analysis, and dissemination of results for the purpose of prevention. Surveillance tells us what our problems are, how big they are, where the solutions should be directed, how well (or poorly) our solutions have worked, and if, over time, there is improvement or deterioration. Surveillance is essential to successful sustained public health intervention for the purposes of prevention. Surveillance sytems must be tailored to the specific disease or injury that is to be prevented. Surveillance should not be limited to the occurrence of death, disease, or disability. Public health is a multilevel cascade of activities involving recognition, evaluation, and intervention. Public health should include elements of experimentation as well as field implementation with evaluation. Surveillance is the mechanism to modify any element in the cascade based upon that element's contribution to prevention or lack thereof. Any element in the causal or intervention pathway is appropriate for surveillance as long as the monitoring of the element is useful in improving the prevention system. These elements include the occurrence of hazard and intervention as well as disease, death, or disability. Examples will be provided that demonstrate the roles of surveillance in the recognition of new diseases, the evaluation of the persistence of recognized problems, the estimation of the magnitude and trends of public health problems, and the provision of information to motivate intervention. (This article is a US Government work and, as such, is in the public domain in the United States of America.) © 1996 Wiley-Liss, Inc.

Surveillance =/= Non-Public Information

No aff is topical under their interpretation, everything is public information in the digital age.

Kerr, 2009 – Professor @ George Washington University Law School. (Orin S.; "ARTICLE: THE CASE FOR THE THIRD-PARTY DOCTRINE"; 107 Mich. L. Rev. 561; lexis; 6/26/15 || NDW)

1. The Doctri/nal Critique The first important criticism of the third-party doctrine is that it does not accurately apply the reasonable expectation of privacy test. According to [*571] critics, individuals normally expect privacy in their bank records, phone records, and other third-party records. n57 Such expectations of privacy are common and reasonable, and Justices who cannot see that are simply out of touch with society and are misapplying the Fourth Amendment. n58 From this perspective, it "defies reality" n59 to say that a person "voluntarily" surrenders information to third parties like banks or telephone companies. n60 As Justice Marshall reasoned in his Smith dissent, "it is idle to speak of "assuming' risks in contexts where, as a practical matter, individuals have no realistic alternative." n61 A corollary to this claim is that the Justices supporting the third-party doctrine have misunderstood the concept of privacy. The Justices envision privacy as an on-off switch, equating disclosure to one with disclosure to all, and as a result they miss the many shades of gray. n62 As Justice Marshall put the point in Smith, "privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes." n63 Echoing Justice Marshall, Daniel Solove argues that the third-party doctrine is based on an incorrect "conception of privacy," a conception of privacy as total secrecy. n64 Along the same lines, Richard Posner argues that the Miller line of cases is "unrealistic." n65 "Informational privacy does not mean refusing to share information with everyone," he maintains, for "one must not confuse solitude with secrecy." n66 Sherry Colb agrees, writing that "treating exposure to a limited audience as identical to exposure to the world" n67 fails to recognize the degrees of privacy.

Third Party Doctrine isn't a viable interpretation, everything is public information.

Villasenor, 2013 - Senior fellow at the Brookings Institution and a professor of electrical engineering and public policy at UCLA. (John; "What You Need to Know about the Third-Party Doctrine"; http://www.theatlantic.com/technology/archive/2013/12/what-you-need-to-know-about-the-third-party-doctrine/282721/; 6/26/15 || NDW)

**Villasenor cites Supreme Court Justice Sonia Sotomayor

One of the most important recent Supreme Court privacy decisions, the United States v. Jones ruling issued in 2012, involved GPS tracking performed directly by the government, without a third party intermediary. (That case, which the government lost, turned on the government's physical intrusion onto private property, without a valid warrant, to attach a GPS tracker to a suspect's car.) Yet Justice Sotomayor used her concurrence in Jones to examine privacy more broadly and telegraph her discomfort with the third-party doctrine: More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. This approach is ill suited to the digital age,

in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks ... I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection.

Surveillance - Temporal

The temporal scope of surveillance are core components of policy decision-making, authorization, and implmentation

Philip **Gounev** et al (Tihomir Bezlov, Anton Kojouharov, Miriana Ilcheva, Mois Faion, Maurits Beltgens, Center for the Study of Democracy, European Commission) **2015** "Part 3: Legal and Investigative Tools" http://ec.europa.eu/dgs/home-affairs/e-library/docs/20150312_1_amoc_report_020315_0_220_part_2_en.pdf

Time limitations The temporal scope of surveillance may be generally divided into short- and long-term surveillance. This differentiation is an important factor in the decisionmaking and authorisation process. Short-term surveillance may range from 24 hours (DE) to 48 hours (AT, CZ, SK) and may only require a simple suspicion that a crime has been committed (AT). Furthermore, in most jurisdictions short-term surveillance that is initiated under the urgency clause may not require immediate official authorisation from a prosecutor or a judge. Long-term authorisation periods for surveillance vary significantly across MS, and are in certain cases dependent on the type of surveillance to be carried out. For example, realtime geolocation in France can be carried out for a maximum of 15 days in a preliminary inquiry and for up to 4 months in an investigation (FR). The maximum allowed periods for surveillance are extendable and often act as increments used as a measure of control as each extension application requires renewed rationalisation and authorisation. In some legislation the total maximum period during which a person may be held under surveillance is also defined: 'Application of a measure may last a maximum of two months; however, if due cause is adduced, it may be extended every two months by means of a written order. The measure may last a total of: 1) 6 months in the case referred to in the sixth paragraph of this Article. 2) 24 months in cases referred to in the fifth paragraph of this Article if they relate to criminal offences referred to in the fourth paragraph of this Article, and 36 months if they relate to criminal offences referred to in the second paragraph of Article 151 of this Act'.123 (SI)

Education – Confidentiality

Confidentiality makes any accurate analysis FISA standards and applications difficult

Elizabeth **Goitein** (co-directs the Brennan Center for Justice's Liberty and National Security Program, J.D. Yale Law School) **and** Faiza **Patel** (serves as co-director of the Brennan Center for Justice's Liberty and National Security Program) **2015** "What went wrong with the FISA court"
https://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf

Under the statutory scheme designed by Congress in 1978, orders issued by the FISA Court share a critical feature with regular Title III warrants: both require prior judicial scrutiny of an application for an order authorizing electronic surveillance in a particular case.90 This is not to say, however, that FISA orders are equivalent to warrants issued by regular federal courts. Title III allows a court to enter an ex parte order authorizing electronic surveillance if it determines, on the basis of the facts submitted in the government's application, that "there is probable cause for belief that an individual is committing, has committed, or is about to commit" a specified predicate offense.91 By contrast, FISA's highest standard, which is reserved for the targeting of U.S. persons, requires a showing of probable cause that the target's activities "involve or may involve" a violation of U.S. criminal law.92 While Congress intended for this standard to approach the threshold for criminal warrants (as discussed above),93 the absolute secrecy surrounding the FISA procedure precludes a full understanding of how this standard operates in practice. For example, documents leaked by Edward Snowden revealed that the government had obtained FISA orders targeting prominent Muslim American community leaders with no apparent connection to criminal activity.94

Impacts - Generic

Precision Good

Standard definitions are good - key to accurate and precise research

Masberg - No Date (Barbara Masberg - Central Washington University Researcher, "Defining the Tourist: Is it Possible? A View from the Conventions and Visitors Bureau" - No Date, Sage Journals, Accessed 6/27/25)

"A problem well defined is a problem half solved"; (Pi- zam 1994, p. 93). In tourism research, problems addressed include investigating tourists and their spending habits, travel behavior, motivation, and lifestyles. These types of research studies delineate the tourist such that target marketing or market segmentation may be conducted, visitors are better satisfied by their tourism destination or product, and spending habits are defined for more accurate tracking of economic impacts of tourism. One of the first items in the research process is defining and/or delimiting the parameters and the problem being addressed in the research. A basic mantra of scholars and researchers is the more accurate and precise research is, the better received the results will be. This mantra becomes even more important when looking at the diversity in the tourism industry as illustrated by the Standard Industrial Codes (SICs) of a variety of nations (Chadwick 1994), the intangibility that requires measurement, and the skepticism of such critical constituencies as lawmakers, residents, and business owners. Gee, Makens, and Choy (1997) point out that standard definitions are necessary to establish parameters for research content and to realize agreement on measuring economic activity and establishing comprehensive impact on the local, state, national, or world economy. Also, comparability of data is in jeopardy as researchers operationally define their samples and delimit their study according to disparate definitions.

Precision regulates the ability of the law to be embedded with illocutionary force --- absent it the ability to govern is degraded

Tanner, Ph.D. from Melbourne and a Lecturer in the College of Law & Justice at Victoria University, 2010 (Edwin, "LEGAL LANGUAGE AND THE NON-LAW RESEARCH STUDENT" Published in the Journal of the Australasian Law Teachers Association 2010 edition, http://www.austlii.edu.au/au/journals/JlALawTA/2010/9.pdf, p. 82)//roetlin

***note: illocutionary force is relating to the communicative effect of an utterance --- for example "There's a snake under you" may have the illocutionary force of a warning --- in this article it basically means precision k2 courts and legislature embedding intent in their texts

Rules arising from case law have a similar illocutionary force. Their legitimating authority originally derived from sovereign command, but more recently from the State.41 In both legislation and case law, the illocutionary force of the words of the law is strong. The words of the law must 'count'42 if they are to regulate behaviour. When judges say they are adhering to the principle of stare decisis they are merely saying that they are applying the doctrine of precedent. In other words, there is a previous decision on a similar issue in the court hierarchy which the court must apply to the case before it. Stare decisis is a schema. One manifestation of speech act form in legislation is the use of the deontic modals43 'shall' and 'may'. These modals have special significance to lawyers in that they indicate, respectively, mandatory and discretionary authority. They have no special significance to nonlaw postgraduate research students. These students are unlikely to be familiar with the deontic force of these words. They may take 'shall' as indicating the future, and 'may' as conveying lack of certainty. In common

usage, ‘shall’ as a deontic modal is obsolete. For example, to nonlawyers the sentence, ‘You shall do it’, no longer expresses an order. To make that sentence into an order, the word ‘shall’ has to be replaced by the word ‘must’ or some form of ‘have to’. Most drafting books acknowledge that ‘must’ is now preferable to ‘shall’ to express mandatory force.44 Rendering the modal ‘shall’ as the more commonly used ‘must’, does not remove its illocutionary force if used in the appropriate setting. The drafting and interpretation of legislation assumes a knowledge of the rules of statutory interpretation. These rules form a specialised schema. They are the body of principles developed through the courts, and subsequently by Parliament, to assist in the drafting and interpretation of statutes and subordinate legislation. The specialised technical language (ie jargon’)45 of the law has developed within the matrix of legal schemata (the enacted words and judicial decisions). Professional ‘jargons’ exist because ordinary language cannot adequately capture all the precision necessary to express technical concepts concisely.4

We must leave nothing to undefined --- absolute precision is a necessity

Turatsinze, Graduated in Legislative Drafting (LLM) from the University of London Institute of Advanced Legal Studies, 2012 (Elias, “THE PURSUIT OF CLARITY, PRECISION AND UNAMBIGUITY IN DRAFTING RETROSPECTIVE LEGISLATION”, Published by the Institute of Advanced Legal Studies in London, http://sas-space.sas.ac.uk/4711/1/Elias_Turatsinze_LLM_ALS_Dissertation.pdf, p. 8-9)//roetlin

On the other hand, precision is defined as the exactness of expression or detail.30 Precision is traditionally viewed as the main goal of common law drafters who make the greatest effort to “say all, to define all”: to leave nothing to the imagination: never to presume upon the reader’s intelligence.31 In legislative drafting, precision requires choosing correct words and maintaining their grammatical sense. This avoids uncertainty in the meaning of words or sentences, which in turn affects construction of statutes. In United Kingdom, this point was succinctly expressed by Lord Bridge of Harwich as follows: “The courts’ traditional approach to construction, giving primacy to the ordinary, grammatical meaning of statutory language, is reflected in the parliamentary draftsman’s technique of using language with the at most precision to express the legislative intent of his political masters and it remains the golden rule of constructions that a statute means exactly what it says and does not mean what it does not say.”32

Judge should prefer legal definitions – designed to prevent ambiguities

goes with a precision standard

MACAGNO, 10 (Fabrizio MACAGNO - Post Doc Researcher, “Legal Definitions” – 10/30/10, Social Science Research Network, Accessed 6/26/15, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742946) dortiz

When used in a discussion or in a dialogue, definitions are not simply propositions, but the propositional contents of speech acts. For instance, some definitions are used to describe the meaning of a term ("murder is the unlawful killing of one human by another, especially with premeditated malice"), while others impose or establish a new meaning. A clear example can be found in contracts, where the parties establish new meanings for specific terms used in their agreements. The propositional content of such speech acts can have different structures: the

identity between the definiens and the definitum can be expressed by indicating its parts, its genus and difference, its etymology, etc... The different types of definitional propositions have distinct argumentative forces, can be used in different types of arguments, and may differently influence the dialogical setting. Fabrizio MACAGNO 201 1.1 Definitions in law: the pragmatic level From a pragmatic perspective, legal definitions can be divided into two broad classes, namely the descriptive and the statutory definition. At the speech act level, definitions are used for two basic purposes in law: explaining the meaning of an unclear or ambiguous word, and attributing a specific meaning to a word. Statutory definitions correspond to performatives having a definitional discourse as their propositional content. Statutory definitions commit both the legislator and the people subject to the law, or the parties to a contract, to a particular definition of a word. Their argumentative purpose is to establish an unambiguous lexicon with a view to prevent potential ambiguities (Aarnio, 1987: 57). A clear example of these definitions in stipulative form can be drawn from contract law (First National Bank v. American States Insurance Co. N° 963164-01/09/98):

Precision is vital—turns solvency and research quality

Resnick 1 [Evan Resnick, Journal of International Affairs, 0022197X, Spring 2001, Vol. 54, Issue 2, "Defining Engagement"]

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

Definitions and framing of specific legal terms is key to advance social and legal change – avoiding these debates replicates conservative violence

Brady, previous editor of Ireland's most influential newspaper The Irish Times, 2/1/15 (Conor, "Why the word 'marriage' is making it hard for many to say yes", LexisNexis, The Sunday Times (London))//roetlin

What's in a word? Quite a lot, sometimes, and wouldn't it be unfortunate if the proposed constitutional amendment to create a new status for same-sex unions were to fall on a dictionary definition. Failure is improbable, however. For the generations born since the 1970s, the sexual orientation of others is not an issue. Older voters' views on sexual mores are increasingly less likely to be influenced by religious teaching. The generation that grew up in a society where it was a criminal offence to provide condoms has become the parents and grandparents of young people who are openly gay or lesbian - and they have discovered they love and cherish these children no less because of their sexual orientation. Nevertheless, the outcome of the May referendum on marriage equality is not a certainty. Even though polls over the past year showed a 75% "yes" vote, a survey last month found 46% of voters have "some reservations" about same-sex marriage. Referendums have a habit of going from yes to no, as Enda Kenny discovered when his attempt to abolish the Seanad, initially an apparent shoo-in, was defeated. The eventual gap between yes and no in May will be much closer than early polls suggested. Capturing the high ground with smart language can be an important determinant in effecting - or blocking - social or legal change. Opponents of abortion seized the label "pro-life" in the 1970s and applied it

skilfully to hold off legislation, not just in Ireland but elsewhere. Anyone who was not "pro-life" was by implication "pro-death" - not an easy position to defend. The government has been adroit in choosing its wording; this will be the "Referendum on Marriage Equality". That has a nice, non-threatening ring to it. In a free and democratic 21st-century republic, who can reasonably hold out against equality? The public discourse so far has been dominated by the pro-change lobby. Gay, lesbian, bisexual and transgender groups have been vociferous. But apart from the Iona Institute and Catholic bishops, many of those who will probably resist change have been silent, not yet articulating a coherent set of counter arguments. This will change as polling day looms, and as middle Ireland weighs up what it is being asked to vote upon. The point of contention will not be granting same-sex couples the same protections and entitlements of the law. These have been effectively secured under civil partnership legislation. Rather the debate will centre around the implicit challenge to the status of the commitment between a man and a woman, still the norm for most of the population. For others, albeit a smaller cohort, opposition will crystallise around the issue of adoption by same-sex couples. I have a friend in a midlands town, a professional man who has been separated for 25 years after his wife left to form another relationship. They have children who are now adults and have never divorced. He still considers himself a married man. His status as a husband and father are important to him, even though the former role is for all practical purposes defunct. I believe he will vote no in May because he believes the referendum proposal seeks to set at naught what he considers a defining aspect of his life. He had a "marriage". What he is now being asked to validate, he reasons, is that his marriage was not what he believed it to be. There are a great many like him, towards whom opponents of change will direct their arguments. If the amendment is passed, they will reason, marriage between men and women will be devalued. The uniqueness of fatherhood and motherhood will be undermined by a vague concept of "parenthood" that takes no account of gender. The constitution's reverencing of the family as the "fundamental group unit" of society will be rendered meaningless. To many younger people, this may seem anachronistic in a world where diversity is celebrated, but values that have prevailed for centuries are not easily negatived. The contentious word is "marriage". It has various synonyms or near synonyms: wedlock, espousal, betrothal, matrimony. There are probably others. Same-sex relationships are documented in the histories of the ancient Greeks and Romans - but the Greeks did not apply the word "marriage" to them. Indeed it is difficult, historically, to find the word "marriage" or its synonyms applied, other than facetiously, to relationships between persons of the same gender. The etymology of the word "matrimony" is informative, coming from the Latin mater (mother) and monium (state or condition). Thus "matrimony" suggests a state or condition that predicates at least the potential of motherhood through the union of male and female. Closer to home, the Brehon laws of ancient Ireland recognised 10 different grades or degrees of marriage. A "first degree" marriage was between a man and woman of equal wealth and rank. A " 10th degree" marriage involved a feebleminded or mentally ill couple. Nowhere was it provided that couples of the same sex might "marry". Doubtless there were same-sex unions at the time of Fionn MacCumhaill and the Fianna. But it does not appear that they were granted the status of "marriage", which was generally a contract for gain or security. Not too many, other than the irredeemably prejudiced or those whose convictions are grounded in strict religious doctrine, will argue that homosexual persons should not have their relationships protected and vindicated by law. And if they can satisfy the criteria for adopting children, they should have that right just like anybody else. But is it so essential that the word "marriage" be attached to their arrangements? It has had a particular meaning down through history. In much the same way, the word "apple" has had a particular meaning. Why should we try to apply it to an orange? There are 196 states in the world. Of these,

according to the respected Pew Research Forum of Washington DC, just 17 - eight within the EU - have legislated for same-sex marriage. Others, including socially tolerant societies such as Germany, Austria and Italy, recognise same-sex unions that give contracted partners the same rights at law, regardless of gender, but they do not call it "marriage". This debate would appear to be about nomenclature rather than substance. It is not impossible that the proposal could fall on an abstract, dictionary definition. It would be regrettable if an initiative aimed at furthering inclusivity was, paradoxically, to facilitate a victory for intolerance.

Production debates need to focus on precise, field-specific phrasing—ordinary meaning is insufficient

Brown, judge – Court of Appeals for the Fifth Circuit, **'59**

(John R., "CONTINENTAL OIL COMPANY, Petitioner, v. FEDERAL POWER COMMISSION," Dissenting Opinion, 266 F.2d 208; 1959 U.S. App. LEXIS 5196; 10 Oil & Gas Rep. 601)

Indeed, I do not think that my cautious Brothers would have undertaken this excursion had they not first have found (or assumed) a basis for considering production in its ordinary, common usage. For clearly, what the Court says does not follow if the term is used in the sense of the oil and gas field. For example, the Court states, 'In the ordinary language of purchase and sale of a product where it is in deliverable form the stream of gas is, in a sense, 'produced' at the latest after it has passed through the first master valve. * * *.' Again, it states, 'but this does not change the fact that in the ordinary sense of the terms production of the gas has been completed at or just above the surface of the ground where it is physically deliverable but then is shut in until delivery commences.'To support this approach, the Court frankly states that 'our duty here is not to determine what is generally understood in the industry, in the resolution of other relationships, is meant by 'production." It is, rather, the Court goes on to say 'to determine what Congress meant by the term.' Reading § 1(b) as though it contained only the first part of the sentence and disregarding [**35] altogether the exclusionary phrases at its end, the Court then proceeds to find that the sole Congressional purpose was 'to regulate these interstate sales.' This causes the Court then to reject the industry context and adopt a construction of 'production' which 'is in line with ordinary non-technical usage' so that it will 'effectuate and not * * * frustrate the purpose of the law.'.' The abundant legislative history canvassed by the many Supreme Court cases **But Congress was not legislating in an atmosphere of 'ordinary non-technical usage** reveals an articulate awareness of the complexities of this whole business. The object of § 1(b) was clearly to define the purpose to regulate [*220] transportation and sale and companies engaged in such transportation or sale. This was done against the background fully known to Congress that at one end of the process was the production of the natural gas, that at the other end was the consumer, and in between were those who transported and distributed it. As pointed out in Part I above, the Court has been emphatic in ascribing an intention to Congress to exclude those matters which relate to the local production activities [**36] traditionally reserved to states for their exclusive control.We are told that § 1(b) exclusion is a provision '* * * that * * * precludes the Commission from and control over the activity of producing or gathering natural gas. * * *.' Colorado Interstate Gas Co. v. FPC, 1945, 324 U.S. 581, 603, 65 S.Ct. 829, 839, 89 L.Ed. 1206. Two years later this was reiterated in Interstate Natural Gas Company v. FPC, 1947, 331 U.S. 682, 690, 67 S.Ct. 1482, 1487, 91 L.Ed. 1742. 'Clearly, among the powers thus reserved to the States is the

power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters.'Within another two years this was reemphasized in FPC v. Panhandle Eastern Pipe Line Co., 1949, 337 U.S. 498, 509-13, 69 S.Ct. 1251, 1258, 93 L.Ed. 1499. 'To accept these arguments springing from power to allow interstate service, fix rates and control abandonment would establish wide control by the Federal Power Commission over the production and gathering [**37] of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states.'How Congress expected to preserve the absolute freedom of the States in matters concerning production unless that term was used in the context of that industry is nowhere made clear by my Brothers. If Congress were to adhere to its purpose, carefully to regulate some but not all of the natural gas moving of dedicated to move in interstate commerce, it was required to prescribe the boundary limits of each in terms of the business and industry to be regulated. That is the usual, not the extraordinary, principle of statutory construction long ago set forth in Unwin v. Hanson, (1891) 2 Q.B. 115, 119, approved in O'Hara v. Luckenback Steamship Co., 1926, 269 U.S. 364, 370-371, 46 S.Ct. 157, 160, 70 L.Ed. 313:'If the act is one [**38] **passed with reference to a particular trade**, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, **then the words are to be construed as having that** particular meaning**, though it may differ from the common or ordinary meaning of the words**. 'And see 50 Am.Jur., Statutes § 277 (1944).What is 'production of natural gas' is to be determined in the light of the actual substantive conditions and engineering-business requirements of that great field of scientific mechanical activity. Such activity is not to be assayed by Judges who, learned in the law, have naught but the limited technical experience and cumulative knowledge of the ordinary person.Judged by the standards of the industry, not only by what was said and uncontradicted, but by what was done on a large scale in this very field, the Commission could only find that all of Continental's facilities were essential to and a part of the production of gas. [*221] IV.The Court's action and opinion is portentous. It is so precisely because it is based on an erroneous assumption and an equally [**39] erroneous construction. It assumes that we are fact finders to supplant or supplement the expert agency. It finds the capacity to cope with this problem by relieving it of all technical complexities and casting it in the mold of the ordinary meaning of production.The Court finds 'that in the ordinary sense of the term production of the gas has been completed at or just above the surface of the ground where it is physically deliverable * * *.' (emphasis in the original) Tying this in to the point of delivery (at the very extreme end of Continental's 4-inch master value and at the very beginning of El Paso's swage), the Court has necessarily adopted the approach of the Commission that facilities for the sale of natural gas subject to the jurisdiction of the Commission are those 'serving to contain the gas at the point of delivery.' That it means to champion this construction is likewise established by the Court's unqualified approval, both here and in Sun Oil Company v. FPC, 5 Cir., 1959, 266 F.2d 222, of J. M. Huber Corp. v. FPC, 3 Cir., 1956, 236 F.2d 550, 556 and Saturn Oil & Gas Co. v. FPC, 10 Cir., 1957, 250 F.2d 61, 69, [**40] the latter of which states: 'To us it is clear that facilities necessary to effect a sale of gas in interstate commerce are facilities used in interstate commerce and are within the jurisdiction of the Commission. This would seem to be the plain intent of section 7(c). The Third Circuit has so held in J. M. Huber Corp. v. Federal Power Commission, 3 Cir., 236 F.2d 550, 556.'The vice of this rationale is

compounded by the Court's interpretation of 'production' or 'production facilities' in terms of ordinary non-industry connotation. But even without this, if the test is to be stated in terms of that piece of equipment which is needed to effectuate the sale or contain the gas at the point of sale delivery, then there is in fact no physical limitation. In those terms the master valve (whether upper or lower, or both) does not alone contain the gas. The master valves are ineffective without the continuation of the leakproof surface casing, the production casing or many other parts of the well, all of which operate simultaneously and indispensably to bring and hold the gas under effective control.That is critical since § 7(c) requires certification [**41] of facilities which are to be constructed or extended. And once a little intrusion is made into the forbidden 1(b) area of production, it is only logical to expect (and justify) application of the full reach of this concept. It stops in a given well where, but only where, the particular piece of equipment may be said to directly assist in the containment of the gas at delivery point. Worse, it means that by the force of § 7(c), the drilling and equipping of a new well could only be done by express approval of the Commission.We and all others have now firmly held that on the commencement of the first jurisdictional sale, the Commission's power attaches at least to the sale. The Court by our present opinion holds that simultaneously power attaches to some piece of gas well equipment. If the jurisdictional sale setting all of this Federal control in motion is in the common form of a long-term dedication-of-reserves- contract by which the mineral owner undertakes to develop a field and deliver all production to the long line pipe line purchaser, the result will be that the drilling of additional wells may not be done except on Commission terms and approval. In such [**42] a situation the 'new' well would, of course, be the means by which to effectuate the sale of the gas. Since this would constitute 'the construction or extension of any facilities' for the sale of natural gas subject to the jurisdiction of the Commission, and would result in the acquisition and operation of 'such facilities or extensions thereof,' it would, as § 7(c) demands, positively require that the Commission issue a certificate of public [*222] convenience and necessity 'authorizing such acts or operation.'Combining this opinion and Sun Oil, this day decided, this Court binds a gas well owner to produce gas for as long as the Commission prescribes. Neither the length of the contract nor the production-nature of the facility by which the 'service' (sale) is performed are an effective limitation. Until nature shuts off the gas the Commission is the perpetual regulator from whose power the Commission's own brief says, '* * * there is no * * * hiding place.'Congress did not mean to invest its creature with these scriptural powers (Psalms 139:7, 8). Section 1(b) draws the line at production.

Precision Bad

Don’t play their game --- their pseudocommunication and legal precision arguments just hide insidious manipulation

Stuart, Professor of Law at Valparaiso University School of Law, December **2008** (Susan, “Shibboleths and Ceballos: Eroding Constitutional Rights Through Pseudocommunication”, Published in Brigham Young University Law Review, p. 1548)//roetlin

Pseudocommunication in the context of this Article is a broad umbrella covering various semantic and rhetorical devices used by lawyers and by courts to persuade others that an unpalatable (and often wrong) result is just and right and good. Here, pseudo-communication does not refer to the lawyer's craft and trade - the use of rhetoric and language to persuade. Instead, pseudo-communication is a mutation of persuasive lawyering into something more insidious: the deliberate manipulation of language under the guise of legal precision to persuade an audience that a gross error in judgment is perfectly acceptable, where all notions of honesty are stripped from the legal purpose by manipulating the tools of the language. In other words, pseudocommunication is the technique of selling a product no one wants, not through persuasive lawyering but through Madison Avenue shilling.

Under the guise of “legal precision” courts use legalese euphemisms to **mask atrocities and murder**

Stuart, Professor of Law at Valparaiso University School of Law, December **2008** (Susan, “Shibboleths and Ceballos: Eroding Constitutional Rights Through Pseudocommunication”, Published in Brigham Young University Law Review, p. 1592-1594)//Roetlin

Similarly did the majority puff up "managerial discipline" n226 as a euphemism for the retaliatory act itself. And this third category of doublespeak - euphemism - is where the Court outdid itself. What must first be understood about the Court's euphemisms is their relationship to legalese, and as jargon, the fourth type of [*1593] doublespeak. n227 To the extent the legal audience agrees on and employs terms consistently, jargon is a legitimate use of language. n228 The specialized language of the law sometimes is the only accurate language available because the precision of the words chosen requires technical language known by and familiar to the profession. n229 Euphemistic jargon as legalese provides perfect cover for the Court to misuse language under the guise of introducing new technical terminology to be adopted by the profession. Unfortunately, these new "technical" terms are euphemisms in the more Orwellian sense than in the legal sense. Euphemisms are a healthy way for individuals to avoid taboo subjects, such as sex, death, and disease, n230 but are doublespeak when "used to mislead or deceive." n231 As Orwell suggested, it "is designed to make lies sound truthful and murder respectable." n232 Hence, Nazi Germany's genocide was a "final solution" and "special treatment," n233 and "capital punishment is our society's recognition of the sanctity of human life." n234 Likewise did the majority employ euphemisms to hide the fact that its decision was based not on any principled reasoning but upon the desire to protect retaliatory behavior by bad managers. Perhaps most suggestive of this effort is the opinion's euphemistic use of "discipline." "Discipline" means "punishment intended to correct or instruct; esp., a sanction or penalty imposed after an official finding of misconduct." n235 In like fashion, the Court has interpreted "discipline" in the context of a union's right to discipline its members' rules violations as distinct from retaliation. n236 [*1594] In Garcetti, however, "discipline" is a euphemism for employer

retaliation. For instance, despite Ceballos having done his job correctly, the issue before the Court was "whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee's official duties." n237 Then, to make sure the audience understands that retaliation is now "discipline," the opinion included the word in the holding of the case, n238 in the phrase "managerial discipline," n239 and, lest anyone be confused, in closing. n240 Similar euphemisms are used as if they were legal jargon rather than some amorphous business jargon with little legal significance, such as "corrective action," n241 "employer control," n242 and "evaluate." n243 The Court's use of euphemisms and its efforts to elevate them to legitimate legal jargon cannot hide the simple truth that the government employer in Garcetti was simply retaliating against a government employee n244 who was doing his job as expected by taxpayers. n245

Legal precision is bad – its tautological and obscures analysis

Coper, Dean and Robert Garran Professor of Law at the Australian National University, Winter **2008** (Michael, "LEGAL KNOWLEDGE, THE RESPONSIBILITY OF LAWYERS, AND THE TASK OF LAW SCHOOLS", Published in University of Toledo Law Review, http://www.utoledo.edu/law/studentlife/lawreview/pdf/v39n2/Coper%20II%20Final.pdf, p. 254)//roetlin

Sometimes this is characterised as learning to "think like a lawyer." Years ago, I came across a nice definition of this beguiling idea. Thinking like a lawyer, the author said, was "taking a positive delight in using logical reasoning to reach conclusions that offend one's humanitarian instincts." n11 The cleverness of the definition should not obscure (though perhaps it only underlines) its ominous warning. There is a real danger that inculcation into a legal culture - learning the rules of the game - can divert the initiates into a love of legal reasoning for its own sake. Seduced by the search for elegance and coherence and obsessed with technique, they lose sight of the ends and purposes which the law is intended to serve. But herein lies the dilemma. To present legal doctrine as an artificial construct, the certainty of which is only an illusion, and which is in reality the product of social forces, hidden values, and judicial discretion, is to court the opposite danger that the neophyte will lose interest in, and even the capacity for, that rigorous analysis which is the necessary underpinning of professional competence. Effective lawyering is a craft of the highest order; yet it requires a challenging unity of opposing ideas: the immoveable object of law as an autonomous body of knowledge and the irresistible force of law as comprehensible only in its social context. One has to simultaneously construct and deconstruct; positivism meets postmodernism, and they must live happily ever after.

Legal precision and legal education are useless without activism and a method for deployment

Coper, Dean and Robert Garran Professor of Law at the Australian National University, Winter **2008** (Michael, "LEGAL KNOWLEDGE, THE RESPONSIBILITY OF LAWYERS, AND THE TASK OF LAW SCHOOLS", Published in University of Toledo Law Review, http://www.utoledo.edu/law/studentlife/lawreview/pdf/v39n2/Coper%20II%20Final.pdf, p. 257)//roetlin

I said earlier that I would not pause to defend this view. I have sought to do that elsewhere. n14 I rather want to focus on the implications for legal education. But I will acknowledge that what I am urging will often be contentious in practical application. It is one thing to use one's knowledge and skills to seek to improve a technical area of the law by participating in or making a submission to some official or quasi-official investigation of the matter. It is another thing to take a stand on a highly contested and controversial matter, in which the legal issues are engulfed in an intense policy and political debate. We may think, though we may not be able to objectively establish, that there is merit in Bills of Rights; that our traditional civil liberties represent fundamental values of the legal system and are unduly and unnecessarily put at risk by the regime of control orders and preventive detention brought in to combat terrorism; that our current treatment of refugees is bad policy and bad law; or that the recent Commonwealth override of the Australian Capital Territory's recognition of same-sex civil unions is discriminatory and inconsistent with basic human dignity, let alone with self-government. As lawyers, we have no monopoly of wisdom on these matters, but we can add value to the debate. In appropriate circumstances, we can urge fidelity to the rule of law or its underlying values, or we can urge the removal or renovation of bad law. In either case, it is not enough for the keepers of special knowledge about the law and the holders of special legal skills to be passive bystanders. Legal education has not adequately embraced these goals. It has generally stopped at the acquisition of legal knowledge and has not addressed its deployment. I understand why. It is a challenge to get even to that first step in the time available. There is the fear of eroding hard-nosed competence with the sloppy thinking of woolly idealism. There is the fear of trading the safe neutrality of the law (riddled as that is with the values of a previous era) for the unruly partisanship and politics of how it might be improved. There is a feeling that it is all too hard, too dangerous, and not the province of law school. In my view, it is the province of law school, as I have argued. I put aside all ambivalence, antinomy, tension, and paradox to say that there has to be more to being a lawyer than the possession of knowledge and technique. As we have seen in the debates about other perspectives in the curriculum, past and present - gender issues, international, and comparative dimensions - that "something more" has to be integrated rather than marginalised. It is a challenge that I urge upon all law schools, engaged, as we are, in the great common endeavour of educating lawyers for membership of a noble profession.

Legal precision is myth --- jargon is unnecessary --- instead we should prefer the clearness and brevity of dictionary definitions

Mellinkoff, Professor at the UCLA School of Law, 19**84** (David, "The Myth of Precision and the Law Dictionary", Published in UCLA Law Review Volume 31, p. 423-424)//roetlin

Twenty years ago I proposed a thesis: "That the language used by lawyers [should] agree with the common speech, unless there are reasons for a difference."' Once upon a time there were reasons for all of the peculiarities of the language of the law but most of those reasons are no longer significant. The chief reason given for our distinctive language is that this is the only way of achieving a precision unknown to the common language:2 precision, the justification for "habitual indifference to the ordinary usage of English words, grammar, and punctuation."'3 Precision, the justification for "preferring the archaic, wordy, pompous and confusing over the clear, brief, and simple."'4 All of this insistence despite the fact that "a study of the litigation that has turned repeatedly (and in many directions) on the interpretation not of layman's words but of law words, brings a conviction of imprecision or incompetenc[e] or both."5 I demonstrated that

precision as justification for the language of the law is myth. Only the smallest part of legal language is precise. "[T]he language of the law is more peculiar than precise,"'6 and it is important not to confuse the epithets. The thesis met with an overwhelmingly favorable reception. I had expected approval by those outside the profession. They needed no convincing. But I was shocked and cheered by the widespread approval of my fellow lawyers. I should not have been shocked. The book that proposed the thesis, The Language of the Law, was bottom-heavy with footnotes.

Legal precision is a myth and complex rhetoric is of no import --- monotony and repetition is the name of the game for legalese

Mellinkoff, Professor at the UCLA School of Law, 19**84** (David, "The Myth of Precision and the Law Dictionary", Published in UCLA Law Review Volume 31, p. 433-434)//roetlin

What that technical education does not do is to improve on the use of basic English, which brings me to one final aspect of the uniqueness of this profession. It is the first massive common law profession to learn its law largely through the casebook method of instruction. The casebook method started at the Harvard Law School in 1870, and spread throughout America.40 The method has been criticized, modified, rationalized in different ways, but the casebook still reigns supreme. In addition to teaching law and legal reasoning, the casebook is indoctrination in the way judges write: and the impression is indelible. Judges differ widely in interpretation of the law. They tend to differ less widely in literary expression. The concentration of judge, as of student, is on the law, as distinct from its expression. Yet, without anyone saying, "Now hear this . . . ".the expression of the appellate opinion has a special subliminal force. This is the Judge speaking! This is the Judge who uses the words, That decide the cases, That make the precedents, That make the common law. Expression and the law are inextricably fused. The opinion, the sum of essential as well as trivial parts, sheds its blessing of mythic precision on each of the parts, the words used, as though each were essential to the result. The overall effect is monotony. Not precision but repetition. And what is repeated is repeated is repeated, until the sense of discrimination between words that are important and words that are inconsequential is numbed. That sense of discrimination, between what is and what is not important, is likewise lost in the law dictionary.

Legal Definitions are absurd – legal definitions twisted to fit context and are overly specific

Holdsworth 06 (Judith L. Holdsworth – BA in law and English Legal Terminology Lecturer and adjuct Professor at the University of the Saarland. "English Legal Language and Terminology" – 10/5/06. DeKieffer & Horgan. P.12. Accessed 6/26/15. http://www.antidumping-law.com/eng/elt/manuscript.pdf)

However, lawyers are "word mongers." A "monger" is a trader or dealer. Lawyers discuss, argue and define, they twist and turn definitions of terms until the most obvious meaning becomes preposterous and the most absurd meaning suddenly seems reasonable. Wordmongering, though, is a necessary activity in the practice of law. We all strive to gain a superior command of the language and to use it effectively, and we are deeply satisfied if we have succeeded in communicating our insights and knowledge of the law effectively to our clients, colleagues or the court. By identifying typical pitfalls in legal language usage, we can avoid some of the more

embarrassing pratfalls. We can present, explain, and argue our causes not only convincingly but also coherently. We are able to draft contracts that will withstand the close scrutiny of the court. Some pitfalls of legalese are: Semantic ambiguity; General and vague terms; Over-specificity; Solemnity of form; Words that are obsolete in common usage, still in use in the legal language; Syntactic ambiguity; Terms giving rise to emotional effect; and Too many choices. Semantic ambiguity refers to the use of indistinct or obscure expressions or use of words that can have more than one meaning in the relevant context. For instance, "day" in the sentence: "The package must be delivered on the day of April 17" could mean (i) after daybreak and before nightfall, (ii) during the working hours or (iii) within the 24-hour period from midnight of April 16 to midnight of April 17. Another example: does a "vehicle" include (i) a bicycle, (ii) a trailer 13 (a) attached or (b) not attached to a car, (iii) a parked car? General and vague terms run rampant in legal terminology. Anglo-American law contains innumerable references to "the average man on the street," "morality," and "reasonableness." Is a person's fist or foot, with or without a shoe, a "dangerous" weapon"? To overcome semantic ambiguity and vagueness, terms can be defined and inclusions enumerated. For instance a "small lobster" can be defined as "a lobster 9 inches or less, measured from the tip of the beak to the end of the shell of the center flap of the tail when the lobster is spread as far as possible flat." However, such attempts too often become over specific. The intention to lend certainty and stability to a law, statute or contract fails because it is not possible for a definition to limit the concept in all directions. The legal document is faulty because specific eventualities that should have been included are omitted. The drafters of the instrument failed or were unable to contemplate every possible circumstance or foresee every invention.

Ordinary Meaning Good

Using the ordinary meaning of words is vital to legal precision, effective communication and the rule of law – it's the foundation of predictability

Pregerson, 6 – US Judge for the Court of Appeals for the Ninth Circuit (Harry, ARMANDO NAVARRO-LOPEZ, Petitioner, v. ALBERTO R. GONZALES, Attorney General, Respondent. No. 04-70345 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT 503 F.3d 1063; 2007 U.S. App. LEXIS 22312, 11/19, lexis)

Expanding these categories beyond recognition at the expense of depriving common words like "felony" and "violence" of their ordinary meaning does a disservice to the law. In order for judges to apply laws and for citizens to obey them, words must have meanings that are consistent and predictable. Precision in language is necessary not only for effective communication, but also for a well-functioning legal system. As guardians of the rule of law, we should be careful not to contribute to the deterioration of the English language, with the loss of respect for the law that inevitably results.

Looking to the ordinary meaning of words is vital to predictability

Hill, 6 – Judge, Supreme Court of Wyoming (IN THE INTEREST OF ANO: SLB, Appellant (Petitioner), v. JEO, Appellee (Respondent). No. C-05-13 SUPREME COURT OF WYOMING 2006 WY 74; 136 P.3d 797; 2006 Wyo. LEXIS 80, 6/23, lexis)

We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations. Ultimately, whether a statute is ambiguous is a matter of law to be determined by the court.

Ordinary meaning is the most predictable way to interpret the resolution

Kanne, 9 – US Circuit Court Judge (CHARLES C. MIDDLETON, SR., Plaintiff-Appellant, v. CITY OF CHICAGO, Defendant-Appellee. No. 08-2806 UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 578 F.3d 655; 2009 U.S. App. LEXIS 18979; 186 L.R.R.M. 3465; 158 Lab. Cas. (CCH) P10,061; 92 Empl. Prac. Dec. (CCH) P43,662

lexis)

At first blush, the answer to our question appears fairly straightforward. After all, when interpreting a statute, we must begin with its text and assume "that the ordinary meaning of that language accurately expresses the legislative purpose." [**5] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252, 124 S. Ct. 1756, 158 L. Ed. 2d 529 (2004) (quotations omitted). Unless Congress expressed a clear intention to the contrary, a statute's language is conclusive. Lamie v. U.S. Tr., 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) ("It is well established that 'when the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms.'" (quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000))). Simply

applying the language of § 1658(a) to USERRA indicates that the latter was subject to the former: this is a civil action; USERRA is an act of Congress; it was enacted well after § 1658(a); and it did not "otherwise provide" for a different limitations period.

Etymology bad

Using modern and common English is critical to maintaining legislative clarity

Turatsinze, Graduated in Legislative Drafting (LLM) from the University of London Institute of Advanced Legal Studies, 2012 (Elias, "THE PURSUIT OF CLARITY, PRECISION AND UNAMBIGUITY IN DRAFTING RETROSPECTIVE LEGISLATION", Published by the Institute of Advanced Legal Studies in London, http://sas-space.sas.ac.uk/4711/1/Elias_Turatsinze_LLM_ALS_Dissertation.pdf, p. 8)//roetlin

By definition, clarity refers to the state or quality of being easily perceived and understood.24 Clarity is also defined as clearness or lucidity as to perception or understanding; freedom from indistinctness or ambiguity.25 For Henry Thring, clarity or clearness depends on the proper selection of words, on their arrangement and on the construction of sentences.26 In legal writing, clarity requires use of plain language. Plain language enhances understanding and transparency of legislation.27 Peter Butt and Richard Castle recommend that "legal documents should be written in modern, standard English as currently used and understood."28 In legislative drafting, clarity makes legislation easier for the reader to understand what is being said.29

Limits Good - Education

Depth over breadth - Mastery of one subject is worth more than shallow understanding of many

Schwartz et al 09 (MARC S. SCHWARTZ University of Texas, PHILIP M. SADLER, GERHARD SONNERT Science Education Department, Harvard-Smithsonian Center for Astrophysics, Cambridge, ROBERT H. TAI Curriculum, Instruction, and Special Education Department, Curry School of Education, University of Virginia, Charlottesville, VA. "Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework" - 9/1/09. Wiley InterScience. Accessed 6/27/15. http://currtechintegrations.com/pdf/depth%20in%20science%20education.pdf)

However, the explosion of scientific knowledge during the 20th century forced the consideration of the alternative view. Advocates argued the importance of studying fewer topics in greater depth (Beittel et al., 1961; Hirsch, 2001; Newmann, 1988; Perkins, 1992; Schmidt, Hsing, & McKnight, 2005; Sizer, 1984; Westbury, 1973). Educators subscribing to this school of thought maintain that students should develop depth of understanding, rather than aim for maximum coverage, claiming that mastery of a few topics trumps the failure to master any. This view was bolstered during the last decade of the 20th century by the American Association for the Advancement of Sciences (AAAS) in their publication Science for All Americans (1989), which was later reinforced in their Benchmarks for Science Literacy (1993) and two influential books from the National Research Council (NRC), How People Learn (1999) and its more recent publication Taking Science to School (2007). Following this initiative, states like California, among others, explicitly affirmed this position in their framework for public education: "Content should . . . value depth over breadth of coverage" (Butts & Precott, 1990). Later in this important decade of educational reform in science, the NRC authored the National Science Education Standards (1997) in which depth of study is an embedded theme whose importance is still evident, although less explicit, in their most recent publication, Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future (Committee on Science, Engineering, and Public Policy, 2007). Yet these documents do little to resolve the problem of "science teachers struggling with the tension of pursuing science topics in depth, as required by the standards, versus the pressure to 'get through' the breadth of the provided curriculum material" (Van Driel, Beijaard, & Verloop, 2001, p. 147).

Yes it is important to be educated in various fields --- but education that is superficial is next to worthless

Coper, Dean and Robert Garran Professor of Law at the Australian National University, Winter **2008** (Michael, "LEGAL KNOWLEDGE, THE RESPONSIBILITY OF LAWYERS, AND THE TASK OF LAW SCHOOLS", Published in University of Toledo Law Review, http://www.utoledo.edu/law/studentlife/lawreview/pdf/v39n2/Coper%20II%20Final.pdf, p. 255)//roetlin

First is the knowledge base, the attribute which has perhaps dominated Australian legal education. Certainly, it has dominated the accreditation requirements for Australian law schools,

and I have observed over my career many colleagues who have felt a compulsion, whether driven by external demands or internal impulses, to "cover" certain material at the expense of mature reflection. This is in part the old chestnut of breadth vs. depth, but it runs the risk of being a parody of the kind of knowledge one needs to be an effective lawyer. A knowledge base is important - without it, even the greatest virtuosity in the exercise of legal skills and legal techniques will be an empty shell - but I mean knowledge that engages the antinomy between law in the abstract and law in context, knowledge that has been constructed, deconstructed, and, most importantly, reconstructed. This is not one-dimensional knowledge, not some superficial statement of propositions of law as immutable, coherent, and internally consistent; but is rather knowledge that incorporates an understanding of the processes of legal change and the impact of social change. It is knowledge that combines craft and insight.

An unlimited topic internal link turns problem-solving and analysis skills

Parker, et. al, **professor and chair of Social Studies Education at the University of Washington**, 8/23/**11** (Walter, "Rethinking advanced high school coursework: tackling the depth/ breadth tension in the AP US Government and Politics course", published in the Journal of Curriculum Studies, http://www.tandfonline.com/doi/pdf/10.1080/00220272.2011.584561, p. 534)//roetlin

In 2002, the National Research Council, which functions under the auspices of the National Academy of Sciences, recommended that AP courses be redesigned to reduce coverage and better reflect what is now known about how students learn. According to that report, 'the inclusion of too much accelerated content can prevent students from achieving the primary goal of advanced study: deep conceptual understanding of the content and unifying concepts of a discipline' (National Research Council 2002: 1). 'Well-designed programmes', in contrast, 'help students develop skills of inquiry, analysis, and problem-solving so that they become superior learners' (p. 12).

Broad topics destroy participation in debate – turns education

Rowland 84 (Robert C., Baylor U., "Topic Selection in Debate", American Forensics in Perspective. Ed. Parson, p. 53-4)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called "NDT" programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage

of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience "negophobia,"7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: "Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament."8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that "broad topics discourage participation because of insufficient time to do requisite research."10 The final effect may be that entire programs either cease functioning or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: "It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate."11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

Neuroscience studies proves our impact

Newsweek, 11 ["The Twitterization of our culture has revolutionized our lives, but with an unintended consequence—our overloaded brains freeze when we have to make decisions." http://www.thedailybeast.com/newsweek/2011/02/27/i-can-t-think.html]

Imagine the most mind-numbing choice you've faced lately, one in which the possibilities almost paralyzed you: buying a car, choosing a health-care plan, figuring out what to do with your 401(k). The anxiety you felt might have been just the well-known consequence of information overload, but Angelika Dimoka, director of the Center for Neural Decision Making at Temple University, suspects that a more complicated biological phenomenon is at work. To confirm it, she needed to find a problem that overtaxes people's decision-making abilities, so she joined forces with economists and computer scientists who study "combinatorial auctions," bidding wars that bear almost no resemblance to the eBay version. Bidders consider a dizzying number of items that can be bought either alone or bundled, such as airport landing slots. The challenge is to buy the combination you want at the lowest price—a diabolical puzzle if you're considering, say, 100 landing slots at LAX. As the number of items and combinations explodes, so does the quantity of information bidders must juggle: passenger load, weather, connecting flights. Even experts become anxious and mentally exhausted. In fact, the more information they try to absorb, the fewer of the desired items they get and the more they overpay or make critical errors. This is where Dimoka comes in. She recruited volunteers to try their hand at combinatorial auctions, and as they did she measured their brain activity with fMRI. As the information load increased, she found, so did activity in the dorsolateral prefrontal cortex, a region behind the forehead that is responsible for decision making and control of emotions. But as the researchers gave the bidders more and more information, activity in the dorsolateral PFC suddenly fell off, as if a circuit breaker had popped. "The bidders reach cognitive and information overload," says Dimoka. They

start making stupid mistakes and bad choices because the brain region responsible for smart decision making has essentially left the premises. For the same reason, their frustration and anxiety soar: the brain's emotion regions—previously held in check by the dorsolateral PFC—run as wild as toddlers on a sugar high. The two effects build on one another. "With too much information, " says Dimoka, "people's decisions make less and less sense." So much for the ideal of making well-informed decisions. For earlier generations, that mean simply the due diligence of looking things up in a reference book. Today, with Twitter and Facebook and countless apps fed into our smart phones, the flow of facts and opinion never stops. That can be a good thing, as when information empowers workers and consumers, not to mention whistle-blowers and revolutionaries. You can find out a used car's accident history, a doctor's malpractice record, a restaurant's health-inspection results. Yet research like Dimoka's is showing that a surfeit of information is changing the way we think, not always for the better. Maybe you consulted scores of travel websites to pick a vacation spot—only to be so overwhelmed with information that you opted for a staycation. Maybe you were *this close* to choosing a college, when suddenly older friends swamped your inbox with all the reasons to go somewhere else—which made you completely forget why you'd chosen the other school. Maybe you had the Date From Hell after being so inundated with information on "matches" that you chose at random. If so, then you are a victim of info-paralysis. The problem has been creeping up on us for a long time. In the 17th century Leibniz bemoaned the "horrible mass of books which keeps on growing," and in 1729 Alexander Pope warned of "a deluge of authors cover[ing] the land," as James Gleick describes in his new book, *The Information*. But the consequences were thought to be emotional and psychological, chiefly anxiety about being unable to absorb even a small fraction of what's out there. Indeed, the Oxford English Dictionary added "information fatigue" in 2009. But as information finds more ways to reach us, more often, more insistently than ever before, another consequence is becoming alarmingly clear: trying to drink from a firehose of information has harmful cognitive effects. And nowhere are those effects clearer, and more worrying, than in our ability to make smart, creative, successful decisions. The research should give pause to anyone addicted to incoming texts and tweets. The booming science of decision making has shown that more information can lead to objectively poorer choices, and to choices that people come to regret. It has shown that an unconscious system guides many of our decisions, and that it can be sidelined by too much information. And it has shown that decisions requiring creativity benefit from letting the problem incubate below the level of awareness—something that becomes ever-more difficult when information never stops arriving. Decision science has only begun to incorporate research on how the brain processes information, but the need for answers is as urgent as the stakes are high. During the BP oil-well blowout last year, Coast Guard Adm. Thad Allen, the incident commander, estimates that he got 300 to 400 *pages* of emails, texts, reports, and other messages every day. It's impossible to know whether less information, more calmly evaluated, would have let officials figure out sooner how to cap the well, but Allen tells NEWSWEEK's Daniel Stone that the torrent of data might have contributed to what he calls the mistake of failing to close off air space above the gulf on day one. (There were eight near midair collisions.) A comparable barrage of information assailed administration officials before the overthrow of the Egyptian government, possibly producing at least one misstep: CIA Director Leon Panetta told Congress that Hosni Mubarak was about to announce he was stepping down—right before the Egyptian president delivered a defiant, rambling speech saying he wasn't going anywhere. "You always think afterwards about what you could have done better, but there isn't time in the moment to second-guess," said White House Communications Director Dan Pfeiffer. "You have to make your decision and go execute." As scientists probe how the flow of information affects decision

making, they've spotted several patterns. Among them: Total Failure to Decide Every bit of incoming information presents a choice: whether to pay attention, whether to reply, whether to factor it into an impending decision. But decision science has shown that people faced with a plethora of choices are apt to make no decision at all. The clearest example of this comes from studies of financial decisions. In a 2004 study, Sheena Iyengar of Columbia University and colleagues found that the more information people confronted about a 401(k) plan, the more participation fell: from 75 percent to 70 percent as the number of choices rose from two to 11, and to 61 percent when there were 59 options. People felt overwhelmed and opted out. Those who participated chose lower-return options—worse choices. Similarly, when people are given information about 50 rather than 10 options in an online store, they choose lower-quality options. Although we say we prefer more information, in fact more can be "debilitating," argues Iyengar, whose 2010 book *The Art of Choosing* comes out in paperback in March. "When we make decisions, we compare bundles of information. So a decision is harder if the amount of information you have to juggle is greater." In recent years, businesses have offered more and more choices to cater to individual tastes. For mustard or socks, this may not be a problem, but the proliferation of choices can create paralysis when the stakes are high and the information complex. Many Diminishing Returns If we manage to make a decision despite info-deluge, it often comes back to haunt us. The more information we try to assimilate, the more we tend to regret the many forgone options. In a 2006 study, Iyengar and colleagues analyzed job searches by college students. The more sources and kinds of information (about a company, an industry, a city, pay, benefits, corporate culture) they collected, the less satisfied they were with their decision. They knew so much, consciously or unconsciously, they could easily imagine why a job not taken would have been better. In a world of limitless information, regret over the decisions we make becomes more common. We chafe at the fact that identifying the best feels impossible. "Even if you made an objectively better choice, you tend to be less satisfied with it," says Iyengar. A key reason for information's diminishing or even negative returns is the limited capacity of the brain's working memory. It can hold roughly seven items (which is why seven-digit phone numbers were a great idea). Anything more must be processed into long-term memory. That takes conscious effort, as when you study for an exam. When more than seven units of information land in our brain's inbox, argues psychologist Joanne Cantor, author of the 2009 book *Conquer Cyber Overload* and an emerita professor at the University of Wisconsin, the brain struggles to figure out what to keep and what to disregard. Ignoring the repetitious and the useless requires cognitive resources and vigilance, a harder task when there is so much information.

Prefer it—the gain in depth is twice as valuable

Science Daily 9 [Science Daily, "Students Benefit From Depth, Rather Than Breadth, In High School Science Courses", http://www.sciencedaily.com/releases/2009/03/090305131814.htm]

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. The study relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science,"

Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic.

Limits Good – Creative Thinking

Limits are key to creative thinking

Intrator, 10 [David President of The Creative Organization, October 21, "Thinking Inside the Box," http://www.trainingmag.com/article/thinking-inside-box

One of the **most pernicious myths about creativity,** one that **seriously inhibits creative thinking** and innovation, **is the belief that one needs to "think outside the box**." As someone who has worked for decades as a professional creative, **nothing could be further from the truth**. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, "**Design depends largely upon constraints."** The myth of thinking outside the box stems from a **fundamental misconception of what creativity is**, and what it's not. In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired. But, in fact, creativity is not about divine inspiration or magic. It's **about problem-solving, and by definition a problem is a constraint**, a limit, a box. One of the best illustrations of this is the work of photographers. They create by excluding the great mass what's before them, **choosing a small frame in which to work**. Within that tiny frame, literally a box, they uncover relationships and establish priorities. What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You're the one choosing the frame. And you alone determine what's an effective solution. This can be quite demanding, both intellectually and emotionally. Intellectually, **you are required to establish limits**, set priorities, and cull patterns and relationships from a great deal of material, much of it fragmentary. More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you're usually left with a big mess of ideas, half-ideas, vague notions, and the like. Now, chances are you've had a great time making your mess. You might have gone off-site, enjoyed a "brainstorming camp," played a number of warm-up games. You feel artistic and empowered. But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works. That's the hard part. It takes a lot of energy, time, and willpower to make sense of the mess you've just generated. It also can be emotionally difficult. **You'll need to throw out many ideas you originally thought were great**, ideas you've become attached to, because they simply don't fit into the rules you're creating as you build your box**.**

Limits solve aff ground—it forces creativity.

Michael **Gibbert et al** (Assistant Professor of Management at Bocconi University (Italy), et al., with Martin Hoeglis, Professor of Leadership and Human Resource Management at WHU—Otto Beisheim School of Management (Germany), and Lifsa Valikangas, Professor of Innovation Management at the Helsinki School of Economics (Finland) and Director of the Woodside Institute) **2007** "In Praise of Resource Constraints," MIT Sloan Management Review, Spring, https://umdrive.memphis.edu/gdeitz/public/The%20Moneyball%20Hypothesis/Gibbert%20et%20al.%20-%20SMR%20(2007)%20Praise%20Resource%20Constraints.pdf, p. 15-16

Resource constraints can also fuel innovative team performance directly. In the spirit of the proverb "necessity is the mother of invention," [end page 15] teams may produce better results because of resource constraints. Cognitive psychology provides experimental support for the "less

is more" hypothesis. For example, scholars in creative cognition find in laboratory tests that subjects are most innovative when given fewer rather than more resources for solving a problem. The reason seems to be that the human mind is most productive when restricted. Limited—or better focused—by specific rules and constraints, we are more likely to recognize an unexpected idea. Suppose, for example, that we need to put dinner on the table for unexpected guests arriving later that day. The main constraints here are the ingredients available and how much time is left. One way to solve this problem is to think of a familiar recipe and then head off to the supermarket for the extra ingredients. Alternatively, we may start by looking in the refrigerator and cupboard to see what is already there, then allowing ourselves to devise innovative ways of combining subsets of these ingredients. Many cooks attest that the latter option, while riskier, often leads to more creative and better appreciated dinners. In fact, it is the option invariably preferred by professional chefs. The heightened innovativeness of such "constraints-driven" solutions comes from team members' tendencies, under the circumstances, to look for alternatives beyond "how things are normally done," write C. Page Moreau and Darren W. Dahl in a 2005 Journal of Consumer Research article. Would-be innovators facing constraints are more likely to find creative analogies and combinations that would otherwise be hidden under a glut of resources.

Limits Bad

Breadth is best policy simulation - policy makers have to cover many issues in order to include many interest groups

Schwartz et al 09 (MARC S. SCHWARTZ University of Texas, PHILIP M. SADLER, GERHARD SONNERT Science Education Department, Harvard-Smithsonian Center for Astrophysics, Cambridge, ROBERT H. TAI Curriculum, Instruction, and Special Education Department, Curry School of Education, University of Virginia, Charlottesville, VA. "Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework" - 9/1/09. Wiley InterScience. Accessed 6/27/15. http://currtechintegrations.com/pdf/depth%20in%20science%20education.pdf)

Whereas the preference for depth of study has become popular among many educators, others argue that students will be better served if the pendulum swings back toward breadth of study. Although state science standards are based on either the AAAS Benchmarks or NRC National Standards, states typically augment these national standards with many more topics (Schmidt et al., 2005).1 The concomitant state tests are then based on these state standards, leaving teachers with the difficult task of deciding how much to cover. Many teachers fear that leaving out a topic will doom their students to miss relevant state examination questions, and that this will reflect on their own performance and that of their school. As Kirst, Anhalt, and Marine (1977) noted, the focus on breadth instead of depth is one of political necessity. "In short, in order to mitigate political disputes many curricular decision makers use pragmatic methods of decision making that result in marginal changes. Conflict can be avoided by using vague language concerning standards and covering so many topics that no major interest group feels left out. Content priority is sacrificed to the political necessity of breadth in coverage" (p. 316). Additionally, there is the more subtle message shaped by the popular culture through television shows such as "Jeopardy" and "Are You Smarter Than a Fifth Grader?" Such contests reward participants lavishly for memorizing a wide range of unrelated facts about the world. Both situations put a premium on curricula that focus on a broad range of information.

Breadth should come first – it doesn't produce superficial education – its key to avoid uncritical acceptance of assumptions

Colander and McGoldrick 9 (David, Professor of Economics at Middlebury College, and KimMarie, professor of economics in the University of Richmond, Liberal Education, Vol. 95, No. 2 "The Economics Major and Liberal Education," Spring)

The success or failure of a liberal education, or an undergraduate major, depends far more on how the educational process influences students' passion for learning than it does on what specifically they learn. A successful liberal education creates a lifelong learner, and classroom instruction is as much a catalyst for education as it is the education itself. Because passion for learning carries over to other fields and areas, the catalyst function of education does not depend on content. Academic departments tend to focus on both the need for depth in the field and the need for specialized training as a component of liberal education. The push for depth over breadth by

disciplinary scholars is to be expected. Just as a Shakespeare scholar is unlikely to be passionate about teaching freshman composition, a scholar of classical game theory is unlikely to be passionate about teaching general economic principles within the context of an interdisciplinary consideration of broad themes. Because breadth is not usually associated with research passion by disciplinary specialists, and because a college is a collection of disciplinary specialists, breadth often gets shortchanged; it is interpreted as "superficial." But in reality, breadth pertains to the nature of the questions asked. It involves asking questions that are unlikely to have definitive answers—"big-think" questions that challenge the foundations of disciplinary analysis. By contrast, depth involves asking smaller questions that can be answered—"little-think" questions that, too often, involve an uncritical acceptance of the assumptions upon which research is built. Questions and areas of study have two dimensions: a research dimension and a teaching dimension. The disciplinary nature of both graduate education and undergraduate college faculties leads to an emphasis on "research questions," which tend to be narrow and in-depth, and a de-emphasis on "teaching questions," which tend to involve greater breadth. Economics has its own distinctive set of teaching questions: Is capitalism preferable to socialism? What is the appropriate structure of an economy? Does the market alienate individuals from their true selves? Is consumer sovereignty acceptable? Do statistical significance tests appropriately measure significance? It is worthwhile to teach such "big-think" questions, but because they do not fit the disciplinary research focus of the profession, they tend not to be included in the economics major. This is regrettable, since struggling with "big-think" questions helps provoke a passion for learning in students and, hence, can be a catalyst for deeper student learning. It is similarly worthwhile to expose students to longstanding debates within the field. For example, Marx considered the alienation created by the market to be a central problem of western societies; Hayek argued that the market was necessary to preserve individual freedom; and Alfred Marshall argued that activities determine wants and, thus, wants cannot be considered as primitives in economic analysis. Such debates are highly relevant for students to consider as they study economics within the context of a liberal education. But these kinds of debates are not actively engaged as part of cutting-edge research, which instead tends to focus either on narrow questions that can be resolved through statistical analysis or on highly theoretical questions that exceed the level of undergraduate students

Context Key

Pref Contextual Definitions - meaning comes from specific usage

Brown et al. 89 (JOHN SEELY BROWN - PhD in communication studies, ALLAN COLLINS - Professor Emeritus of Learning Sciences, PAUL DUGUID - adjunct full professor at the School of Information at the University of California, Berkeley. "Situated Cognition and the Culture of Learning" - Jan/Feb 1989, Educational Researcher, Vol. 18. Accessed 6/27/15 . http://edr.sagepub.com/content/18/1/32.full.pdf)

Experienced readers implicitly understand that words are situated. They, therefore, ask for the rest of the sentence or the context before committing themselves to an interpretation of a word. And they go to dictionaries with situated examples of usage in mind. The situation as well as the dictionary supports the interpretation. But the students who produced the sentences listed had no support from a normal communicative situation. In tasks like theirs, dictionary definitions are assumed to be self-sufficient. The extralinguistic props that would structure, constrain, and ultimately allow interpretation in normal communication are ignored. Learning from dictionaries, like any method that tries to teach abstract concepts independently of authentic situations, overlooks the way understanding is developed through continued, situated use. This development, which involves complex social negotiations, does not crystallize into a categorical definition. Because it is dependent on situations and negotiations, the meaning of a word cannot, in principle, be captured by a definition, even when the definition is supported by a couple of exemplary sentences. All knowledge is, we believe, like language. Its constituent parts index the world and so are inextricably a product of the activity and situations in which they are produced. A concept, for example, will continually evolve with each new occasion of use, because new situations, negotiations, and activities inevitably recast it in a new, more densely textured form. So a concept, like the meaning of a word, is always under construction. This would also appear to be true of apparently well-defined, abstract technical concepts. Even these are not wholly definable and defy categorical description; part of their meaning is always inherited from the context of use.

Dictionaries Bad

Dictionary definitions should be discounted- their acontexual descriptions are arbitrary and lack meaning

Posner '12[January 31 2012, "Richard Posner is the Judge of the 7th Circuit court of Appeals," "7TH CIR. UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT. NO. 11–2917. 2012-01-31 UNITED STATES OF AMERICA, PLAINTIFF–APPELLEE, V. DEANNA L. COSTELLO, DEFENDANT–APPELLANT." https://casetext.com/case/united-states-v-costello-13]

So the government's reliance on the dictionary definition of "harboring" is mistaken, though a point of greater general importance is that dictionaries must be used as sources of statutory meaning only with great caution. "Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." Cabell v. Markham, 148 F.2d 737, 739 (2d Cir.1945) (L.Hand, J.). "[T]he choice among meanings [of words in statutes] must have a footing more solid than a dictionary—which is a museum of words, an historical catalog rather than a means to decode the work of legislatures." Frank H. Easterbrook, "Text, History, and Structure in Statutory Interpretation," 17 Harv. J.L. & Public Policy 61, 67 (1994); see also A. *10441044 Raymond Randolph, "Dictionaries, Plain Meaning, and Context in Statutory Interpretation," 17 Harv. J.L. & Public Policy 71, 72 (1994). "[I]t makes no sense to declare a unitary meaning that 'the dictionary' assigns to a term. There are a wide variety of dictionaries from which to choose, and all of them usually provide several entries for each word. The selection of a particular dictionary and a particular definition is not obvious and must be defended on some other grounds of suitability. This fact is particularly troubling for those who seek to use dictionaries to determine ordinary meaning. If multiple definitions are available, which one best fits the way an ordinary person would interpret the term?" Note, "Looking It Up: Dictionaries and Statutory Interpretation," 107Harv. L.Rev. 1437, 1445 (1994) (footnote omitted). Dictionary definitions are acontextual, whereas the meaning of sentences depends critically on context, including all sorts of background understandings. In re Erickson, **815 F.2d 1090, 1092** (7th Cir.1987). A sign in a park that says "Keep off the grass" is not properly interpreted to forbid the grounds crew to cut the grass. "[O]ne can properly attribute to legislators the reasonable minimum intention 'to say what one would ordinarily be understood as saying, given the circumstances in which it is said.' This principle, it should be noted, does not direct interpreters to follow the literal or dictionary meaning of a word or phrase.

Random Framework Cards

Their framework promotes pseudocommunication – the aff's defeatist claims about reform justifies a proliferation of propaganda – the aff gets to control the vocabulary and take advantage of that ability to steer the conversation

Stuart, Professor of Law at Valparaiso University School of Law, December **2008** (Susan, "Shibboleths and Ceballos: Eroding Constitutional Rights Through Pseudocommunication", Published in Brigham Young University Law Review, p. 1549-1552)//roetlin

Propaganda goes farther than persuasion in influencing the recipient with a much different goal and process; it "is the deliberate and systematic attempt to shape perceptions, manipulate cognitions, and direct behavior to achieve a response that furthers the desired intent of the propagandist." n14 Where persuasion informs, propaganda deceives. "The means may vary from a mild slanting of information to outright deception, but the ends are always predetermined in [*1550] favor of the propagandist." n15 Persuasion is an effort to address individual psychological behavior whereas propaganda is designed to manipulate societal behavior and its patterns. n16 Jowett and O'Donnell define "propaganda" as the promotion of "a partisan or competitive cause in the best interest of the propagandist but not necessarily in the best interest of the recipient. The recipient, however, may believe that the communication is merely informative." n17 Pseudocommunication is a useful, if not the principal, tool of propagandists. The characteristics and purposes of pseudo-communication are: 1) The sender maintains control and determines the meaning of the message and limits the effectiveness of feedback. 2) The sender's control of the analysis results in the Stated and Observed Purposes being different and often contradictory because the sender's stated purposes are often deliberately hidden, unclear, and not empirically verifiable. 3) The sender's control of the analysis as well as the flow of information encourages collective and non-critical thinking by the receiver. 4) The sender's symbol system confuses symbols and signs and encourages ambiguous interpretation by implying, without establishing, close relationships between symbols and their referents. 5) The sender's appeals make emotional connections between the receiver and the message. 6) The sender bases his justification for the message on private and unknowable sources, such as outside authorities, inside information, secret knowledge, and mystical revelation. [*1551] 7) The sender believes that the ends justify the means, which are value-free and above criticism. 8) The sender analyzes the universe with certainty and reduces that analysis to a simple word, phrase, or slogan. 9) The sender encourages the receiver to avoid responsibility because, alternately, the responsibility is someone else's or the receiver is acting on behalf of a higher authority. 10) The sender tells the receiver that an outside, evil force is causing disorganization and misunderstanding and that no amount of intelligence will overcome its continually changing tactics. n18 Pseudocommunication tampers with reality. Consequently, pseudocommunication requires reflecting not only on the symbols used for the communication itself but the context and the structure of the message, which is intended to appeal to emotions rather than to rationality, n19 hence its close affiliation with propaganda. Not all pseudocommunication is propaganda; pseudo-communication is also the backbone of bureaucratic communications and mass media. But the psychological goal of propaganda is the psychological goal of pseudocommunication - to manipulate reality for the benefit of the speaker. When the government uses pseudo-communication, one remembers Orwell's fictional classic 1984 and the principle of doublethink.

n20 Big Brother's doublespeak for converting citizens like Winston Smith to orthodoxy - "war is peace" [*1552] and "freedom is slavery" - is the use of pseudocommunication for government purposes. n21 If a court's decisions are a government function, then pseudocommunication can be its servant as surely as Big Brother's.

Simulations are good – less resources but effective learning

Badiee and Kaurman 6/25 (Farnaz Badiee – Instructional Designer at the Center for Teaching, Learning, and Technology at the University of British Columbia and David Kaufman – professor at Simon Fraser University. "Design Evaluation of a Simulation for Teacher Education" – published online 6/25/15. Sage Journals. P.1 Accessed 6/26/15. http://sgo.sagepub.com/content/5/2/2158244015592454.article-info) dortiz

Simulation techniques have been used as training and feedback tools for many years in occupations such as medicine, aviation, military training, and large-scale investment where real-world practice is dangerous, costly, or difficult to organize (for example, see Drews & Backdash, 2013). In pre-service teacher education, classroom simulations can help pre-service teachers to translate their theoretical knowledge into action through repeated trials without harming vulnerable students, and they can provide more practice time and diversity than limited live practicum sessions (Carrington, Kervin, & Ferry, 2011; Hixon & So, 2009). One such simulation is simSchool (www.simschool.org), designed to provide teaching skills practice in a simulated classroom with a variety of students, each with an individual personality and learning needs. simSchool has been shown in several studies to have potential as a practice and learning tool for pre-service teachers (Badiee & Kaufman, 2014; Christensen, Knezek, Tyler-Wood, & Gibson, 2011; Gibson, 2007). Although simSchool has been under development for more than 10 years (Gibson & Halverson, 2004), very little published research has addressed its design as an instructional tool. To address this gap, the current study evaluated the design of simSchool (v.1) from the perspective of its target users, pre-service teachers, providing both quantitative and qualitative evidence of its strengths, weaknesses, and areas for improvement.

Simulation is an effective way to learn – mimics real life with no real harms

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Classroom simulations are starting to offer the possibility of enhancing the practicum by providing new opportunities for pre-service teachers to practice their skills. A simulation is a simplified but accurate, valid, and dynamic model of reality implemented as a system (Sauvé, Renaud, Kaufman, & Marquis, 2007). R. D. Duke (1980), the founder of simulation and gaming as a scientific discipline, noted that the meaning of "to simulate" stems from the Latin simulare, "to imitate," and defined it as "a conscious endeavor to reproduce the central characteristics of a system in order to understand, experiment with, and/or predict the behavior of that system" (cited in Duke & Geurts, 2004, Section 1.5.2). Simulation involves play, exploration, and discovery, all elements of learning (Huizinga, 1938/1955). It has a long history in adult education, initially in the form of abstract representations using physical components such as paper and pencil or playing boards and, more recently, in many types of computer-based virtual environments

(Ramsey, 2000). Simulations are distinguished from games in that they do not involve explicit competition; instead of trying to "win," simulation participants take on roles, try out actions, see the results, and try new actions without causing real-life harm. Simulations, when paired with reflection, offer the possibility of experiential learning (Dewey, 1938; Kolb, 1984; Lyons, 2012; Ulrich, 1997). Dieker, Rodriguez, Lignugaris/ Kraft, Hynes, and Hughes (2014) pointed out that an effective simulation produces a sense of realism that leads the user to regard the simulated world as real in some sense: These environments must provide a personalized experience that each teacher believes is real (i.e., the teacher "suspends his/ her disbelief"). At the same time, the teacher must feel a sense of personal responsibility for improving his or her practice grounded in a process of critical self-reflection. (p. 22) Suspension of disbelief and this sense of personal responsibility work together to engage the learner in the simulation process so that it becomes a "live" experience; feedback and reflection complete a cycle so that the learner can conceptualize and ultimately apply the new learning (Kolb, 1984).

Framework File – SDI

Policy Debate Good

1NC – Shell

A. Interpretation --- the ballot's sole purpose is to answer the resolutional question: Is the outcome of the enactment of a topical plan better than the status quo or a competitive policy option?

Definitional support ---

1. "Resolved" before a colon reflects a legislative forum

Army Officer School 4 (5-12, "# 12, Punctuation – The Colon and Semicolon", http://usawocc.army.mil/IMI/wg12.htm)

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

2. "United States Federal Government should" means the debate is solely about the outcome of a policy established by governmental means

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

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

B. Violation --- they claim advantages that are independent of the plan

C. Reasons to prefer:

1. Predictable limits --- the grammar of the resolution is based upon enacting a policy. They justify arbitrarily changing the question of the debate to an infinite number of potential frameworks, ensuring the Aff always wins. Grammar is the only predictable basis for determining meaning; it's the foundation for how words interact. Ignoring it justifies changing the focus of the debate, mooting the resolution altogether.

2. Ground --- advantages that aren't linked to the outcome of the plan are impossible to negate. They can claim "critical" arguments outweigh disads linked to the plan or shift their advocacy to avoid impact-turns.

3. Plan-focus --- critical frameworks change the role of the ballot from a yes / no question about the desirability of the plan to something else. This undermines the singular logical purpose of debate: the search for the best policy. Logical policymaking is the biggest educational impact --- any other learning is worthless because it can't be applied to the real world.

D. Topicality is a voting issue for fairness and outweighs all other issues because without it, debate is impossible

Shively 00 (Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Partisan Politics and Political Theory, p. 181-182)

The requirements given thus far are primarily negative. The ambiguists must say "no" to-they must reject and limit-some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational persuasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest-that consensus kills debate. But this is true only if the agreement is perfect-if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the *starting* condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not communicating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if one's target audience simply thinks everyone is resting or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators, and debaters must have some shared ideas about the subject and/or the terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator's audience must know what is being resisted. In

short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony.

2NC – Limits

Changing the framework unlimits the topic --- anything other than plan focus opens the floodgates to a huge number of alternative styles. A *partial* list of arguments actually used in recent years includes the Aff using debate to perform via music or art, criticize the state or problem-solution thinking, claim that representations, ontology, methodology, or ethics come first, use their 'worldview' to 'solve our disads', present the plan as a metaphor, irony, or counterfactual, remain completely silent, or use the 1AC to examine identity, minority participation, or debate itself.

Worse, the potential list is literally infinite --- only our interpretation limits debate to promote politically relevant dialogue

Lutz 00 (Donald, Professor of Political Science – U Houston, Political Theory and Partisan Politics, p. 39-40)

Aristotle notes in the Politics that political theory simultaneously proceeds at three levels – discourse about the ideal, about the best possible in the real world, and about existing political systems. Put another way, comprehensive political theory must ask several different kinds of questions that are linked, yet distinguishable. In order to understand the interlocking set of questions that political theory can ask, imagine a continuum stretching from left to right. At the end, to the right is an ideal form of government, a perfectly wrought construct produced by the imagination. At the other end is the perfect dystopia, the most perfectly wretched system that the human imagination can produce. Stretching between these two extremes is an infinite set of possibilities, merging into one another, that describe the logical possibilities created by the characteristics defining the end points. For example, a political system defined primarily by equality would have a perfectly inegalitarian system described at the other end, and the possible states of being between them would vary primarily in the extent to which they embodied equality. An ideal defined primarily by liberty would create a different set of possibilities between the extremes. Of course, visions of the ideal often are inevitably more complex than these single-value examples indicate, but it is also true that in order to imagine an ideal state of affairs a kind of simplification is almost always required since normal states of affairs invariably present themselves to human consciousness as complicated, opaque, and to a significant extent indeterminate. A non-ironic reading of Plato's republic leads one to conclude that the creation of these visions of the ideal characterizes political philosophy. This is not the case. Any person can generate a vision of the ideal. One job of political philosophy is to ask the question "Is this ideal worth pursuing?" Before the question can be pursued, however, the ideal state of affairs must be clarified, especially with respect to conceptual precision and the logical relationship between the propositions that describe the ideal. This pre-theoretical analysis raises the vision of the ideal from the mundane to a level where true philosophical analysis and the careful comparison with existing systems can proceed fruitfully. The process of pre-theoretical analysis, probably because it works on clarifying ideas that most capture the human imagination, too often looks to some like the entire enterprise of political philosophy. However, the value of Jean-Jacques Rousseau's concept of the General Will, for example, lies not in its formal logical implications, nor in its compelling hold on the imagination, but on the power and clarity it lends to an analysis and comparison of the actual political systems. Among other things it allows him to show that anyone who wishes to pursue a state of affairs closer to that summer up in the concept of the General Will must successfully develop a civil religion. To the extent politicians believe theorists who tell them that pre-theoretical clarification of language describing an ideal is the essence and sum total of political philosophy, to that extent they will properly conclude that political philosophers have little to tell them, since politics is the realm of the possible not the realm of logical clarity. However, once the ideal is clarified, the political philosopher will begin to articulate and assess the reasons why we might want to pursue such an ideal. At this point, analysis leaves the realm of pure logic and enters the realm of the logic of human longing, aspiration, and anxiety. The analysis is now limited by the interior parameters of the human heart (more properly the human psyche) to which the theorist must appeal. Unlike the clarification stage where anything that is logical is possible, there are now define limits on where logical can take us. Appeals to self-destruction, less happiness rather than more, psychic isolation, enslavement, loss of identity, a preference for the lives of mollusks over that of humans, to name

just a few ,possibilities, are doomed to failure. The theorist cannot appeal to such values if she or he is to attract an audience of politicians. Much political theory involves the careful, competitive analysis of what a given ideal state of affairs entails, and as Plato shows in his dialogues the discussion between the philosopher and the politician will quickly terminate if he or she cannot convincingly demonstrate the connection between the political ideal being developed and natural human passions. In this way, the politician can be educated by the possibilities that the political theorist can articulate, just as the political theorist can be educated by the relative success the normative analysis has in "setting the Hook" of interest among nonpolitical theorists. This realm of discourse, dominated by the logic of humanly worthwhile goals, requires that the theorist carefully observe the responses of others in order not to be seduced by what is merely logical as opposed to what is humanly rational. Moral discourse conditioned by the ideal, if it is to e successful, requires the political theorist to be fearless in pursuing normative logic, but it also requires the theorist to have enough humility to remember that, if a non-theorist cannot be led toward an idea, the fault may well lie in the theory, not in the moral vision of the non-theorist.

Alternative frameworks are potentially limitless

Mearsheimer 95 (John, Professor of Political Science – U Chicago, International Security, Winter)

Nevertheless, critical theorists readily acknowledge that realism has been the dominant interpretation of international politics for almost seven hundred years. "Realism is a name for a discourse of power and rule in modern global life." Still, critical theory allows for change, and there is no reason, according to the theory anyway, why a communitarian discourse of peace and harmony cannot supplant the realist discourse of security competition and war. In fact, change is always possible with critical theory because it allows for an unlimited number of discourses, and it makes no judgment about the merit or staying power of any particular one. Also, critical theory makes no judgment about whether human beings are "hard-wired" to be good or bad, but instead treats people as infinitely changeable.

Potential critical arguments are limitless --- we'd be forced to defend all of history

Shors and Mancuso 93 (Mathew and Steve, U Michigan, "The Critique: Skreaming Without Raising Its Voice", Debaters Research Guide, http://groups.wfu.edu/debate/MiscSites/DRGArticles/ShorsMancuso1993.htm)

Unfortunately, these uses of the Critique are not only inevitable when its rules are accepted, but they also make a mockery of any potential intellectual power of the Critique. Taken to its logical end, soon there will be *Critiques of business Confidence* and the like, when the overriding set of principles includes "the judge should never harm the confidence of businesses." Precisely because normative statements are always relative, no one set of principles is ever always defensible. What the Critique allows is that debaters find **any philosopher or advocate in the history of humankind** who writes "Rational thought is a myth" and therein lies a Critique.

Limits Good – 2NC

Basic limits are necessary to effective resistance –-- they govern deliberative democracy and are essential to prevent violence and tyranny

Shively 00 (Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Partisan Politics and Political Theory, p. 184)

The point here is that in arguing—and the point holds equally for other forms of contest—we assume that it is possible to educate or persuade one another. We assume that it is possible to come to more mutual understandings of an issue and that the participants in an argument are open to this possibility. Otherwise, there is no point to the exercise; we are simply talking at or past one another. At this point, the ambiguists might respond that, even if there are such rules of argument, they do not apply to the more subversive or radical activities they have in mind. Subversion is, after all, about questioning and undermining such seemingly "necessary" or universal rules of behavior. But, again, the response to the ambiguist must be that the practice of questioning and undermining rules, like all other social practices, needs a certain order. The subversive needs rules to protect subversion. And when we look more closely at the rules protective of subversion, we find that they are roughly the rules of argument discussed above. In fact, the rules of argument are roughly the rules of democracy or civility: the delineation of boundaries necessary to protect speech and action from violence, manipulation and other forms of tyranny. Earlier we asked how the ambiguists distinguish legitimate political behaviors, like contest or resistance, from illegitimate behaviors, like cruelty and subjugation. We find a more complete answer here. The former are legitimate because they have civil or rational persuasion as their end. That is, legitimate forms of contest and resistance seek to inform or convince others by appeal to reasons rather than by force or manipulation. The idea is implicit in democracy because democracy implies a basic respect for self-determination: a respect for people's rights to direct their own lives as much as possible by their own choices, to work and carry on relationships as they see fit, to participate in community and politics according to decisions freely made by them rather than decisions forced on them, and so on. Thus, to say that rational persuasion is the end of political action is simply to acknowledge that, in democratic politics, this is the way we show respect for others' capacities for self-direction. In public debate, our goal is to persuade others with ideas that they recognize as true rather than by trying to manipulate them or move them without their conscious, rational assent.

Limits key to effective discussion

Bauman 99 (Zygmunt, Emeritus Professor of Sociology – U Leeds and Warsaw, In Search of Politics, p. 4-5)

The art of politics, if it happens to be *democratic* politics, is about dismantling the limits to citizen's freedom; but it is also about self-limitation: about making citizens free in order to enable them to set, individually and collectively, their own, individual and collective, limits. That second point has been all but lost. All limits are off-limits. Any attempt at self-limitation is taken to be the first step on the road leading straight to the gulag, as if there was nothing but the choice between the market's and the government's dictatorship over needs—as if there was no room for the citizenship in other form than the consumerist one. It is this form (and only this form) which financial and commodity markets would tolerate. And it is this form which is promoted and cultivated by the governments of the day. The sole grand narrative left in the field is that of (to quote Castoriadis again) the accumulation of junk and more junk. To that accumulation, there must be no limits (that is, all limits are seen as anathema and no limits would be tolerated). But it is that accumulation from which the self-limitation has to start, if it is to start at all. But the aversion to self-limitation, generalized conformity and the resulting insignificance of politics have their price—a steep price, as it happens. The price is paid in the currency in which the price of wrong politics is usually paid—that of human sufferings. The sufferings come in many shapes and colours, but they may be traced to the same root. And these sufferings have a self-perpetuating quality. They are the kind

of sufferings which stem from the malfeasance of politics, but also the kind which are the paramount obstacle to its sanity. The most insister and painful of contemporary problems can be best collected under the rubric of *Unsicherheit*—the German term which blends together experiences which need three English terms—uncertainty, insecurity and unsafety—to be conveyed. The curious thing is that the nature of these troubles is itself a most powerful impediment to collective remedies: people feeling insecure, people wary of what the future might hold in store and fearing for their safety, are not truly free to take the risks which collective action demands. They lack the courage to dare and the time to imagine alternative ways of living together; and they are too preoccupied with tasks they cannot share to think of, let alone to devote their energy to, such tasks can be undertaken only in common.

2NC – Ground

Their framework is unfair because it undermines negative ground. Critical arguments inevitably cater to the Aff because they allow them to claim "critical" arguments outweigh disads linked to the plan or shift their advocacy to avoid impact-turns.

Only policy resolutions provide stable and productive ground --- alternative frameworks are impossible to debate

Lahman 36 (Carroll Pollack, Director of Men's Forensics – Western State Teacher's College, Debate Coaching: A Handbook for Teachers and Coaches, p. 74-5)

V. Formulating the Proposition 5 A "question" for debate is not enough. Obviously a contest debate cannot be held on the topic: "Mussolini," for it may be attacked from **any number of angles**. A discussion is possible, but not a debate. Something must be declared concerning the policy on which two opposing positions are possible. An example is "Resolved, that Mussolini's governmental principles should be condemned." A. *Kinds of Propositions* "Propositions may be classified as (1) those of fact, (2) those dealing with proposals advocated as theoretically sound, and (3) those dealing with matters of practical policy."6 (1) *Propositions of fact* are concerned with the question "Is this true?" Examples are: Resolved, that prohibition is unsound in principle. Resolved, that too many people attend college. Resolved, that a high protective tariff does the American farmed more harm than good. Partly as a result of the visits of British debaters to this country, this type of proposition is being more widely used than previously. (2) *Propositions advocated as theoretically sound* fall between proportions of fact and propositions of policy. They frequently have the weakness of trying to separate theory and practice. The following examples illustrate the type: Resolved, that a new political alignment on the basis of liberal and conservative parties would be desirable in the United States. Resolved, that a requirement of two years of Latin for every student in high school would be desirable. (3) Propositions of policy deal with the question: "Should this be done?" They are the most definite and concrete of the three types, and for that reason are most widely used. To illustrate: Resolved that a Federal Department of Education, headed by a cabinet member, should be established. Resolved, that interscholastic athletics should be abolished. Resolved, that ____ should adopt the city manager form of government.

Policy topics are necessarily public --- this ensures the issues of controversy are not based on subjective private arguments that can't be debated

Shively 97 (Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Compromised Goods, p. 118)

I would answer that we can as long as we adhere to two basic rules of public debate. The first is that public debaters must base their arguments on public evidence. This is simply what it means to make a public, as opposed to a private, argument: to provide reasons or evidences that are comprehensible to one's audience. Obviously, to make an argument based on internal or private experience is to make an argument that no one else can assess—it is to talk to oneself. Thus Neuhaus writers, "A public argument is **transsubjective**. It is not derived from sources of revelation or disposition that are essentially **private and arbitrary**."11 It makes its case with reasons that are shared. Thus religious argument is safely undertaken in public discourse as long as it is presented "in terms that can make sense to anyone, including those who disagree and those who refuse to share the theological starting point."12

Ground Good

Two impacts ---

1. Fairness ---- good predictable ground is necessary for the Neg to have a chance to compete. Without it, the debate is skewed against us from the beginning.

2. Turns the case --- without predictable ground, debate becomes meaningless and produces a political strategy wedded to violence

Shively 00 (Ruth Lessl, Assistant Prof Political Science – Texas A&M U., Partisan Politics and Political Theory, p. 182)

The point may seem trite, as surely the ambiguists would agree that basic terms must be shared before they can be resisted and problematized. In fact, they are often very candid about this seeming paradox in their approach: the paradoxical or "parasitic" need of the subversive for an order to subvert. But admitting the paradox is not helpful if, as usually happens here, its implications are ignored; or if the only implication drawn is that order or harmony is an unhappy fixture of human life. For what the paradox should tell us is that some kinds of harmonies or orders are, in fact, good for resistance; and some ought to be fully supported. As such, it should counsel against the kind of careless rhetoric that lumps all orders or harmonies together as arbitrary and inhumane. Clearly some basic accord about the terms of contest is a necessary ground for all further contest. It may be that if the ambiguists wish to remain full-fledged ambiguists, they cannot admit to these implications, for to open the door to some agreements or reasons as good and some orders as helpful or necessary, is to open the door to some sort of rationalism. Perhaps they might just continue to insist that this initial condition is ironic, but that the irony should not stand in the way of the real business of subversion. Yet difficulties remain. For agreement is not simply the initial condition, but the continuing ground, for contest. If we are to successfully communicate our disagreements, we cannot simply agree on basic terms and then proceed to debate without attention to further agreements. For debate and contest are forms of dialogue: that is, they are activities premised on the building of progressive agreements. Imagine, for instance, that two people are having an argument about the issue of gun control. As noted earlier, in any argument, certain initial agreements will be needed just to begin the discussion. At the very least, the two discussants must agree on basic terms: for example, they must have some shared sense of what gun control is about; what is at issue in arguing about it; what facts are being contested, and so on. They must also agree—and they do so simply by entering into debate—that they will not use violence or threats in making their cases and that they are willing to listen to, and to be persuaded by, good arguments. Such agreements are simply implicit in the act of argumentation.

A2: Justifies Offensive Language

Multiple other checks –-- communal shunning, apologies, post round discussions or speaker points can all act as a deterrent –-- the ballot decides the question of the resolution, not individual ethics.

Offensive language is an extreme example that crosses "red lines" and can be rejected --- this doesn't justify a non-policy framework

Frank 97 (David A., Assistant Prof and Director of Forensics – U Oregon, Argumentation & Advocacy, Spring, p. 195)

I believe the debate culture should establish well-developed "**red lines"** that place restrictions on the verbal behavior in the debate classroom. To be sure, any ethical attempt to refute, critique and deconstruct an opponent's argument on the resolution should be encouraged. Yet attacks on the selfconcepts and self- esteem of others should not be tolerated and are inconsistent with the intent of academic debate. The existence of such "red lines" should not discourage vigorous debate, for there are many available arguments that deal with substantive issues on any resolution. Our task as a community of debate educators is to develop judging paradigms that integrate a commitment to the values of diversity and impartiality. The judge should represent and enforce communal and personal values that exist to promote the health of argument and the public sphere. **At the same time, judges can remain impartial adjudicators of substantive arguments.** While some will cluck about "political correctness" and "censorship," the debate round is not a speaker's corner or a talk show, it is a classroom. If it is a classroom, then some preconditions must exist if students are to learn. Among these preconditions should be a guarantee that a person's race, gender, ethnicity, etc., will not be the target of abuse or harassment.

Double bind ---- either offensive language is a reason to reject the plan and there's no link because these arguments can operate within our framework, or it is unrelated to the plan and can only be considered by breaking plan focus, which is illogical. Accepting this teaches a model of decision-making where good ideas are rejected for personal reasons --- this is the ultimate form of privileging personal purity over the collective good and should be rejected.

A2: Representation Matter/1st

1. While this may generally be true, it makes no sense in the context of debate. Policy proposals, like plans, are issued at the beginning of debates, not at the end. Representations usually influence policy outcomes, but in debate they are pre-decided. They have to show how they *already* influenced the plan --- which is exactly our framework argument.

2. Rigged game --- don't even evaluate this argument --- without predictability, there is no way for us and disprove their claim that "representations matter" in this instance. We have no evidence that "The Woolly Mammoth" is extinct --- but that doesn't mean it isn't true, just that the topic has nothing to do with this question.

3. Representations don't influence reality

Kocher 00 (Robert L, Author and Philosopher, http://freedom.orlingrabbe.com/lfetimes/reality_sanity1.htm)

While it is not possible to establish many proofs in the verbal world, and it is simultaneously possible to make many uninhibited assertions or word equations in the verbal world, it should be considered that reality is more rigid and does not abide by the artificial flexibility and latitude of the verbal world. The world of words and the world of human experience are **very imperfectly correlated**. That is, saying something doesn't make it true. A verbal statement in the world of words doesn't mean it will occur as such in the world of consistent human experience I call reality. In the event verbal statements or assertions disagree with consistent human experience, what proof is there that the concoctions created in the world of words should take precedence or be assumed a greater truth than the world of human physical experience that I define as reality? In the event following a verbal assertion in the verbal world produces pain or catastrophe in the world of human physical reality or experience, which of the two can and should be changed? Is it wiser to live with the pain and catastrophe, or to change the arbitrary collection of words whose direction produced that pain and catastrophe? Which do you want to live with? What proven reason is there to assume that when doubtfulness that can be constructed in verbal equations conflicts with human physical experience, human physical experience should be considered doubtful? It becomes a matter of choice and pride in intellectual argument. My personal advice is that when verbal contortions lead to chronic confusion and difficulty, better you should stop the verbal contortions rather than continuing to expect the difficulty to change. Again, it's a matter of choice. Does the outcome of the philosophical question of whether reality or proof exists decide whether we should plant crops or wear clothes in cold weather to protect us from freezing? Har! Are you crazy? How many committed deconstructionist philosophers walk about naked in subzero temperatures or don't eat? Try creating and living in an alternative subjective reality where food is not needed and where you can sit naked on icebergs, and find out what happens. I emphatically encourage people to try it with the stipulation that they don't do it around me, that they don't force me to do it with them, or that they don't come to me complaining about the consequences and demanding to conscript me into paying for the cost of treating frostbite or other consequences. (sounds like there is a parallel to irresponsibility and socialism somewhere in here, doesn't it?). I encourage people to live subjective reality. I also ask them to go off far away from me to try it, where I won't be bothered by them or the consequences. For those who haven't guessed, this encouragement is a clever attempt to bait them into going off to some distant place where they will kill themselves off through the process of social Darwinism — because, let's face it, a society of deconstructionists and counterculturalists filled with people debating what, if any, reality exists would have the productive **functionality of a field of diseased rutabagas** and would **never survive** the first frost. The attempt to convince people to create and move to such a society never works, however, because they are not as committed or sincere as they claim to be. Consequently, they stay here to work for left wing causes and promote left wing political candidates where there are people who live productive reality who can be fed upon while they continue their arguments. They ain't going to practice what they profess, and they are smart enough not to leave the availability of people to victimize and steal from while they profess what they pretend to believe in.

4. Prefer our evidence --- the best empirical research concludes Neg

Roskoski and Peabody 91 (Matthew and Joe, "A Linguistic and Philosophical Critique of Language 'Arguments,'" http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques)

Language Does Not Create Reality Language "arguments" assume the veracity of the Sapir-Whorf hypothesis. Usually, this is made explicit in a subpoint labeled something like "language creates reality." Often, this is implicitly argued as part of claims such as "they're responsible for their rhetoric" or "ought always to avoid X language." Additionally, even if a given language "argument" does not articulate this as a premise, the authors who write the evidence comprising the position will usually if not always assume the Sapir-Whorf hypothesis. Perhaps the most common example is the popular sexist language "argument" critiquing masculine generic references. Frequently debaters making this "argument" specifically state that language creates reality. The fact that their authors assume this is documented by Khosroshahi: The claim that masculine generic words help to perpetuate an androcentric world view assumes more or less explicitly the validity of the Sapir-Whorf hypothesis according to which the structure of the language we speak affects the way we think. (Khosroshahi 506). We believe this example to be very typical of language "arguments." If the advocate of a language "argument" does not defend the Sapir-Whorf hypothesis, then there can be no link between the debater's rhetoric and the impacts claimed. This being the case, we will claim that a refutation of the Sapir-Whorf hypothesis is a sufficient condition for the refutation of language "arguments". Certainly no logician would contest the claim that if the major premise of a syllogism is denied, then the syllogism is false. Before we begin to discuss the validity of the hypothesis, we ought first to note that there are two varieties of the Sapir-Whorf hypothesis. The strong version claims that language actually creates reality, while the weak version merely claims that language influences reality in some way (Grace). As Bloom has conceded, the strong version - "the claim that language or languages we learn determine the ways we think" is "clearly untenable" (Bloom 275). Further, the weak form of the hypothesis will likely fail the direct causal nexus test required to censor speech. The courts require a "close causal nexus between speech and harm before penalizing speech" (Smolla 205) and we believe debate critics should do the same. We dismiss the weak form of the hypothesis as inadequate to justify language "arguments" and will focus on the strong form. Initially, it is important to note that the Sapir-Whorf hypothesis does not intrinsically deserve presumption, although many authors assume its validity without empirical support. The reason it does not deserve presumption is that "on a priori grounds one can contest it by asking how, if we are unable to organize our thinking beyond the limits set by our native language, we could ever become aware of those limits" (Robins 101). Au explains that "because it has received so little convincing support, the Sapir-Whorf hypothesis has stimulated little research" (Au 1984 156). However, many critical scholars take the hypothesis for granted because it is a necessary but uninteresting precondition for the claims they really want to defend. Khosroshahi explains: However, the empirical tests of the hypothesis of linguistic relativity have yielded more equivocal results. But independently of its empirical status, Whorf's view is quite widely held. In fact, many social movements have attempted reforms of language and have thus taken Whorf's thesis for granted. (Khosroshahi 505). One reason for the hypothesis being taken for granted is that on first glance it seems intuitively valid to some. However, after research is conducted it becomes clear that this intuition is no longer true. Rosch notes that the hypothesis "not only does not appear to be empirically true in any major respect, but it no longer even seems profoundly and ineffably true" (Rosch 276). The implication for language "arguments" is clear: a debater must do more than simply read cards from feminist or critical scholars that say language creates reality. Instead, the debater must support this claim with **empirical studies or other** forms of **scientifically valid research**. Mere intuition is not enough, and it is our belief that valid empirical studies do not support the hypothesis. After assessing the studies up to and including 1989, Takano claimed that the hypothesis "has no empirical support" (Takano 142). Further, Miller & McNeill claim that "nearly all" of the studies performed on the Whorfian hypothesis "are best regarded as efforts to substantiate the weak version of the hypothesis" (Miller & McNeill 734). We additionally will offer four reasons the hypothesis is not valid. The first reason is that it is impossible to generate empirical validation for the hypothesis. Because the hypothesis is so metaphysical and because it relies so heavily on intuition it is difficult if not impossible to operationalize. Rosch asserts that "profound and ineffable truths are not, in that form, subject to scientific investigation" (Rosch 259). We concur for two reasons. The first is that the hypothesis is phrased as a philosophical first principle and hence would not have an objective referent. The second is there would be intrinsic problems in any such test. The independent variable would be the language used by the subject. The dependent variable would be the subject's subjective reality. The problem is that the dependent variable can only be measured through self- reporting, which - naturally - entails the use of language. Hence, it is impossible to separate the dependent and independent variables. In other words, we have no way of knowing if the effects on "reality" are actual or merely artifacts of the language being used as a measuring tool. The second reason that the hypothesis is flawed is that there are problems with the causal relationship it describes. Simply put, it is just as plausible (in fact infinitely more so) that reality shapes language. Again we echo the words of Dr. Rosch, who says: {C}ovariation does not determine the direction of causality. On the simplest level, cultures are very likely to have names for physical objects which exist in their culture and not to have names for objects outside of their experience. Where television sets exists, there are words to refer to them. However, it would be difficult to argue that the objects are caused by the words. The same reasoning probably holds in the case of institutions and other, more abstract, entities and their names. (Rosch 264). The color studies reported by Cole & Means tend to support this claim (Cole & Means 75). Even in the

best case scenario for the Whorfians, one could only claim that there are causal operations working both ways - i.e. reality shapes language and language shapes reality. If that was found to be true, which at this point it still has not, the hypothesis would still be scientifically problematic because "we would have difficulty calculating the extent to which the language we use determines our thought" (Schultz 134). The third objection is that the hypothesis self- implodes. If language creates reality, then different cultures with different languages would have different realities. Were that the case, then meaningful cross- cultural communication would be difficult if not impossible. In Au's words: "it is never the case that something expressed in Zuni or Hopi or Latin cannot be expressed at all in English. Were it the case, Whorf could not have written his articles as he did entirely in English" (Au 156). The fourth and final objection is that the hypothesis cannot account for single words with multiple meanings. For example, as Takano notes, the word "bank" has multiple meanings (Takano 149). If language truly created reality then this would not be possible. Further, most if not all language "arguments" in debate are accompanied by the claim that intent is irrelevant because the actual rhetoric exists apart from the rhetor's intent. If this is so, then the Whorfian advocate cannot claim that the intent of the speaker distinguishes what reality the rhetoric creates. The prevalence of such multiple meanings in a debate context is demonstrated with every new topicality debate, where debaters spend entire rounds quibbling over multiple interpretations of a few words.1

5. Not offense --- our framework doesn't exclude discussing representations --- they can tie their arguments to the outcome of the plan, read it on the Neg, or use other forums to discuss these issues.

6. Privileging representations locks in violence --- policy analysis is the best way to challenge power

Taft-Kaufman 95 (Jill, Professor of Speech – CMU, Southern Communication Journal, Vol. 60, Issue 3, Spring)

The postmodern passwords of "polyvocality," "Otherness," and "difference," unsupported by substantial analysis of the concrete contexts of subjects, creates a solipsistic quagmire. The political sympathies of the new cultural critics, with their ostensible concern for the lack of power experienced by marginalized people, aligns them with the political left. Yet, despite their adversarial posture and talk of opposition, their discourses on intertextuality and inter-referentiality isolate them from and ignore the conditions that have produced leftist politics--conflict, racism, poverty, and injustice. In short, as Clarke (1991) asserts, postmodern emphasis on new subjects conceals the old subjects, those who have limited access to good jobs, food, housing, health care, and transportation, as well as to the media that depict them. Merod (1987) decries this situation as one which leaves no vision, will, or commitment to activism. He notes that academic lip service to the oppositional is underscored by the absence of focused collective or politically active intellectual communities. Provoked by the academic manifestations of this problem Di Leonardo (1990) echoes Merod and laments: Has there ever been a historical era characterized by as little radical analysis or activism and as much radical-chic writing as ours? Maundering on about Otherness: phallocentrism or Eurocentric tropes has become a lazy **academic substitute for actual engagement** with the detailed histories and contemporary realities of Western racial minorities, white women, or any Third World population. (p. 530) Clarke's assessment of the postmodern elevation of language to the "sine qua non" of critical discussion is an even stronger indictment against the trend. Clarke examines Lyotard's (1984) The Postmodern Condition in which Lyotard maintains that virtually all social relations are linguistic, and, therefore, it is through the coercion that threatens speech that we enter the "realm of terror" and society falls apart. To this assertion, Clarke replies: I can think of few more striking indicators of the political and intellectual impoverishment of a view of society that can only recognize the discursive. If the worst terror we can envisage is the threat not to be allowed to speak, we are appallingly ignorant of terror in its elaborate contemporary forms. It may be the intellectual's conception of terror (what else do we do but speak?), but its projection onto the rest of the world would be calamitous....(pp. 2-27) The realm of the discursive is derived from the requisites for human life, which are in the physical world, rather than in a world of ideas or symbols.(4) Nutrition, shelter, and protection are basic human needs that require collective activity for their fulfillment. Postmodern emphasis on the discursive without an accompanying analysis of how the discursive emerges from material circumstances hides the complex task of envisioning and working towards **concrete social goals** (Merod, 1987). Although the material conditions that create the situation of marginality escape the purview of the postmodernist, the situation and its consequences are not overlooked by scholars

from marginalized groups. Robinson (1990) for example, argues that "the justice that working people deserve is economic, not just textual" (p. 571). Lopez (1992) states that "the starting point for organizing the program content of education or political action must be the present existential, concrete situation" (p. 299). West (1988) asserts that borrowing French post-structuralist discourses about "Otherness" blinds us to realities of American difference going on in front of us (p. 170). Unlike postmodern "textual radicals" who Rabinow (1986) acknowledges are "fuzzy about power and the realities of socioeconomic constraints" (p. 255), most writers from marginalized groups are clear about how discourse interweaves with the concrete circumstances that create lived experience. People whose lives form the material for postmodern counter-hegemonic discourse do not share the optimism over the new recognition of their discursive subjectivities, because such an acknowledgment does not address sufficiently their collective historical and current struggles against racism, sexism, homophobia, and economic injustice. They do not appreciate being told they are living in a world in which there are no more real subjects. Ideas have consequences. Emphasizing the discursive self when a person is hungry and homeless represents both a cultural and humane failure. The need to look beyond texts to the perception and attainment of concrete social goals keeps writers from marginalized groups ever-mindful of the specifics of how power works through political agendas, institutions, agencies, and the budgets that fuel them.

A2: Frameworks Institute

Frame theory is wrong --- beliefs aren't so easily shaped

Oliver and Johnston 00 (Pamela E., U Wisconsin and Hank, SDSU, "What A Good Idea! Frames and Ideologies in Social Movement Research", 2-29, http://www.ssc.wisc.edu/~oliver/PROTESTS/ArticleCopies/Frames.2.29.00.pdf)

Frame theory is often credited with "bringing ideas back in" to the study of social movements, but frames are not the only useful ideational concepts. In particular, the older, more politicized concept of ideology needs to be used in its own right and not recast as a frame. Frame theory is rooted in linguistic studies of interaction, and points to the way shared assumptions and meanings shape the interpretation of any particular event. Ideology theory is rooted in politics and the study of politics, and points to coherent systems of ideas which provide theories of society coupled with value commitments and normative implications for promoting or resisting social change. Ideologies can function as frames, but there is more to ideology than framing. Frame theory offers a **relatively shallow conception** of the transmission of political ideas as marketing and resonating, while a recognition of the complexity and depth of ideology points to the social construction processes of thinking, reasoning, educating, and socializing. Social movements can only be understood by genuinely linking social psychological and political sociology concepts and traditions, not by trying to rename one group in the language of the other.

Prefer our evidence --- there's no empirical basis for their theory

Benford 97 (Robert D., Professor of Sociology – U Nebraska-Lincoln, "An Insider's Critique of the Social Movement Framing Perspective", Sociological Inquiry, Vo. 67, No. 4)

In the last decade the framing perspective has gained increasing popularity among social movement researchers and theorists. Surprisingly, there has been **no critical assessment** of this growing body of literature. Though the perspective has made significant contributions to the movements literature, it suffers from several shortcomings. These include neglect of **systematic empirical studies**, descriptive bias, static tendencies, reification, reductionism, elite bias, and monolithic tendencies. In addition to a critique of extant movement framing literature, I offer several remedies and illustrate them with recent work, the articles by Francesca Polletta. John H. Evans, Sharon Erickson Nepstad, and ira Silver in this special section address several of the concerns raised in this critique and, in so doing, contribute to the integration of structural and cultural approaches to social movements.

A2: Nayar

Zero alternative --- breaking down 'global orders' fails and results in cataclysmic violence

Balakrishnan 3 (Uma, Department of Government and Politics – St. John's University, "Taking Charge of the Future", International Studies Review, 5)

Re-Framing the International provides a perfect starting point for debates on the construction of the future. It raises a number of interesting questions that need to be explored. Is it possible to create a global community without losing the focus on the individual within this group? How does one balance the interests of larger actors like transnational corporations with those of the community so that we do not exchange one set of absolute rules (embodied in static sovereignty) for another? Where do we locate the norms that will underlie the new order, given the variety and seeming incoherence of demands from across the globe? In spite of the great sense of hope that underlies Re-Framing the International, the nagging question of how this can be accomplished without upheaval remains. Although the arguments for a peaceful transition are logical, the contributors are unable to show how power can be transcended. Given the current intransigence of the United States and the United Kingdom with respect to Iraq, it is difficult to envision the triumph of logic without the thrust provided by **cataclysmic events like those that have characterized the past century.**

Even Nayar concedes

Nayar 99 (Jayan, Critical Theorist, 9 Transnat'l L. & Contemp. Probs. 599, Lexis)

And so, what might I contribute to the present collective exercise toward a futuristic imaging of human possibilities? **I am unsure**. It is only from my view of the "world," after all, that I can project my visions. These visions do not go so far as to visualize any "world" in its totality; they are uncertain even with regard to worlds closer to home, worlds requiring transformatory actions all the same. Instead of fulfilling this task of imagining future therefore I simply submit the following two "poems."

Local thinking sustains hegemonic ordering and exclusion --- their framework locks in parochialism

Hoffs 6 (Dianne and Peter, U Maine, Journal of Educational Administration, Vol. 44, No. 3)

There is no question that helping educational leadership students become self-analytical and reflect upon the areas where their own leadership and decisions can be improved is an important aspect of self and school improvement. If, however, an educational leadership program fails to push students to reflect beyond their individual actions and their current setting, it can actually reinforce their tendency both to think and act locally. This confines their actions to the norms of their local schools and communities, which can **only result** in the **maintenance of the status quo**. More problematic, local thinking can **mask deep prejudice** that exists to sustain a system that advantages the dominant culture. School leaders who hesitate to challenge local norms may perpetuate a system of schooling that **marginalizes people** who are considered different. As Counts reminds us, all education includes the imposition of ideas and values, but educators have an obligation to be clear about what assumptions shape their practice. A narrow focus on local concerns may involve "the clothing of one's own deepest prejudices in the garb of universal truth" (Counts, 1932, p. 180).There is an alternative. Educational leaders have to decide in big and small ways every day whether to let local or global contexts shape their actions. School leaders who go out of their way to welcome immigrant students, hire openly gay teachers, support a multi-cultural curriculum, honor a variety of religious holidays, and routinely examine school practices that might reinforce privilege (to list just a few examples), perhaps even in the face of local disapproval, contribute to the important task of creating an arena for expanding **local and parochial**

weltanschauungen. Exemplary acts by school leaders speak even louder than exemplary words. They send messages about the inclusiveness of the schools' social and intellectual environments. They quite literally set up a level playing field for the arena of ideas and beliefs. This is an arena from which a **new social order can emerge**.

Critique Debate Good

Critique Debate Good - Shell

The traditional framework of policy debate assumes that discourse is a neutral medium through which thoughts are transmitted. This whitewashes the fact that discourses are produced such that they define what can and cannot be said through a violent process of control and exclusion

Roland **Bleiker,** "Forget IR Theory," *Alternatives*; **1997**

The doorkeepers of IR are those who, knowingly or unknowingly, **make sure that the discipline's discursive boundaries remain intact. Discourses**, in a Foucaultian sense, **are subtle mechanisms that frame our thinking process. They determine the limits of what can be thought, talked, and written of in a normal and rational way. In every society the production of discourses is controlled, selected, organized, and diffused by certain procedures. They create systems of exclusion that elevate one group of discourses to a hegemonic status while condemning others to exile**. Although the boundaries of discourses change, at times gradually, at times abruptly, they maintain a certain unity across time, a unity that dominates and transgresses individual authors, texts, or social practices. **They explain**, to return to Nietzsche, **why "all things that live long are gradually so saturated with reason that their origin in unreason thereby becomes improbable."28 Academic disciplines are powerful mechanisms to direct and control the production and diffusion of discourses. They establish the rules of intellectual exchange and define the methods, techniques, and instruments that are considered proper for the pursuit of knowledge. Within these margins, each discipline recognizes true and false propositions based on the standards of evaluation it established to assess them.29** <63-64>

Critique solves - Dissent at the epistemological and ontological level runs through the discursive cracks of hegemony to the heart of social change.

Bleiker, 00 Ph.D. visiting research and teaching affiliations at Harvard, Cambridge, Humboldt, Tampere, Yonsei and Pusan National University as well as the Swiss Federal Institute of Technology and the Institute of Social Studies in The Hague,(Roland, Popular Dissent**,** Human Agency and Global Politics, Cambridge University Press)

This chapter has mapped out some of the discursive terrains in which transversal dissent takes place. **Discourses are not invincible monolithic forces that subsume everything in reach. Despite their power to frame social practices, a discursively entrenched hegemonic order can be fragmented and thin at times. To excavate the possibilities for dissent that linger in these cracks, a shift of foci from epistemological to ontological issues is necessary.** Scrutinising the level of Being reveals how individuals can escape aspects of hegemony. Dasein, the existential awareness of Being, always already contains the potential to become something else than what it is. By shifting back and forth etween hyphenated identities, an individual can travel across various discursive fields of power and gain the critical insight necessary to escape at least some aspect of the prevailing order. **Transversal practices of dissent that issue from such mobile subjectivities operate at the level of dailiness. Through a range of seemingly mundane acts of resistance, people can gradually transform societal values and thus promote powerful processes of social change. Theses transformations are not limited to existing boundaries of sovereignty. The power of discursive practices is not circumscribed by some ultimate spatial delineation, and neither are the practices of dissent that interfere with them. At a time when the flow of capital and information is increasingly trans-territorial, the sphere of everyday life has become an**

integral aspect of global politics — **one that deserves the attention of scholars who devote themselves to the analysis of international relations.** The remaining chapters seek to sustain this claim and, in doing so, articulate a viable and non-essentialist concept of human agency.

A2: Predictability

Unpredictability is inevitable – embracing this fact, however, allows us to live meaningful lives.

Bleiker and Leet 6 (Roland, prof of International Relations @ U of Queensland, Brisbane, and Martin, Senior Research Officer with the Brisbane Institute, *Millennium: Journal of International Studies*, 34(3), p. 729-730)JM

Dramatic, sublime events can uproot entrenched habits, but so can a more mundane cultivation of wonder and curiosity. Friedrich Nietzsche pursued such a line of enquiry when reflecting upon what he called the ' after effects of knowledge'. He considered how **alternative ways** of life **open up through** a simple **awareness of the fallibility of knowledge**. **We endure** a series of non-dramatic **learning experiences as we emerge from** the illusions of **childhood**. **We are confronted with being uprooted from the safety of the house**. At first, **a plunge into despair is likely**, as one realises the contingent nature of the foundations on which we stand and the walls behind which we hide and shiver in fear: All **human life is sunk deep in untruth; the individual cannot pull it out of this well without growing** profoundly **annoyed** with his entire past, without finding his present motives (like honour) senseless, **and without opposing** scorn and **disdain to the passions that urge one on to the future and to the happiness in it**.43 The sense of **meaninglessness**, the anger at this situation, **represents a reaction against the habits of one's upbringing** and culture. One no longer feels certain, **one no longer feels in control**. The sublime disruption of convention gives rise to the animosity of loss. The resentment may last a whole lifetime. Nietzsche insists, however, that **an alternative** reaction **is possible**. **A** completely different '**after effect of knowledge' can emerge** over time **if we** are prepared to **free ourselves from** the **standards** we continue to apply, even if we do no longer believe in them. To be sure, **the: old motives of intense desire would still be strong at first**, due to old, inherited habit, **but they would gradually grow weaker under the influence of cleansing knowledge.** Finally one would live among men and with oneself as in nature, without praise, reproaches, overzealousness, delighting in many things as in a spectacle that one formerly had only to fear.44 The elements of fear and defensiveness are displaced by delight if and when we become aware of our own role in constructing the scene around us. The '**cleansing knowledge'** of which Nietzsche speaks **refers to exposing the entrenched habits of representation of which we were ignorant**. We realise, for example, that nature and culture are continuous rather than radically distinct. We may have expected culture to be chosen by us, to satisfy our needs, to be consistent and harmonious, in contrast to the strife, accident and instinct of nature. But **just as we can neither predict a thunderstorm striking nor prevent it, so we are unable ever to eliminate the chance of a terrorist striking in our midst**. **We can better reconcile ourselves to the unpredictability and 'irrationality' of politics** and culture **by overcoming** our childhood and idealistic **illusions**. The cultivation of the subliminal, then, can dilute our obsession with control by questioning the assumptions about nature and culture in which this obsession is embedded. **Without** this work of **cultivation**, **we are** far more **vulnerable** once hit by the after effects of knowledge. **We find ourselves** in a place we never expected to be, **overwhelmed by unexamined habits** of fear and loathing. But **if**, as Nietzsche suggests, **we experiment with the subliminal disruptions encountered in the process of 'growing up', we may become better prepared.** We may follow Bachelard's lead and recognise that the house not only offers us a space to withdraw from the world when in fear, but also a shelter in which to daydream, to let our minds wander and explore subliminal possibilities. That, Bachelard believes, is indeed the chief benefit of the house: 'it protects the dreamer' .45

A2: Limits

A focus on limits engenders violent practices by stopping productive discussions.

Bleiker and Leet 6 (Roland, prof of International Relations @ U of Queensland, Brisbane, and Martin, Senior Research Officer with the Brisbane Institute, *Millennium: Journal of International Studies*, 34(3), p. 733-734)JM

A subliminal orientation is attentive to what is bubbling along under the surface. It is mindful of how conscious attempts to understand conceal more than they reveal, and purposeful efforts of progressive change may engender more violence than they erase. For these reasons, Connolly emphasises that 'ethical artistry' has an element of naïveté and innocence. One is not quite sure what one is doing. Such naïveté need not lead us back to the idealism of the romantic period. 'One should not be naïve about naïveté', Simon Critchley would say.56 Rather, the challenge of change is an experiment. It is not locked up in a predetermined conception of where one is going. It involves tentatively exploring the limits of one's being in the world, to see if different interpretations are possible, how those interpretations might impact upon the affects below the level of conscious thought, and vice versa. This approach entails drawing upon multiple levels of thinking and being, searching for changes in sensibilities that could give more weight to minor feelings or to arguments that were previously ignored.57 Wonder needs to be at the heart of such experiments, in contrast to the resentment of an intellect angry with its own limitations. The ingre d i e n t of wonder is necessary to disrupt and suspend the normal pre s s u res of returning to conscious habit and control. This exploration beyond the conscious implies the need for an ethos of theorising and acting that is quite diff e rent from the mode directed towards the cognitive justification of ideas and concepts. Stephen White talks about 'circ u i t s of reflection, affect and arg umentation'.58 Ideas and principles provide an orientation to practice, the implications of that practice feed back into our affective outlook, and processes of argumentation introduce other ideas and affects. The shift, here, is from the 'vertical' search for foundations in 'skyhooks' above or 'foundations' below, to a 'horizontal' movement into the unknown.

We must incorporate alternative perspectives in order to stop violence.

Bleiker 1 (Roland, prof of International Relations @ U of Queensland, Brisbane, *Millennium: Journal of International Studies*, 30(3), p. 519)JM

Hope for a better world will, indeed, remain slim if we put all our efforts into searching for a mimetic understanding of the international. Issues of global war and Third World poverty are far too serious and urgent to be left to only one form of inquiry, especially if this mode of thought suppresses important faculties and fails to understand and engage the crucial problem of representation. We need to employ the full register of human perception and intelligence to understand the phenomena of world politics and to address the dilemmas that emanate from them. One of the key challenges, thus, consists of legitimising a greater variety of approaches and insights to world politics. Aesthetics is an important and necessary addition to our interpretative repertoire. It helps us understand why the emergence, meaning and significance of a political event can be appreciated only once we

scrutinise the representational practices that have constituted the very nature of this event.

Discourse First – Intelligibility

Discourse key: it is within discourse that the chaos of the world transubstantiates into experience. Serving as the dynamo of normalcy and judgment, discourse renders the world and the social intelligible.

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Power is not a stable and steady force, something that exists on its own. **There is no essence to power, for its exercise is dependent upon forms of knowledge that imbue certain actions with power**. This is to say that the manner in which we view and frame power also influences how it functions in practice. **'It is within discourse**,' Foucault claims**, 'that power and knowledge articulate each other.'** 31 **Discourses are subtle mechanisms that frame our thinking process. They determine the limits of what can be thought, talked and written in a normal and rational way.** In every **society the production of discourses is controlled, selected, organised and diffused by certain procedures. This process creates systems of exclusion in which one group of discourses is elevated to a hegemonic status while others are condemned to exile. Discourses give rise to social rules that decide which statements most people recognise as valid, as debatable or as undoubtedly false**. They guide the selection process that ascertains which propositions from previous periods or foreign cultures are retained, imported, valued, and which are forgotten or neglected. 32 Although these boundaries change, at times gradually, at times abruptly, they maintain a certain unity across time, a unity that dominates and transgresses individual authors, texts or social practices. Not everything is discourse, but everything is in discourse. Things exist independently of discourses, but we can only assess them through the lenses of discourse, through the practices of knowing, perceiving and sensing which we have acquired over time. Nietzsche: That mountain there! That cloud there! What is 'real' in that? Subtract the phantasm and every human contribution from it, my sober friends! If you can! If you can forget your descent, your past, your training — all of your humanity and animality. There is no 'reality' for us — not for you either, my sober friends… 33 Nietzsche's point, of course, is not that mountains and clouds do not exist as such. To claim such would be absurd. Mountains and clouds exist no matter what we think about them. And so do more tangible social practices. But they are not 'real' by some objective standard. Their appearance, meaning and significance is part of human experiences, part of a specific way of life. A Nietzschean position emphasises that discourses render social practices intelligible and rational — and by doing so mask the ways in which they have been constituted and framed. Systems of domination gradually become accepted as normal and silently penetrate every aspect of society. They cling to the most remote corners of our mind, for 'all things that live long are gradually so saturated with reason that their emergence out of unreason thereby becomes improbable'. 34 Discourses are more than just masking agents. They provide us with frameworks to view the world, and by doing so influence its course. Discourses express ways of life that actively shape social practices. But more is needed to demonstrate how the concept of discourse can be of use to illuminate transversal dissident practices. More is needed to outline a positive notion of human agency that is not based on stable foundations. This section has merely located the terrains that are to be explored. It is now up to the following chapters to introduce, step by step, the arguments and evidence necessary to develop and sustain a discursive understanding of transversal dissent and its ability to exert human agency.

Discourse First – Policy Making

Policymaking cannot escape the nature of actions as preconstituted in language- the creation of a single acceptable description of actions is vital to preventing engagement or discussion of these acts, meaning that in a vacuum there is no way to evaluate policy without kritik.

Patton 97, professor of philosophy at the University of New South Wales, Sydney, Australia (Paul, "The World Seen From Within: Deleuze and the Philosophy of Events", Theory and Event 1:1, 1997)

 There is a parallel here with the views of Anscombe and others in the philosophy of action, according to which **actions** (a special class of events) **are always events under a description**. This is **because actions involve intentions and intentions presuppose some description of what it is that the agent intends to do**. On this view, **the bare occurrence** (or numerical identity) **of actions might be specifiable in purely physical terms, but their identity as actions of a particular kind involves reference to appropriate descriptions**. 4 **There is** thus **a necessary connection between the identity of the action and the manner in which it would be described by the agent**. Moreover**, to the degree that events involving non-human agencies such as corporate bodies, political movements and nation states are understood in terms of the model of rational action, this connection applies in the case of a broad range of social and political events**. Thus, while it may be true that by installing offensive missiles the Soviet authorities reinforced the defensive capabilities of Cuba, this might not be an appropriate description of their action. 5 The same action may have multiple (true) descriptions, but it is not always possible to substitute one description of an action for another in contexts that involve reference to the beliefs or intentions of agents. This thesis about the dependence of actions upon descriptions implies **that the nature of such events is not exhausted by any particular description or set of descriptions.** Ian Hacking explores some surprising consequences of this thesis. One is the phenomena to which Nietzsche and Foucault drew attention, namely that **new forms of description of human behavior make possible new kinds of action. Only after the discursive characterization of behavior in terms of juvenile delinquency or split personality was established did it become possible for individuals to conceive of themselves and therefore to act as delinquents or splits. Not all discursive constructions of subjectivity open up new possibilities for action: some may serve to invalidate or remove possibilities for action**. Hacking cites the case of a bill brought before the British Parliament which sought to pardon retrospectively several hundred soldiers who were shot for desertion during the First World War, on the grounds that they would now be regarded as suffering from post-traumatic stress. 6 Such a redescription would pathologize the action of the deserters, retrospectively transforming their actions into symptoms. In other cases, the aim of retroactive redescription is to render reprehensible behavior that was formerly acceptable, as for example, when the European 'settlement' of Aboriginal land in the Australian colonies is redescribed as invasion. The second surprising conclusion which Hacking draws from this account of the nature of actions is that **there is no simple fact of the matter which enables us to say whether such redescriptions are correct or incorrect. It follows that the nature of past actions is essentially indeterminate: one and the same event may be expressed in an open-ended series of statements**. In other words, generalizing the Anscombe thesis about actions points in the same direction as Deleuze's Stoic thesis about the relationship between events and the forms of their linguistic expression: **while the event proper or pure event is not reducible to the manner in which it appears or is incarnated in particular states of affairs, the nature of the incarnate or impure event is closely bound up with the forms of its expression**. Moreover, **since the manner in which a given occurrence is described or 'represented' within a given social context determines it as a particular kind of event, there is good reason for political actors to contest accepted descriptions.**

Discourses are intrinsic to political calculation- ignoring their importance is tantamount to saying that the president has no role in shaping policymaking.

Campbell et al, 07, David, Professor of Geography at the University of Durham**,** (Alison J. Williams, Post-Doctoral Research Associate in the International Boundaries Research Unit in the Department of Geography at Durham University; Luiza Bialasiewicz, Professor of Geography at Royal Halloway University, London; Stuart Elden, Professor of Geography at Durham; Alex Jeffrey, Professor of Geography, Politics & Sociology at the University of Newcastle-upon-Tyne; Stephen Graham, Professor of Geography at Durham, "Performing security: The imaginary geographies of current US strategy", Political Geography, Vol. 26, p. 406-407)

It is, finally, important to call attention to the difference between performativity and performance. **Performativity is a discursive mode through which ontological effects** (the idea of the autonomous subject or the notion of the pre-existing state) **are established. Performativity thereby challenges the notion of the naturally existing subject. But it does not eradicate the appearance of the subject or the idea of agency**. **Performance presumes a subject and occurs within the conditions of possibility brought into being by the infrastructure of performativity**. This is especially important when it comes to considering the role of named individuals in the development and furtherance of security policy. Although the citation of such names gives the appearance of wilful subjects exercising agency with volition, we argue in this paper, **despite calling attention to the performances of individuals or policies, that the continuities between groups of security officials and the arguments they propagate demonstrate the importance of performativity** (especially recitation and reiteration as constraints on those performances) **in the production of policy**. Methodologically this approach requires an alternative model of explanation, one best explicated by the argument of William Connolly (2005: 869) that classical models of explanation based on ''efficient causality'' – whereby ''you first separate factors and then show how one is the basic cause, or they cause each other, or how they together reflect a more basic cause'' – need to give way to the idea of ''emergent causality''. In this conception, **politics is understood as a resonant process in which diverse elements infiltrate into the others, metabolizing into a moving complex** – causation as resonance between elements that become fused together to a considerable degree. Here causality, as relations of dependence between separate factors, morphs into energized complexities of mutual imbrication and interinvolvement, in which heretofore unconnected or loosely associated elements fold, blend, emulsify, and dissolve into each other, forging a qualitative assemblage resistant to classical models of explanation (Connolly, 2005: 870. See also Connolly, 2004). In this context, **it is important to understand what an individually named subject signifies, and how we can understand the place of agency within performativity once pre-given subjectivity is contested**. In his account of the contemporary American political condition, William Connolly argues that, in contradistinction to any idea of a conspiratorial cabal exercising command, the US is run by a ''theo-econopolitical [resonance] machine'' in which the Republican party, evangelical Christians, elements of the electronic media and ''cowboy capitalists'' come together in emergent and resonant, rather than efficient, relationships (Connolly, 2005: 878). This means the **major public figures** like the President **and prominent media commentators need to be understood in particular ways.** As Connolly (2005: 877) argues: **It is pertinent to see how figures such as Bush and O'Reilly dramatize the resonance machine. But while doing so, it is critical to remember that they would merely be oddball characters unless they triggered, expressed and amplified a resonance machine larger than them. They are catalyzing agents and shimmering points in the machine**; their departure will weaken it only if it does not spawn new persona to replace them.

Discourse K is key to Change

Language and politics is indistinct since language is the field under which all things, including politics, are constituted.

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But were these poetic dissident activities, as some fear, a mere play with words, intellectual games devoid of social significance? Not necessarily. **Language is always already politics. The links between words and what they signify may not be authentic, but they are constituted as real through the language in which they are embedded. And the ensuing forms of representation, partial and subjective as they are, become our social and political realities. Hence, to engage with language is to engage directly in social struggle.** In this sense, poetic dissent is as real and often as effective as the practices of international *Realpolitik.*

Discourse is better than policymaking, it creates the possibility for alternative modes of expression which policymaking automatically rules out.

Bleiker, 98 asst. prof. of International Studies at Pusan National University (Roland, "Retracing and redrawing the boundaries of events: Postmodern interferences with international theory", *Alternatives,* Oct-Dec 1998, Vol. 23, Issue 4)

"Inventions from the unknown," the poet Arthur Rimbaud says, "demand new forms."[37] New forms of speaking create preconditions for new forms of acting. **Opening up different ways of identifying events, of seeing and feeling reality, can occur only through language. It is a process saturated with obstacles and contradictions, obscurities and frustrations. It is never complete. It may not even happen. It certainly does not happen always.** Language has no outside. Only different insides. There is no easy language. There are only worn-out metaphors. (How to locate forms of writing and thinking that may turn into new forms of acting and living? **The point is to stretch language up to its limits: beyond the encrusted layers of silencing speech habits, but only as far as the roots still touch the ground. Disentangle knots of words, liberate from them laughter, shouts, gazes, variations, sensitivities, multiplicities. But do not disregard the manner in which a particular language is embedded in concrete social practices.** "Any war against a form of language," Michael Shapiro says, "must come from within.")[38] Contracting Contradictions Live the life of contradictions. The contradictions of life. Think through contradictions, not against them. Write about contradictions, not around them. Don't cut off the edges that bother you. They will never fit into your box, even without edges. (**Instead of continuously trying to fill the void left by the fallen God, postmodern thought no longer searches for alternative Archimedean foundations. The increasingly transversal events of contemporary world politics require more than ever that one accepts ambiguities and deals with the fragmented nature of life** in the late twentieth century. One must try to comprehend international relations by relying on various forms of insight and levels of analysis even if they are incommensurable and contradict each other's internal logic. **An event** like the fall of the Berlin Wall has multiple faces. It **is too complex to be viewed adequately through one set of lenses**. The masses of people that took to the streets in November 1989 were only one of many factors that contributed to the downfall of the existing regime. Other crucial influences include the evolution of the Sovietled alliance system, the existence of a second German state, economic decay, or the obsolescence of domestic systems of threats and privileges. **Each of these political sites offers possibilities for different readings of the event in question, readings that may contradict each other. Each provides a unique fragment of insight** into the fall of the Berlin Wall. **None of them can have the last word. Only in their incomplete**

and perhaps contradictory complementariness can these insights provide something that resembles an adequate understanding of what happened.)

Discourse K is key to Education

Social dynamics cannot be understood through the opposition of dominant and marginalized discourses: discursive analysis reveals that domination and marginalization are constantly shifting, and by their very discursive nature transgress the traditional categories of thought. Critique is key for thought to reach that discursive void around which oppression and resistance orbit.

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But **how are we to understand a void?** How are we to appreciate the dynamics that evolve within it, the ways in which it plays out the forces that linger on all of its multiple points of entry and exit? **The first step in this direction entails a departure from the deeply entrenched Western practice of viewing the world in dualistic terms. Much of modern thought has revolved around the juxtaposition of antagonistic bipolar opposites, such as rational/non-rational, good/ evil, just/unjust, chaos/order, domestic/international or, precisely, strong/weak. One side of the pairing is considered to be analytically and conceptually separate from the other.** The relationship between them generally expresses the superiority, dominance or desirability of one entity (such as strong/order) over the other (such as weak/chaos). The crucial spaces between them, the grey and indefinable voids, remain unexplored. Departing from this long tradition would, by contrast, emphasise the complementariness of opposites and the overlapping relationships between them. Since one side of the pairing (such as order) can only exist by virtue of its opposite (such as chaos), both form an inseparable and interdependent unit. 4 **Non-dualistic conceptualising recognises that social dynamics cannot be understood by juxtaposing dominant and marginalised discourses, or local and global spheres. Discourses overlap, influence each other. They transgress boundaries. They are in a constant state of flux, and so are their multiple and cross-territorial relationships with political practice. A dominant discourse usually incorporates elements of discursive practices that are squeezed into the margins.** The influence of these exiled discourses, in turn, may increase to the point of their becoming dominant. The dividing lines between **discourses always changes and may be blurred** to the point that one needs to accept, as Foucault does, that multiple discursive elements interact at various strategic levels. 5 **What deserves our attention, then, is the discursive void, the space where these multiple and overlapping discourses clash, where silent and sometimes not so silent arguments are exchanged, where boundaries are drawn and redrawn.** The second step in appreciating how the discursive void influences transversal struggles requires a break with some aspects of Foucault's thought. **It may be the case that confrontations in the discursive void do not take place among equals, that, indeed, the only drama staged there is an endlessly repeated play of domination**. 6 But **resistance to these plays of domination is an equally constant theme**. Foucault, of course, would not necessarily disagree, for he argues that 'wherever there is power, there is resistance'. 7 He is simply less optimistic about the chances of precisely locating and directing these forms of resistance. He even goes as far as arguing that because the dynamic in the space between the strong and the weak takes place in an interstice, a 'non-place' where adversaries do not meet directly, no one is responsible for its outcome. 8 Such an interpretation can easily lead to a fatalistic interpretation that annihilates altogether the concept of human agency — an interpretation that is neither compelling nor necessarily compatible with most of Foucault's remaining arguments.

A2: Shively

It is no longer a question of searching for Truth, but rather of accepting difference and facilitating dialog within that difference

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In the absence of authentic knowledge, the formulation of theoretical positions and practical action requires modesty. **Accepting difference and facilitating dialogue becomes more important than searching for the elusive Truth**. But **dialogue is a process**, an ideal, not an end point. **Often there is no common discursive ground, no language that can establish a link between the inside and the outside. The link has to be searched first**. But the celebration of difference is a process, an ideal, not an end point. A call for tolerance and inclusion cannot be void of power. **Every social order, even the ones that are based on the acceptance of difference, excludes what does not fit into their view of the world**. Every form of thinking, some international theorists recognize, expresses a will to power, a will that cannot but "privilege, oppress, and create in some manner."[54] There is no all-encompassing gaze. **Every process of revealing is at the same time a process of concealing. By opening up a particular perspective, no matter how insightful it is, one conceals everything that is invisible from this vantage point**. The **enframing** that occurs by such processes of revealing, Martin Heidegger argues, **runs the risk of making us forget that enframing is a claim, a disciplinary act that "banishes man into that kind of revealing that is an ordering**." And where this ordering holds sway, Heidegger continues, "it drives out every other possibility for revealing."[55] This is why **one must move back and forth between different, sometimes incommensurable forms of insights. Such an approach recognizes that the key to circumventing the ordering mechanisms of revealing is to think in circles**--not to rest too long at one point, but to pay at least as much attention to linkages between than to contents of mental resting places. **Inclusiveness does not lie in the search for a utopian, all-encompassing worldview, but in the acceptance of the will to power**--in the recognition that we need to evaluate and judge, but that no form of knowledge can serve as the ultimate arbiter for thought and action. As a critical practice, postmodernism must deal with its own will to power and to subvert that of others. This is not to avoid accountability, but to take on responsibility in the form of bringing modesty to a majority.

Truth seeking is bad – Truth to power is key

Mourard 1 (Roger, Wastenaw CC-College of educ, http://inkido.indiana.edu/research/onlinemanu/papers/focault.pdf)

The political task is not to discover the **truth** and thereby free humanity from domination or alienation. **Truth is a function of power/knowledge**. Rather, **the task is to conduct "a battle about the status of truth and the** economic and political **role that it plays**." **Foucault's approach is to challenge the existing social order** of the present by showing how it emerged from the will to dominate through the creation of a fictitious individual self and its equally manufactured objectification as an entity to be investigated scientifically.

Framing Key – Frameworks Institute

Rhetoric matters --- the way the plan is framed determines its meaning

Frameworks Institute 5 ("The FrameWorks Perspective: Strategic Frame Analysis," http://www.frameworksinstitute.org/strategicanalysis/perspective.shtml)

Strategic frame analysis is an approach to communications research and practice that pays attention to the public's deeply held worldviews and widely held assumptions. This approach was developed at the FrameWorks Institute by a multi-disciplinary team of people capable of studying those assumptions and testing them to determine their impact on social policies. Recognizing that there is more than one way to tell a story, strategic frame analysis taps into decades of research on how people think and communicate. The result is an empirically-driven communications process that makes academic research understandable, interesting, and usable to help people solve social problems. This interdisciplinary work is made possible by the fact that the concept of framing is found in the literatures of numerous academic disciplines across the social, behavioral and cognitive sciences. Put simply, framing refers to the construct of a communication — its language, visuals and messengers — and the way it signals to the listener or observer how to interpret and classify new information. By framing, we mean how messages are encoded with meaning so that they can be efficiently interpreted in relationship to existing beliefs or ideas. **Frames trigger meaning**. The questions we ask, in applying the concept of frames to the arena of social policy, are as follows: How does the public think about a particular social or political issue? What is the public discourse on the issue? And how is this discourse influenced by the way media frames that issue? How do these public and private frames affect public choices? How can an issue be reframed to evoke a different way of thinking, one that illuminates a broader range of alternative policy choices? This approach is strategic in that it not only deconstructs the dominant frames of reference that drive reasoning on public issues, but it also identifies those alternative frames most likely to stimulate public reconsideration and enumerates their elements (reframing). We use the term reframe to mean changing "the context of the message exchange" so that different interpretations and probable outcomes become visible to the public (Dearing & Rogers, 1994: 98). Strategic frame analysis offers policy advocates a way to work systematically through the challenges that are likely to confront the introduction of new legislation or social policies, to anticipate attitudinal barriers to support, and to develop research-based strategies to overcome public misunderstanding. What Is Communications and Why Does It Matter? The domain of communications has not changed markedly since 1948 when Harold Lasswell formulated his famous equation: who says what to whom through what channel with what effect? But what many social policy practitioners have overlooked in their quests to formulate effective strategies for social change is that communications merits their attention because it is an inextricable part of the agenda-setting function in this country. Communications plays a vital role in determining which issues the public prioritizes for policy resolution, which issues will move from the private realm to the public, which issues will become pressure points for policymakers, and which issues will win or lose in the competition for scarce resources. No organization can approach such tasks as issue advocacy, constituency-building, or promoting best practices without taking into account the critical role that mass media has to play in shaping the way Americans think about social issues. As William Gamson and his colleagues at the Media Research and Action Project like to say, media is "an arena of contest in its own right, and part of a larger strategy of social change." One source of our confusion over communications comes in not recognizing that each new push for public understanding and acceptance happens against a backdrop of long-term media coverage, of perceptions formed over time, of scripts we have learned since childhood to help us make sense of our world, and folk beliefs we use to interpret new information. As we go about making sense of our world, mass media serves an important function as the mediator of meaning — telling us what to think about (agenda-setting) and how to think about it (media effects) by organizing the information in such a way (framing) that it comes to us fully conflated with directives (cues) about who is responsible for the social problem in the first place and who gets to fix it (responsibility).

Violence Impact – Nayar

Their framework ignores the violence inherent in our perspectives -- making violence inevitable

Nayar 99 (Jayan, Critical Theorist, 9 Transnat'l L. & Contemp. Probs. 599, Lexis)

Rightly, we are concerned with the question of what can be done to alleviate the sufferings that prevail. But there are **necessary prerequisites** to answering the "what do we do?" question. We must first ask the intimately connected questions of "about what?" and "toward what end?" These questions, obviously, impinge on our vision and judgment. When we attempt to imagine transformations toward preferred human futures, we engage in the difficult task of judging the present. This is difficult not because we are oblivious to violence or that we are numb to the resulting suffering, but because, outrage with "events" of violence aside, processes of violence embroil and implicate our familiarities in ways that defy the simplicities of straightforward imputability. Despite our best efforts at categorizing violence into convenient compartments--into "disciplines" of study and analysis such as "development" and "security" (health, environment, population, being other examples of such compartmentalization)--the encroachments of order(ing) function at more pervasive levels. And without doubt, the perspectives of the observer, commentator, and actor become **crucial determinants**. It is necessary, I believe, to question this, "our," perspective, to reflect upon a perspective of violence which not only locates violence as a happening "out there" while we stand as detached observers and critics, but is also one in which we are ourselves implicated in the violence of ordered worlds where **we stand very much as participants**. For this purpose of a critique of critique, it is necessary to consider the "technologies" of ordering.

Gameworks Michigan 7

Top Level

Politics are good

We don't have to win that the political system is good – all relationships are contingent and exclusionary – we just have to win that 'the political' is an institution worth discussing. It is.

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The essays collected in this volume examine the relevance of the agonistic approach I have elaborated in my previous work for a series of issues that I take to be important to the left-wing project. Each chapter deals with a different question, but in each case my aim is to address the question in a political way. As Ernesto Laclau and I argued in Hegemony and Socialist Strategy, to think politically requires **recognizing the ontological dimension of radical negativity**.1 It is because of the existence of a form of negativity that cannot be overcome dialectically that full objectivity can never be reached and that **antagonism is an ever present possibility**. Society is **permeated by contingency** and any order is of an hegemonic nature, i.e. it is always the expression of power relations. In the field of politics, this means that the search for a **consensus without exclusion** and the hope for a perfectly reconciled and harmonious society **have to be abandoned**. As a result, the emancipatory ideal cannot be formulated in terms of a realization of any form of 'communism'.

The reflections proposed here take their bearings from the critique of rationalism and universalism that I have developed [END PAGE xi] since The Return of the Political, where I began to elaborate a model of democracy which I call 'agonistic pluralism'.2 In inscribing the dimension of radical negativity in the political domain, I proposed in that book to distinguish between 'the political' and 'politics'. By 'the political', I refer to the ontological dimension of antagonism, and by 'politics' I mean the ensemble of practices and institutions whose aim is to organize human coexistence. These practices, however, always operate within a terrain of conflictuality informed by 'the political'.

The key thesis of 'agonistic pluralism' was later elaborated in The Democratic Paradox, where I argued that a central task of democratic politics is to provide the institutions which will permit conflicts to take an 'agonistic' form, where the opponents are not enemies but adversaries among whom exists a **conflictual consensus**.3 What I intended to show with this agonistic model was that it was possible, **even when starting with** the assertion of the **ineradicability of antagonism**, to envisage a democratic order.

Nonetheless, it is true that political theories that affirm such a thesis usually end up defending an authoritarian order as the only way to keep civil war at bay. This is why most political theorists committed to democracy believe that they have to assert the availability of a rational solution to political conflicts. My argument, however, is that the authoritarian solution is **not a necessary logical consequence of such an ontological postulate**, and that by distinguishing between 'antagonism' and 'agonism', **it is possible to visualize a form of democracy that does not deny radical negativity.**

In recent years, reflecting on worldwide political [END PAGE xii] developments, I have been led to enquire about the possible implications of my approach for international relations. What are the consequences in the international arena of the thesis that every order is an hegemonic one? Does it mean that there is no alternative to the current unipolar world, with all the negative consequences this entails? Undoubtedly, the illusion of a cosmopolitan world beyond hegemony and beyond sovereignty has to be relinquished. But this is not the only solution available, as we can also conceive of another one: a pluralization of hegemonies. In my view, by establishing more equal relations between regional poles, a multipolar approach could be a step towards an agonistic order

where conflicts, although they would not disappear, would be less likely to take an antagonistic form.

Another aspect of my reflections concerns the consequences of the hegemonic approach regarding radical projects whose aim is to establish a different social and political order. How can such a new order be brought about? What strategy to follow?

The traditional revolutionary approach has mostly been forsaken, but it is increasingly replaced by another one that, under the name of 'exodus', reproduces, albeit in a different way, many of its shortcomings. In this book **I take issue with the total rejection of representative democracy** by those who, instead of aiming at a transformation of the state through an agonistic hegemonic struggle, advocate a strategy of deserting political institutions. Their belief in the availability of an 'absolute democracy' where the multitude would be able to self-organize without any need of the state or political institutions signifies a lack of understanding of what I designate as 'the political'.

To be sure, they question the thesis of a progressive homogenization of the 'people' under the category of 'the [END PAGE xiii] proletariat', while affirming the multiplicity of 'the multitude'. But to acknowledge radical negativity implies recognizing not only that **the people is multiple**, but that it is also divided. Such a division cannot be overcome; it can **only be institutionalized in different ways**, some more egalitarian than others. According to this approach, radical politics consists in a diversity of moves in a multiplicity of institutional terrains, so as to construct a different hegemony. It is a 'war of position' whose objective is not the creation of a society beyond hegemony, but a process of **radicalizing democracy** - the construction of more democratic, more egalitarian institutions.

We should engage in agnostic fights about politics -

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In *The Return of the Political*, *the Democratic Paradox* and *on the Political* I have developed these reflections on 'the political', understood as the antagonistic dimension which is inherent to all human societies.[2] To that effect, I have proposed the distinction between 'the political' and 'politics'. 'The political' refers to this dimension of antagonism which can take many forms and can emerge in diverse social relations. It is a dimension that can never be eradicated. 'Politics', on the other hand, refers to the ensemble of practices, discourses and institutions that seek to establish a certain order and to organize human coexistence in conditions which are always potentially conflicting, since they are affected by the dimension of 'the political'.

As I have repeatedly emphasized in my writings, political questions are not mere technical issues to be solved by experts. Proper political questions always involve decisions that require making a choice between conflicting alternatives. This is something that cannot be grasped by the dominant tendency in liberal thought, which is characterized by a rationalist and individualist approach. This is why liberalism is unable to adequately envisage the pluralistic nature of the social world, with the conflicts that pluralism entails. These are conflicts for which no rational solution could ever exists, hence the dimension of antagonism that characterizes human societies.

The typical understanding of pluralism is as follows: we live in a world in which there are indeed many perspectives and values, but due to empirical limitations, we will never be able to adopt

them all; however, when put together, they could constitute an harmonious and non-conflictual ensemble. I have shown that this type of perspective, which is dominant in liberal political theory, has to negate the political in its antagonistic dimension in order to thrive. Indeed, one of the main tenets of this kind of liberalism is the rationalist belief in the availability of a universal consensus based on reason. No wonder, therefore, that the political constitutes liberalism's blind spot. By bringing to the fore the inescapable moment of decision – in a strong sense of having to decide within an undecidable terrain – what antagonism reveals is the very limit of any rational consensus.

The denial of 'the political' in its antagonistic dimension is, I have argued, what prevents liberal theory from envisaging politics in an adequate way. The political in its antagonistic dimension cannot be made to disappear by simply denying it or wishing it away. This is the typical liberal gesture, and such negation only leads to the impotence that characterizes liberal thought when confronted with the emergence of antagonisms and forms of violence that, according to its theory, belong to a bygone age when reason had not yet managed to control the supposedly archaic passions. This is at the root of liberalism's current incapacity to grasp the nature and causes of new antagonisms that have emerged since the Cold War.

Liberal thought is also blind to the political because of its individualism, which makes it unable to understand the formation of collective identities. Yet the political is from the outset concerned with collective forms of identification, since in this field we are always dealing with the formation of 'us' as opposed to 'them'. Here the main problem with the liberal rationalism is that it deploys a logic of social based on an essentialist conception of 'being as presence', and that it conceives objectivity as being inherent to things themselves. It cannot recognize that there can only be an identity when it is constructed as difference, and that any social objectivity is constituted through acts of power. What it refuses to admit is that any form of social objectivity is ultimately political and that it must bear the traces of the acts of exclusion that govern its constitution.

Limits Good

Substantive and demarcated limits are necessary for dialogue – EVEN IF THEY EXCLUDE and probably because they exclude – refusal to make identity claims normative kills the possibility for discussion.

John **Dryzek 06**, Professor of Social and Political Theory, The Australian National University, Reconciling Pluralism and Consensus as Political Ideals, American Journal of Political Science,Vol. 50, No. 3, July 2006, Pp. 634–649

A more radical contemporary pluralism is suspicious of liberal and communitarian devices for reconciling difference. Such a critical pluralism is associated with agonists such as Connolly (1991), Honig (1993), and Mouffe (2000), and difference democrats such as **Young** (2000). As Honig puts it, "Difference is just another word for what used to be called pluralism" (1996, 60). Critical pluralists resemble liberals in that they begin from the variety of ways it is possible to experience the world, but stress that the experiences and perspectives of marginalized and oppressed groups are likely to be very different from dominant groups. They also have a strong suspicion ofliberal theory that **looks neutral** but in practice supports and serves the powerful.

Difference democrats are **hostile to consensus**, partly because consensus decisionmaking (of the sort popular in 1970s radical groups) conceals informal oppression under the guise of concern for all by disallowing dissent (Zablocki 1980). But the real target is political theory that deploys consensus, especially deliberative and liberal theory. Young (1996, 125–26) argues that the appeals to unity and the common good that deliberative theorists under sway of the consensus ideal stress as the proper forms of political communication can often be oppressive. For deliberation so oriented all too easily equates the common good with the interests of the more powerful, thus sidelining legitimate concerns of the marginalized. Asking the underprivileged to set aside their particularistic concerns also means marginalizing their favored forms of expression, especially the telling of personal stories (Young 1996, 126).3 Speaking for an agonistic conception of democracy (to which Young also subscribes; 2000, 49–51), Mouffe states:

To negate the ineradicable character of antagonism and aim at a universal rational consensus— that is the real threat to democracy. Indeed, this can lead to violence being unrecognized and hidden behind appeals to "**rationality**," as is often the case in liberal thinking. (1996, 248)

Mouffe is a radical pluralist: "By pluralism I mean the end of a substantive idea of the good life" (1996, 246). But neither Mouffe nor Young want to **abolish communication** in the name of pluralism and difference; much of their work advocates sustained attention to communication. Mouffe also cautions against uncritical celebration of difference, for some differences imply "subordination and should therefore be challenged by a radical democratic politics" (1996, 247). Mouffe raises the question of the **terms in which engagement across difference might proceed**. Participants should ideally accept that the positions of others are legitimate, though not as a result of being persuaded in argument. Instead, it is a matter of **being open to conversion** due to adoption of a particular kind of **democratic attitude** that converts antagonism into agonism, fighting into critical engagement, enemies into adversaries who are treated with respect. Respect here is notjust (liberal) toleration, but positive validation of the position of others. For Young, a communicative democracy would be composed of people showing "equal respect," under **"procedural rules of fair discussion and decisionmaking"** (1996, 126). Schlosberg speaks of "agonistic respect" as "a critical pluralist ethos" (1999, 70).

Mouffe and Young both want pluralism to be regulated by a particular kind of attitude, be it respectful, agonistic, or even in Young's (2000, 16–51) case reasonable.Thus **neither proposes unregulated pluralism as an alternative to (deliberative) consensus**. **This regulation cannot be just procedural, for that would imply "anything goes" in terms of the substance of positions**. Recall thatMouffe rejects differences that imply

subordination. Agonistic ideals demand judgments about what is worthy of respect and what is not. Connolly (1991, 211) worriesabout **dogmatic assertions** and denials **of identity that fuel existential resentments** that **would have to be changed to make agonism possible**. Young seeks "transformation of private, self-regarding desires into public appeals to justice" (2000, 51). Thus for Mouffe, Connolly, and Young alike, **regulative principles for democratic communication are not just attitudinal or procedural; they also refer to the substance of the kinds of claims that are worthy of respect**. These authors would not want to legislate substance and are suspicious of the content of any alleged consensus. But in retreating from "anything goes" relativism, **they need principles to regulate the substance of what rightfully belongs in democratic debate.**

Specific Affs

Surveillance

Surveillance is uniquely a political act – state involvement is possible

Fernandez and Huey 9 (Luis Fernandez [PhD in Justice Studies, Arizona State University] and Laura Huey [PhD in Sociology, University of British Colombia], 2009, "Is Resistance Futile? Some Thoughts on Resisting Surveillance," *Surveillance & Society*, 6(3): 198-202)

Let's now turn to a quick examination of resistance. As a central theme in the surveillance literature, it is sticking that resistance, as a concept, remains under theorized. In part, this may be due to the generalized nature of the concept, which can cover vast territories of divergent human action. Thus, like surveillance, it is probably useful to start not with all-encompassing definition, but with an understanding that resistance too will be contextual, relational, and dependent on the power dynamics of a given situation. Possible actors engaged in the resistance of surveillance, then, could include individuals, groups, institutions, networks, and the state itself (e.g., states versus states). But the nature of resistance tactics, technologies, and techniques will evolve in a direct response to a power struggles. Of the work in this area that has been produced to date, what is clearly revealed is the fact that **surveillance-based practices are highly contested political territory within and across contemporary society, both at the individual level and collectively**. Monahan (2006), for instance, asserts that surveillance is already imbedded in a set of social practices that reproduce social stratification. If he is correct, and we believe he is, then most forms of surveillance are, from their inception, already embedded in a power dynamic that could, with some help, **lead to forms of resistance**. We see this as a good starting point for analyzing the potential for resisting surveillance, since it builds a dialectic relationship between those who observe and collect data, and those who are observed and from whom information is extracted. Further, we suggest that another good starting point in the study of resistance and surveillance is not surveillance mechanisms, but resistance itself. This insight comes from Hardt and Negri (2004), who in their analysis of revolt and state control argue that revolt is generally the innovator, with the state adapting and developing new forms of control to address the innovations. For example, Fernandez (2008) shows how protesters caught the Seattle Police off guard at the 1999 Word Trade Organization protest, eventually resulting in significant policing innovations in the following years. This same dynamic, we believe, might exist in the resistance of surveillance and might yield important insight on how surveillance evolves. In sum, we suggest that if surveillance and resistance are best understood as dynamic, then we must examine instances of resistance first, since they are likely going to be not only a response to surveillances practices but also present the new starting ground for the next set of surveillance mechanisms. This, we think, inverts the current analysis of the relationship. We encourage scholars to pursue research projects along these lines of inquiry

Queer

Liberal politics is accessible to the queer subject – the political body is queered

--both are changeable – its about agreeing to be something

-the queer subject is veiled in obscurity, just like the appositive political subject

-restrictions don't destroy people's identities – all people have access to politics

-queer bodies are fluid – they can enter and exit spaces based on the queering of those spaces – that presumes autonomy – autonomy over your position taking is the definition of the liberal subject

Samuels '99 (Jacinth; 1999; DANGEROUS LIAISONS: QUEER SUBJECTIVITY, LIBERALISM AND RACE; [[[[CITES]]]]; www.tandfonline.com/doi/pdf/10.1080/095023899335383; 7-26-15; mbc)

Rawls attempts to redress the inequities that have historically plagued the judicial system by proposing a theory of justice whose principles are collectively determined by occupants of the 'original position', a hypothetical environment wherein inhabitants are necessarily ignorant of their achieved and ascribed characteristics. These restrictions allow the original position to be constituted as an 'initial status quo' wherein any fundamental agreements or conclusions concerning the principles of justice are inevitably fair – a phenomenon which Rawls terms 'justice as fairness' (1971: 12).

Yet it is precisely **these restrictions** – those which Rawls deems essential to attaining rational agreement on first principles of justice – **which form the basis for comparison between the Rawlsian and the queer subject.** Entry to the original position is, for example, conditional upon the participant's willingness to deliberate from behind a 'veil of ignorance', the goal being to mask and thereby neutralize the impact of any factors which would prompt people to exploit circumstances to their own advantage. Hence the Rawlsian subject, now rendered ignorant of its sex, race, class, ethnicity, gender, etc., **provides an apposite model for any subject which is at least partially defined by the absence of such characteristics.** In this respect the queer subject, similarly 'veiled' in its own obscurity, **may be likened to the former**; both subjects, united in the quest for neutrality, **sustain their existence through the absence or, at the very least, mitigation of presence.**

It seems odd then that a subject position which is defined largely by what it excludes could be deemed inclusive, much less accessible, but Rawls deftly circumvents this problem by emphasizing the original position's conceptual status. **Any number of people may 'simulate the deliberations of this hypothetical situation, simply by reasoning in accordance with the appropriate restrictions**.' Exactly when one enters the original position or even who does so is **irrelevant** because the veil of ignorance ensures the uniformity of all available information (Rawls, 1971: 138–9).

The original position is therefore distinguished by the sheer fluidity of its spatiality, a quality which facilitates the seemingly effortless entrance/exit of its participants. Here, once again, we discover an

area **consistent with queer subjectivity** for which the notion of 'space'4 **is also essential.** Queer subjectivity occupies a 'new space in the domain of sexuality: a postgay, postlesbian space' (Morton, 1995: 369) which, **like the original** position, can be entered and/or exited at will. It is a space whose fluidity reflects an identity which **refuses to name itself** and which heralds the declaration that '[t]o be gay is to have a mere identity; to be queer is to enter and celebrate the ludic space of textual indeterminacy' (Morton, 1995: 373).

The ability to move freely into and out of a space/subject position, be it Rawlsian or 'queer', **presumes the liberty of an autonomous subject** – liberty and autonomy **being constitutive elements of liberalism**. Thus liberty, for Rawls (1971: 202), is premised upon agents who are free to act without restriction – a definition which affirms both the sovereignty of the liberal subject and the freedom to do what one desires where not prohibited by law (Brown, 1995: 154). Insofar as liberty is juxtaposed not to slavery but a will-less absence of choice (Brown, 1995: 154), the autonomous subject is characterized by 'the absence of immediate constraints on [his] entry into and movement within civil society' (Brown, 1995: 156). To the extent that liberalism deems race, class, gender, sexuality, etc. to be indicative of such 'constraints', **their removal is a necessary condition for both the liberty of the Rawlsian and 'queer' subjects and the autonomous exercise of their respective will.**

Rawls' theory of justice is clearly indicative of a neo-Kantian theoretical heritage which deŽ nes moral subjects on the basis of autonomy, rationality and an uncompromising distinction between reason and affectivity. Given Kant's conviction that moral legislation is contingent upon the freedom and equality of rational beings, the deliberations of those in the original position must, in turn, be the product of rational choice rather than bias, ascriptive or achieved characteristics (Rawls, 1971: 252). Subjects within this Kantian ideal are thus akin to 'geometricians in different rooms who, reasoning alone for themselves, all arrive at the same solution to a problem' (Benhabib, 1987: 91). Hence the Rawlsian subject, much like its Kantian predecessor, inhabits a unitary subject position which occludes subjectivity outside of itself.

In his attempt to do justice to Kant's conception of noumenal agency, Rawls recapitulates a basic problem with the Kantian conception of the self,namely, that noumenal selves cannot be individuated. If all that belongs to them as embodied, affective, suffering creatures, their memory and history, their ties and relations to others, are to be subsumed under the phenomenal realm, then what we are left with is an empty mask that is everyone and no one. (Benhabib, 1987: 89)

Nor would it seem that the queer subject is any more suited to resolving this dilemma. On the one hand, 'queer' celebrates the diversity of those who experience heterosexist oppression without invoking an essentialized identity, but at the same time 'the most appealing aspect of a queer identity **is the refusal to name what that identity means'** (Slagle, 1995: 97–8). Perhaps this refusal is less the result of a principled aversion to essentialism than it is the **discomforting knowledge of what such a disclosure would occasion**. That is, once the veil of ignorance 'relieves' participants of all individuating characteristics, the parties are no longer similarly but rather identically situated (Sandel, 1982: 131), **thus effectively erasing the basis for any claim to diversity**. Moreover, with each subject being driven by precisely the same motivations and knowledge, the original position essentially consists of a single 'disembodied, pre-social or transcendent self reasoning to reflective equilibrium' (Frazer and Lacey, 1993: 46).

The interrogation of the Rawlsian subject necessarily casts doubt on assertions that the fluidity of queer subjectivity is a deliberate strategy designed to avoid both the strictures of definitional boundaries and their intrinsic essentialism (Morrison, 1992: 14). Rather than simply a means by which to ensure both poetic and political licence, the indeterminacy of 'queer' **masks the same problem** that the veil of ignorance is intended to obscure. Once the veil can no longer bear the weight of its own scrutiny, it is not people, but a solitary subject who is exposed by the accident of its drooping facade. The veil tumbles to reveal 'no real plurality of perspectives in the Rawlsian original position, but only a definitional identity' (Benhabib, 1987: 90). Hence, the judgements are those of the philosopher himself, the construction of the original position having served only to obscure, to neutralize, substantive assumptions which should have been spelled out and defended. Far from being the product of an abstract, transcendent process of reasoning, the theory of justice is revealed as chosen from a very specific social position, that of a white, middle-class, liberal American male. (Frazer and Lacey, 1993: 55)

These sentiments are echoed in the critique of a queer discourse **which tacitly adapts male subjects as its implicit referent** (Kader and Piontek, 1992: 9). The problem stems from those objectives, defined as either Rawlsian or 'queer', **which are nevertheless similarly rooted in liberal idealism.** The veil of ignorance is deemed unproblematic by Rawls because it is considered a necessary condition for the achievement of rationality and morality among subjects.

Only rational, moral subjects – so designated, tautologically, by virtue of inhabiting the original position – **are imbued with the unity of thought, or logic of identity, needed to achieve rational agreement on first principles of justice**. Queer subjectivity, though not explicitly concerned with rational consensus, is none the less specifically designed to achieve the same inclusivity/universality and equality which are foundational to the liberal tradition. Hence the agent of 'equality' need not differ substantively from the agent of 'rationality', 'fairness' or 'justice': **they are, in fact, the same.** Moreover,

> [t]o the extent that the attributes of liberal personhood and liberal justice are established by excluding certain beings and certain domains of activity from their purview, liberalism cannot fulŽ ll its universalist vision but persistently reproduces the exclusions of humanist Man. The hollowness of liberalism's universalist promise, then, inheres . . . in its depoliticization of invidious social powers . . . [and] in its often cruel celebration of Ž ctional sovereignty. (Brown, 1995: 164)

A revelation of this magnitude is bound to have serious consequences for the inclusivity which is similarly integral to the production of queer subjectivity. Positioned rather precariously between the postmodern critique which spawned its creation, and the liberal strategies which it actively employs in an attempt to distinguish itself from its predecessors, the queer subject is subsequently constitutive not of a genuinely autonomous, anti-essentialist subject, but rather the unwitting reproduction of the very liberal humanist subject which it was originally intended to critique.

LGBTQ

LGBTQ+ theorization is applicable to politics – passage of Gay Marriage legislation proves the normative statements of this study

Marzullo & Herdt 11 (Michelle A., Gilbert; November 8th, 2011; Marriage Rights and LGBTQ Youth: The Present and Future Impact of Sexuality Policy Changes; Michelle A. Marzullo holds a PhD in Anthropology concentrating in Race, Gender, and Social Justice from American University in Washington, DC + Gilbert H. Herdt is Professor of Human Sexuality Studies and Anthropology and a Founder of the Department of Sexuality Studies and National Sexuality Resource Center at San Francisco State University; onlinelibrary.wiley.com/doi/10.1111/j.1548-1352.2011.01204.x/full; 7-26-15; mbc)

DOMA and "Don't Ask, Don't Tell" effectively ushered in a new generation of discourses and social practices that continue to shape the political, social, and cultural milieu in the United States (Herdt and Kertzner). The issue of marriage has often been used by politicians and policy elites when votes are needed for a particular candidate (Mooney and Schuldt :212). In 2004, this strategy generated a genuine moral panic during the 2004 presidential campaign when the question of marriage equality for gays and lesbians was used as a wedge issue to help reelect President George W. Bush and many reported voting on their "moral values" (Herdt ; Tiger 2004). Confirming that "same-sex marriage" is a morality policy, Mooney and Schuldt showed that many people find decisions around the issue to be technically simple as most respondents reported their decision was made by "simply applying their basic values rather than by gathering information" (:203). "Morality policy" is distinct from information driven policy and has three main characteristics: (1) "moral values" are the basis for policy conflict; (2) these "moral values" do not lend to compromise; and, (3) such policies are technically simple, lacking complicated numerical formulas or indexes perceived as necessary for understanding by the general public (Mooney and Schuldt :200). Of those most opposed to "same-sex marriage," 60 percent report that changing their stance would be nearly impossible or difficult (Mooney and Schuldt :209). As witnessed in Pat Buchanan's culture war rebuke, those identifying as "traditionalists" are strongly predicted to be opposed to "same-sex marriage" (Henry and Reyna). Implicit in such culture war traditionalism is usually an underlying judgment thwarting sexual or intimate citizenship for all gay and lesbian people translating into restrictive laws and higher surveillance of this group (Herdt and Kertzner). In 2006 and continuing through the writing of this article, several other states have either rejected same-sex marriage or codified a definition of marriage as between one man and one woman only. In building opposition to these political machinations and largely as a result of consciousness raising at the grassroots level by marriage equality advocates, there has been a hard-fought yet significant positive change in U.S. attitudes surrounding homosexuality. For example, a major ABC News–Washington Post poll conducted in shows that 49 percent of Americans agree that gay and lesbian or homosexual people should be able to get legally married, while a full 66 percent of those ages 18–29 believe that "LGB" couples should be able to get married. To date, 44 states either ban or do not explicitly support marriages between gays and lesbians, although a growing number of these states do offer other limited forms of partnership recognition, such as domestic partnership or civil union (Confessore and Barbaro ; Human Rights Campaign). We turn now to examining public opinion fluctuations on the subject of marriage equality over the past 20 years to show how this national conversation and the ensuing legal contests have impacted attitudes of Americans, not the least of which are the generations of young people, LGBTQ and straight, who have grown up in this climate.

Feminism

Feminist legal change is possible – must remain a priority – it is historically inaccurate to suggest the law hasn't improved for feminist goals
Larson 1993

(Jane Larson (1958 - 2011) was the Voss-Bascom Professor of Law at the University of Wisconsin Law School. ; INTRODUCTION: THIRD WAVE CAN FEMINISTS USE THE LAW TO EFFECT SOCIAL CHANGE IN THE 1990s? ; 1992-93 ; http://heinonline.org/HOL/Page?handle=hein.journals/illlr87&div=45&g_sent=1&collection=journals **; AWEY)**

Just as notable as the increasing complexity of feminism's political vision is the depth of the philosophical critique of the existing legal regime that the Symposium essays reflect. In the past decade, feminism has come fully into its own as a philosophical and political tradition, developing distinctive theories of knowledge, human nature, justice, and the paths, purposes, and practices of power. Feminist theorists increasingly set aside conventional political traditions and analytic models as inadequate for women's purposes: the lack of de jure equality does not explain women's condition; traditional civil rights strategies will not remedy women's injuries; and neither conservative, liberal, nor radical political theories fully articulate a model for a sexually just society. Yet, paradoxically, feminism remains more committed to change from within the existing frame of society than other progressive and critical political tendencies. Women are unwilling to separate their lives, interests, and aspirations from those of other people. As a result, feminism tends to fight its battles close to home, from within the families, workplaces, and polities that feminists seek fundamentally to reorder. The Symposium participants share with much current feminist thinking a tendency to theorize about broad principles of justice and fairness from quite intimate and particular settings-sexuality, 18 abortion, 19 childbirth and child rearing, 20 and education. 21 Looking to legal feminism's past accomplishments, no Symposium participant is so skeptical as to deny that feminist lawyering and theory have won many meaningful legal battles to advance women. It is no longer acceptable to explicitly argue that laws should reflect the view that men are superior to women-more capable, energetic, reasonable, intelligent, or just, or, by virtue either of divine or biological imperative, better suited than women to power. Linda Hirshman argues, however, that the law has found a new and more covert language for these same claims of male supremacy. The legal system, for example, freely spends its justice resources to order the political and commercial spheres critical to men's interests, yet it deprives, under a rubric of privacy and limited government, the relational and familial realms important to women. In the public sphere of politics and law, women's claims for sexual fairness often are derided as based on passion rather than logic, politics rather than reason, representing the pleading of special interests rather than the pursuit of universal principles appropriate in a democracy. Thus, the voices of women are systematically ignored, Hirshman contends, even in a legal and political system that claims to fully incorporate and represent their interests. 22 Hirshman gives special attention to the ways that the male-superior norm pervades legal education, expressed through disrespect of feminist legal scholars and their work, and in the minuscule numbers of women on law faculties.23 Through control of the political and scholarly agenda, Professor Hirshman claims, what is accepted as true, rational, and relevant continues to be judged according to a malesuperior norm. Hirshman advises her readers to be skeptical about the possibilities for bettering women's lives through law while lawyers continue to be trained in institutions that either ignore or disrespect women and their interests.24 Professor Hirshman

urges feminists to "take back" the law as a tool for social justice by remaking the institutions of legal power, beginning with their intellectual foundation in the law schools. Drawing attention to the importance of the Anita Hill-Clarence Thomas hearings in persuading Congress to pass the 1991 Civil Rights Restoration Act, 25 Professor Greene counsels the same kind of effort to reconstitute the legislatures, to ensure that elected representatives are able to hear and respond to calls for fundamental change on behalf of women.26 For both Hirshman and Greene, it is not enough for women to have an opportunity to be heard by those in power, to be the objects of men's justice. Rather, women must be represented among those who have the power to determine what justice is.

Cyborg

Talking about cyborgs allows for meaningful political action

Sundén 2k1 (Jenny Sundén, Professor of Gender Studies at Södertörn University, She has a Ph.D. from the Department of Communication Studies from Linköping University, she is currently a reviewer of journals such as European Journal of Women's Studies, Feminist media Studies, Feminist Theory, and New Media and Society; "What Happened to Difference in Cyberspace? The (Re)turn of the She-Cyborg"; Feminist Media Studies, Vol. 1, No.2, 2001; Published online Dec. 12, 2010; http://www.tandfonline.com/doi/pdf/10.1080/14680770120062141)//HB

Instead of reinforcing the Cartesian split through bodily destruction, feminist readings of the cyborg take transgressions as its subject. The cyborg is viewed as an alternative figuration, as a way out of the old schemes of thought. It is a powerful political fiction that shatters the dichotomous categorizations of Enlightenment epistemology, such as mind/body, organism/machine, public/ private, culture/nature, civilized/primitive, and centrally, man/woman, male/ female, masculine/feminine. **Haraway** (1991a: 149) has argued for a positive reading of the cyborg mythos in a world that has blurred distinctions between these oppositions, in a "border war" in the territories of production, repro- duction and imagination. Her ambition is "to build an ironic political myth faithful to feminism, socialism and materialism". **Her "Cyborg Manifesto" proposes a grounding for meaningful political action**, and questions the tenden- cies of feminisms that base their epistemologies on an inversion of the dichoto- mies they intend to criticize. It is a cyborg interpretation with no commitment to an absolute grounding for knowledge, but with an emphasis on "situated" and "partial" knowledges, uncertain and sometimes contradictory subjectivities and identities whose significations are not determined by the categorizations of human/animal/machine.

Anti-State/Foucault Affs

Resistance to surveillance shouldn't be held to only anti-state criticism – doing so limits new methods of resistance and ignores other forms of surveillance

Geesin 12 (Beverly Geesin, PhD candidate in Sociology at U. of York, March 2012, Thesis: "Resistance to Surveillance in Everyday Life," http://etheses.whiterose.ac.uk/2697/, pg. 9-10)

While acknowledging the tremendous contribution that has been made towards the understanding of surveillance systems within contemporary society within surveillance studies, there are three ways in which the discipline appears to be rather stuck. One goal of this thesis is to reinvigorate discussions around surveillance in order to move beyond these three conceptual difficulties. Firstly, the field is held back by its attachment to Foucault's metaphor of the Panopticon (1977/1995). Even within attempts to move beyond Foucault's Panopticon, theorists seem to find it very difficult to let it go (see Poster, 1990; 9 Gandy, 1993; Mathiesen, 1997; Lyon, 1994, 2006a, 2006b amongst others) and this has led to a second fixation with Deleuze's brief updating of the Panopticon with his 'Post-script on Control Societies' (1992). The model of the Panopticon as outlined by Foucault has become 'reified'. This has, on the one hand, limited the development of theoretical frameworks which go beyond this model. On the other hand, with forms of surveillance which do not fit within this model, they have either been excluded from analysis or misunderstood through an inappropriate application of the Panopticon (Haggerty, 2006). This introductory chapter will explore this fascination with the Panopticon and the limitations of this particular model for understanding contemporary forms of analysis. The rest of this thesis will explore other frameworks for understanding contemporary surveillance (Chapters 2 and 3) and utilise them to analyse three 'sites' of surveillance (Chapters 4, 5 and 6).

Islamaphobia

Engaging the state and changing policy builds upon current government efforts to self-reform and ensures law enforcement stops racial profiling on minorities— disengaging the state is ineffective and cedes the political to further allow dehumanization of not just Muslims, but all minorities

Representative Ellison, 14 (12/11/2014, Rep. Keith Ellison (D-MN), US Official News, "Rep. Ellison Testifies in Senate Hearing on Civil and Human Rights," Lexis, JMP)

Office of the House of Representative Keith Ellison, U.S Government has issued the following news release: Rep. Keith Ellison (D-MN) testified in front of Senate Judiciary Committee on the Constitution, Civil Rights, and Human rights today during a hearing entitled "The State of Civil and Human Rights in the United States." The hearing was chaired by Senator Dick Durbin (D-IL) and Rep. Ellison was joined by his colleagues Senator Cory Booker (D-NJ) and Rep. Luis Gutierrez (D-IL). Rep. Ellison's written testimony submitted for the record to the committee is below. Last week 15 year old Abdisamad Sheikh-Hussein was run over by a man in an SUV that had a bumper sticker that said "Islam Is Worse Than Ebola" on it. **Discrimination and hate exist everywhere and we should shine a light on them.** Today I'd like to focus on state-sponsored violations of our civil rights and liberties and the context in which these violations occur. Why? Because the government's job is to promote the general welfare. Because we entrust our government with the right to protect and serve our communities, we expect more of them. Most of the time our public servants diligently uphold this social contract; but **when the state fails it is all the more devastating and deserves our attention**. President Obama and Attorney General Holder have demonstrated leadership that has brought important reforms like the Hate Crimes Prevention Act, the repeal of Don't Ask Don't Tell, and the Fair Sentencing Act. We still have a long way to go. Our system of justice works for some, not all. This injustice takes place in a social and economic context. When Officer Wilson confronted Michael Brown on Canfield Drive in Ferguson, the interaction didn't take place in a vacuum. Like many of our communities, Ferguson suffers from economic abandonment. Ferguson Missouri's unemployment is 13%, over double the national average. The number of low-income people in Ferguson doubled over the last 10 years. In 2012, almost all of Ferguson's neighborhoods had a poverty rate of over 20%, the threshold at which the negative effects of poverty emerge. Do we respond to this with policies that create jobs, improve infrastructure, and promote education? No. We build more prisons and give our police weapons designed for a war zone. Our low income and minority communities are over-policed and under-protected. We cannot continue to try to address our economic problems with criminal justice solutions. It isn't fair to our communities. It isn't fair to law enforcement. And it solves neither the criminal justice nor the economic justice problems. If we only buy body cameras and don't address structural and economic inequality, we will find ourselves here again, year after year. We know we have an inequality problem when the CEO of Wal-mart makes over $12,000 per hour and the average Wal-mart employee makes $8.48, or when the CEO of McDonalds makes $9,200 an hour and the cashier makes $8.25. I'd also like to talk about another form of state sponsored discrimination – one that I have experienced myself. It isn't a secret that I have experience with the divisive rhetoric and fear-mongering that some public officials use to gain power. Many will recall the House Committee on Homeland Security hearings to discuss the threat posed by Muslims in America. My request to broaden the hearing to include all forms of violent extremism was rejected. Now, years later, public officials around the country continue to use divisive rhetoric. A county commissioner in Coffee County, TN posted on his public Facebook page an image of a man holding a shotgun with the caption "How to Wink at a Muslim." A state senator in Oklahoma said that American Muslims are a "cancer in our nation that needs cutting out." And in my own state of Minnesota, a GOP County chairman called Muslims parasites that should be fragged. To frag someone means to violently kill them. These are not rare occurrences. These examples demonstrate that **these toxic views have spread**. This type of bigotry is contrary to what we stand for as Americans, and when our public officials engage in it, it gives the American public a signal that it is ok to do the same. **Public officials have an increased responsibility and when they begin to treat a particular group differently because of their faith, they should be called out and held accountable**. Our words matter. **Beyond changing the rhetoric, we have to change our policies.** Shortly after he took office President Bush said that racial profiling is "wrong, and we will end it in America." Over a decade later we still have bad policies on the books. In New York and many other US cities, Muslim communities are mapped, infiltrated, and surveilled simply because they are Muslim. The Departments of Homeland Security and Justice conduct extensive operations in Arab, Middle Eastern, Muslim, and South Asian communities under the guise of countering violent extremism. Study after study has shown that acts of violent extremism in the United States are motivated by a variety of ideologies and that only a small percentage are committed by American Muslims. According to the FBI, only 6% of acts of terrorism on American soil between 1980 and 2005 were committed by those Muslims. Yet, nearly all programming targeted towards countering violent extremism is geared towards Muslim communities. I am not against surveillance. I am against surveillance without reasonable suspicion. We should not be singling out communities and harassing and spying on them without cause. Intelligence gathering should never be based on religion or race. If you think this is just a "Muslim problem" – you're wrong. Local **law enforcement, encouraged by**

the federal government, raid Latino communities and workplaces. There is FBI surveillance, without suspicion, of Chinese and Russian communities in the US. And as we know, there is the routine practice of profiling African American young men. A young black man is 21 times more likely to be shot and killed by a police officer than his white counterpart. As the co-chair of the Progressive Caucus I have joined the chairs of the Congressional Black Caucus, The Congressional Hispanic Caucus, and The Asian Pacific Caucus to urge the Department of Justice to issue revised profiling guidance that will help stop law enforcement from discriminating against our citizens based on their religion, national, origin, ethnicity, and sexuality. Yesterday the Department of Justice issued the revised guidance that expands protections for some, but allows the FBI, TSA, and Border Patrol to continue mapping, monitoring, and targeting Americans based on their religion or what they look like. We should not continue to violate the civil liberties of our citizens in the name of national security. Discriminatory profiling is wrong. It doesn't help prevent crime. It creates a culture of fear and resentment within our communities. It is contrary to our core constitutional principles when federal dollars are spent perpetuating law-breaking activity like entrapment.

Topical version of the aff solve better— curtailing FBI surveillance power provide the best safeguard against abuse and only reform through the state addresses the heart of the problem

Berman, 11 --- Counsel in the Liberty and National Security Project at the Brennan Center for Justice (Emily, "DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS," http://brennan.3cdn.net/b80aa0bab0b425857d_jdm6b8776.pdf, JMP)

Substantive Recommendations Regardless of what additional procedural protections are implemented, some elements of the FBI's existing powers simply permit too much government intrusion into the lives of innocent Americans and therefore should be curtailed in the following ways: 1. Prohibit the FBI from using highly intrusive investigative techniques unless there is some basis in fact to suspect wrongdoing.290 • This would prohibit tailing someone, posing as other people in order to mine information from neighbors and acquaintances, and recruiting informants to glean more information in the absence of some factual basis for suspicion. • This prohibition, summarily overturned by the 2008 Guidelines, was enshrined in all previous iterations of the Guidelines for decades. It **is the single most important safeguard against profiling and other forms of abuse**, and the government has offered no persuasive justification for its sudden disappearance. 2. Require agents to use the least intrusive investigative technique that is likely to prove effective. • The "least intrusive method" requirement has been part of the Guidelines since their inception. The current, equivocal language on this requirement in the Guidelines and the DIOG should be amended to stress its importance, even in terrorism investigations. 3. Prohibit improper consideration of race, religion, ethnicity, national origin, or First-Amendment-protected activity in investigative decisions. • Addressing this issue is most urgent in the context of rules regarding use of informants to collect information about First-Amendment-protected activity, such as infiltration of a place of worship or political gathering. Such activities should require higher levels of predication and more aggressive oversight of investigative decisions than activities that do not implicate Americans' constitutional rights. Even outside the First Amendment context, however, **reform is necessary. One standard to consider was recently implemented by the Office of the Director of National Intelligence** (DNI). The standard for use in the DNI's Information Sharing Environment (ISE)-Suspicious Activity Reporting (SAR) system adopts a "behavior-focused approach to identifying suspicious activity" based on the standard announced in Terry v. Ohio.291 392 U.S. 1 (1968). It requires that "race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (except if used as part of a specific suspect description)."292 **This type of limitation on the use of these factors to justify law enforcement**

activity is crucial. Conclusion **The time to act is now**—before the Guidelines result in widespread and unwarranted intrusions into Americans' privacy, harmful religious and ethnic profiling, and the divergence of scarce resources to ineffective and indiscriminate collection of information. The changes recommended above will go a long way to reduce the risk of excesses that the current Guidelines permit. They would reinvigorate the substantive standards on which investigative activity should be predicated and would ensure that intrusive investigative methods are used only when necessary. And **they would impose internal and external checks to guarantee the lawful, effective use of the powers conferred on federal agents.** In short, they would safeguard Americans' rights of privacy, free expression, association, and religion as well as help to focus investigative activity where there are indications of threats. The result will be a safer, more just America.

Not Mutually Exclusive

Public Movements not exclusive

Public movements and legal reforms are not mutually exclusive— projects of oral dissent must be incorporated into politics in order to effectively create change within the state

Guinier 09 (Lani Guinier is an American civil rights theorist; she is the Bennett Boskey Professor of Law at Harvard Law School and the first woman of color appointed to a tenured professorship at that institution. "BEYOND LEGISLATURES: SOCIAL MOVEMENTS, SOCIAL CHANGE, AND THE POSSIBILITIES OF DEMOSPRUDENCE" 89 B.U. L. Rev. 539 2009 p. 544-547, pg. online @ www.law.harvard.edu/faculty/guinier/publications/bu-courting.pdf//DM**)**

In her Ledbetter dissent and subsequent remarks, Justice Ginsburg was courting the people to reverse the decision of a Supreme Court majority and thereby limit its effect. In Robert Cover's "jurisgenerative" sense, she claimed a space for citizens to advance alternative interpretations of the law. Her oral dissent and public remarks represented a set of demosprudential practices for instantiating and reinforcing the relationship between public engagement and institutional legitimacy. In Justice Ginsburg's oral dissent we see the possibilities of a more democratically-oriented jurisprudence, or what Gerald Torres and I term demosprudence.37 Demosprudence builds on the idea that lawmaking is a collaborative enterprise between formal elites – whether judges, legislators or lawyers – and ordinary people. The foundational hypothesis of demosprudence is that the wisdom of the people should inform the lawmaking enterprise in a democracy. From a demosprudential perspective, the Court gains a new source of democratic authority when its members engage ordinary people in a productive dialogue about the potential role of "We the People" in lawmaking.38 Demosprudence is a term Professor Torres and I initially coined to describe the process of making and interpreting law from an external – not just internal – perspective. That perspective emphasizes the role of informal democratic mobilizations and wide-ranging social movements that serve to make formal institutions, including those that regulate legal culture, more democratic.39 Demosprudence focuses on the ways that "the demos" (especially through social movements) can contribute to the meaning of law. Justice Ginsburg acted demosprudentially when she invited a wider audience into the conversation about one of the core conflicts at the heart of our democracy.40 She grounded her oral dissent and her public remarks in a set of demosprudential practices that linked public engagement with institutional legitimacy. Those practices are part of a larger demosprudential claim: that the Constitution belongs to the people, not just to the Supreme Court. The dissenting opinions, especially the oral dissents, of Justice Ginsburg and other members of the Court are the subject of my 2008 Supreme Court foreword, Demosprudence Through Dissent. 41 The foreword was addressed to judges, especially those speaking out in dissent, urging them to "engage dialogically with nonjudicial actors and to encourage them to act democratically."42 The foreword focuses on oral dissents because of the special power of the spoken word, but Justices can issue demosprudential concurrences and even majority opinions, written as well as spoken.43 Moreover, true to its origins, demosprudence is not limited to reconceptualizing the judicial role. Lawyers and nonlawyers alike can be demosprudential, a claim that I foreshadow in the foreword and which Torres and I are developing in other work on law and social movements.44 Supreme Court Justices can play a democracy-enhancing role by expanding the audience for their opinions to include those unlearned in the law. Of the current Justices, Justice Antonin Scalia has a particular knack for attracting and holding the attention of a nonlegal audience. His dissents are "deliberate exercises in advocacy" that "chart new paths for changing the law."45 Just as Justice Ginsburg welcomed women's rights activists into the public sphere in response to the Court majority's decision in Ledbetter, Justice Scalia's dissents are often in conversation with a conservative constituency of accountability.46 By writing dissents like these, both Justices have acknowledged that their audience is not just their colleagues or the litigants in the cases before them. Both exemplify the potential power of demosprudential dissents when the dissenter is aligned with a social movement or constituency that "mobilizes to change the meaning of the Constitution over time."47 Thus, Justice Ginsburg speaks in her "clearest voice" when she addresses issues of gender equality.48 Similarly, Justice Scalia effectively uses his originalist jurisprudence as "a language that a political movement can both understand and rally around."49 Both Justices Ginsburg and Scalia are at their best as demosprudential dissenters when they encourage a "social movement to fight on."50 Robert Post, writing in this symposium, reads my argument exactly right: "[C]ourts do not end democratic debate about the meaning of rights and the law; they are participants within that debate."51 As Post explains, I argue that the "meaning of constitutional principles are forged within the cauldron of political debate," a debate in

which judges are often important, though not necessarily central, actors.52 Law and politics are in continuous dialogue, and the goal of a demosprudential dissenter is to ensure that the views of a judicial majority do not preempt political dialogue. When Justice Ginsburg spoke in a voice more conversational than technical, she did more than declare her disagreement with the majority's holding. By vigorously speaking out during the opinion announcement, she also appealed to citizens in terms that laypersons could understand and to Congress directly.53 This is demosprudence.

State Centered Practices spur social change

Even if the state is not perfect, it has a role to play in key social and rights movements— specifically the Supreme Court can engage in acts of demosprudence to spur dissent and public conversation

Guinier 09 (Lani Guinier is an American civil rights theorist; she is theBennett Boskey Professor of Law at Harvard Law School and the first woman of color appointed to a tenured professorship at that institution. "BEYOND LEGISLATURES: SOCIAL MOVEMENTS, SOCIAL CHANGE, AND THE POSSIBILITIES OF DEMOSPRUDENCE" 89 B.U. L. Rev. 539 2009 p. 547-551, pg. online @ www.law.harvard.edu/faculty/guinier/publications/bu-courting.pdf//DM)

Robert Post eloquently summarizes and contextualizes the argument I make about demosprudence. He also corrects the misunderstanding of the law/politics divide that beats at the heart of Gerald Rosenberg's criticisms of that argument.54 Post neatly restates my premise: "Law inspires and provokes the claims of politically engaged agents, as it simultaneously emerges from these claims."55 In his companion essay, Professor Rosenberg polices the law/politics distinction to create a false binary. Rosenberg dismisses the possibility of an ongoing and recursive conversation between law and politics that may produce changes in the law and eventually in our "constitutional culture," meaning changes in the popular as well as elite understanding of what the law means. Constitutional culture is the fish tank in which the beliefs and actions of judicial as well as non-judicial participants swim. It is the "dynamic sociopolitical environment" in which ideas about legal meanings circulate, ferment, compete and ultimately surface in formal venues such as legal advocacy or legislative actions.56 As political scientist Daniel HoSang explains, the goal of demosprudence is "to open up analytic and political possibility to build and sustain more dynamic and politically potent relationships between [legal elites] and aggrieved communities."57 Professor Rosenberg's critique of demosprudence rests on several misunderstandings of my work and that of other legal scholars.58 First, Professor Rosenberg wrongly assumes that my claims are descriptive rather than aspirational.59 Second, Professor Rosenberg's concern about my "Courtcentric" analysis overlooks the occasion for my argument;60 that is, the traditions associated with the Supreme Court foreword published every year in the November issue of the Harvard Law Review. Third, he orients his entire critique around polling data and other social science research to trivialize the relationship of narrative to culture, to exaggerate the predictive capacity of a data-driven approach to quantify causation and to preempt other useful analytic approaches.61 First, my foreword posits that judges can play a demosprudential role and that oral dissents are one potential vehicle for allowing them to do so.62 While it is true that oral dissents currently face obstacles to their demosprudential efficacy, those obstacles need not be insurmountable. Moreover, Rosenberg's critique arguably makes my point. He is saying "people don't pay attention,"63 while I am saying "yes, they can!" Indeed, they might pay more attention if Justices took the time to talk to them.64 He characterizes the past; I aim to sketch out the contours of a different future. Rosenberg is absolutely right that one next step might be to deploy the tools of social science to explore the extent to which this claim has been realized.65 But the foreword is suggestive, not predictive. Justices of the Supreme Court can be demosprudential when they use their opinions to engage non-legal actors in the process of making and interpreting law over time. They have democratically-based reasons to seek to inspire a mobilized constituency; it is not that they invariably will cause a social movement to emerge. Similarly, the idea that Court opinions do not invariably inspire social movements does not mean they cannot have this effect. Nor do I argue that oral dissents are the only, or even the single most important, communication tool at the Court's disposal. When the Supreme Court announced Brown v. Board of Education66 in 1954, there were no dissents. Moreover, the orality of the opinion announcement was not a central feature of the event. No one heard the voice of Earl Warren reading his decision on the radio. Nevertheless, the decision had a powerful effect, in part because it was purposely drafted to speak to "the people."67 Justice Warren consciously intended that the Brown opinion should be short and readable by the lay public.68 In his work, Professor Rosenberg focuses on the white backlash the Brown decision inspired.69 But a demosprudential analysis also focuses on the front lash, the way that Brown helped inspire the civil rights movement. Brown's accessibility and forcefulness helped inspire a social movement that in turn gave the opinion its legs.70 In 1955, Rosa Parks refused to give up her seat on a bus in Montgomery. She was arrested. Four days later, when she was formally arraigned and convicted, a one-day bus boycott by the black citizens of Montgomery was unexpectedly, amazingly, successful.71 Dr. Martin Luther King, Jr. delivered a sermon that evening before a mass meeting of 5000 people gathered at and around Holt Street Baptist Church.72 He prepared his audience to take the bold step of continuing the boycott indefinitely. He did so by brilliantly fusing two great texts: the Supreme Court's pronouncement a year earlier in Brown and the Bible.73 Dr. King roused the crowd at that first mass meeting in Montgomery with a spirited refrain: "If we are wrong –

the Supreme Court of this nation is wrong. If we are wrong God Almighty was wrong."74 In the foreword, I argue that Dr. King was a classic example of a "roleliterate participant."75 His theological and strategic acumen enabled him to invoke Brown as "authorization" and "legitimation" to sustain the actions that 50,000 blacks in Montgomery, Alabama would take for over thirteen months when they refused to ride the city's buses.76 But as Robert Post rightly points out, the word "authorize" meant something more like embolden or encourage.77 My point is that Brown shows judicial actors can inspire or provoke "mass conversation." It is when the legal constitution is narrated through the experience of ordinary people in conversation with each other that legal interpretation becomes sustainable as a culture shift.78 And if a majority opinion can rouse, so too can a dissenting one. Thus, demosprudence through dissent emphasizes the use of narrative techniques and a clear appeal to shared values that make the legal claims transparent and accessible. Although demosprudence through dissent is prescriptive rather than descriptive, it was never my intent to suggest that the Court should be central to any social movement. Like Justice Ginsburg, I am not a proponent of juridification (the substitution of law for politics).79 In Justice Ginsburg's words, "[t]he Constitution does not belong to the Supreme Court."80 At the same time, I recognize that the Court has been deeply influential, albeit unintentionally at times, in some very important social movements. Studying the 1960s student movement in Atlanta, Tomiko Brown-Nagin argues that the lunch counter sit-ins were, in fact, a reaction to the Supreme Court's decision – not because of what the Supreme Court said, but because of what it did not say.81 The Court initially raised, then dashed expectations. It was the disappointment with "all deliberate speed" – the legal system's failure to live up to the promise of the Court's initial ruling – that inspired students to take to the streets and initiate some of the bold protest demonstrations at lunch counters and in streets in the 1960s.82 Brown-Nagin emphasizes the multiple ways in which courts, lawyers and social movement actors are engaged in a dialogic and recursive discourse.83

Cultural Change

Using the law creates a “cultural shift” which can change people’s mindset Loewy 2000

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Three ways of approaching the achievement of social change are the notions of "cultural shift," "negotiation of strategy" and "dimensional lawyering." These views are not mutually exclusive, but they are informed by different underlying ideologies. a. Cultural Shift The creation of a cultural shift is one view of the way to make true social change. 39 Professor Thomas Stoddard suggests that social change and legal change are not always coexistent, that one does not always prompt the other.4 ' Furthermore, attempts at law reform may only succeed on a formal level and may not have any real impact on the larger cultural context into which they fit.41 The law's traditional mechanisms can be adapted, however, to improve society in extra-legal ways. This use of the law is what Stoddard calls the law's culture-shifting capacity.42 A cultural shift may take place when far-reaching or significant change occurs, public awareness of that change is widespread, the public generally perceives that change as legitimate or valid, and there is continuous, overall enforcement of the change. 43 One theory perhaps underlying the notion of cultural shift and its belief that all of these components must occur contemporaneously is that lawyers may not be able to divert the direction of a rule of law very far off course from the beliefs of elected officials." Without the support of the general public and the enforcement of the change, change cannot really occur. To make major changes in critical social relationships, one must change the way people think about the issue.45 A new law that affects a large number of people in fundamental ways creates the potential for culture shifting. 6 For the shift to have cultural resonance, however, the general public must also perceive the shift. It must be "generally discerned and then absorbed by the society as a whole."47 This common awareness must also be accompanied by some sense of public acceptance grounded in a sense of legitimacy or validity, as awareness is never enough to assure compliance.48 Finally, unless the rules are enforced, the public will disregard them. Unless a new law promotes public awareness and adherence to the rules, as well as provides appropriate sanction for their disregard, culture-shifting cannot occur.49 Professor Nan Hunter suggests an additional requirement for a true cultural shift.50 She posits that in addition to the four requirements listed above, some type of public engagement in the effort to change the law must occur.51 When a change stems from a mobilized public demand, whether through litigation or legislation on state or federal levels, the resulting change has an immediate culture-shifting impact.5 2 She thus places great emphasis on mobilization and empowerment of those seeking legal assistance, and strengthening the represented constituency or community organization.53 This empowerment is valuable because the constituent community will work toward larger, more fundamental change, viewing the law as a tool to accomplish this change as opposed to viewing the reform of the law as the end goal in and of itself.54 Consequently, these communities will not be constrained by the limits of the law and will better serve as repeat players in the scheme of social change.55 Professor Chai Feldblum suggests that

in order for the public to believe in the legitimacy of a change, whether enacted by the legislature or decided by a court, there must be an engagement with the morality underlying the issue.56 She maintains that the moral discourse surrounding the debate of social issues must not be discounted.57 While legal commentators have long documented the impact of judicial reasoning on the moral rhetoric surrounding a controversial issue, the legislators' discourse has lacked similar recognition.5 8 Because the surrounding rhetoric is so powerful, it must involve a real engagement with the underlying moral issues, as this grappling will have an impact on the type of culture-shift that occurs.59 Because the issues around which social change occur are those that are grounded, at their core, in morality, the more the moral aspects of the issues are emphasized, the greater the impact of the cultural shift. 60

Blocks

A2 Law Sucks/Excludes Us

Engaging Paradoxically with the law has value – if the law is BAD then the only way it will change is buying getting into the trenches

Hirsch 12 (Dr. Alexander Keller Hirsch is Assistant Professor in the Department of Political Science at the University of Alaska, Fairbanks. His primary field is political theory, and his research and teaching interests focus on the entanglements, impasses, and dreamworlds faced by people who inhabit the afterness of catastrophe, 2012, "The promise of the unforgiven: Violence, power and paradox in Arendt," pgs. 9-11, online @ psc.sagepub.com/content/early/2012/12/13/0191453712467319.full.pdf+html//DM)

My approach to the paradox differs from both Young-Bruehl's and Bar On's in that I am less interested in smoothing over, correcting, or otherwise neutralizing Arendt's aporia. Rather than view it as something to be explained or solved, I contend that the irresolvability of the paradox is precisely its source of generativity. In this sense I follow in line with a number of scholars who have recently argued that paradox, far from an endgame, represents a condition of possibility for a renewed vision of democratic politics as an inherently tragic venture. Perhaps Bonnie Honig has been most effective in this regard. In her marvelous recent collection of essays, Emergency Politics, Honig invokes Rousseau's well-known paradox of politics. For Rousseau, famously, political founding requires virtuous citizens to set it in motion, and yet such a citizenry cannot exist until that founding has conditioned a people capable of founding in the first place. As Honig parses Rousseau, 'In order for there to be a people well-formed enough for good lawmaking, there must be good law, for how else will the people be well formed? The problem is: Where would that good law come from absent an already well-formed, virtuous people?'44 Where most deliberative theorists, such as Seyla Benhabib or Ju¨rgen Habermas, work to find normative or prescriptive principles and procedures for solving Rousseau's paradox, Honig urges us to bracket the inclination to settle, sublimate, or otherwise resolve it at all. Rather she sees the paradox of politics as fecund with possibility. On this point, it is well worth quoting Honig at length: It might seem that acknowledging the vicious circularity of the paradox of politics must be costly to a democracy, or demoralizing: If the people do not exist as a prior – or even as a post hoc – unifying force, then what will authorize or legitimate their exercises of power? But there is ... also promise in such an acknowledgment. Besides, denial is costly too, for we can deny or disguise the paradox of politics only by suppressing or naturalizing the exclusion of those (elements of the) people whose residual, remaindered, minoritized existence might call the pure general will into question. From the perspective of the paradox of politics, unchosen, unarticulated, or minoritized alternatives – different forms of life, identities, solidarities, sexes or genders, alternative categories of justice, unfamiliar tempos – re-present themselves to us daily, in one form or another, sometimes inchoate. The paradox of politics provides a lens through which to re-enliven those alternatives. It helps us to see the lengths to which we go or are driven to insulate ourselves from the remainders of our settled paths. It keeps alive both the centripetal force whereby a people is formed or maintained as a unity and the centrifugal force whereby its other, the multitude, asserts itself.45 Here, Honig highlights those forms of exclusion that get erased when the paradox of politics is resolved or forgotten. Taking the irreparability of that paradox seriously means that new angles of vision get opened up. Specifically, the paradox helps us to see the extent of our attempts to conceal the violence committed in the act of founding a people. What is further revealed is the extent to which the work of democratic politics entails 'not just rupture but maintenance, not just new beginnings but preparation, receptivity, and orientation'.46 This is the tragic condition of the political paradox Honig redeems for democratic thinking. In qualifying what constitutes a tragic condition Honig turns to the moral philosophy of Bernard Williams. For Williams, Honig recalls, tragic situations are 'situations where there is no right thing to do but something must be done. Here every action is inaction.'47 Tragic situations are paradoxical ones. No matter what choice we make we are stuck. In this sense, tragedy questions the view that the subject is the sovereign master of its destiny. Tragedy raises doubts about the Platonist vision of the hyperrational ideal and the Kantian belief in the sufficiency and autonomy of the self.48 Instead, tragedy affirms the notion that the subject and its actions are vulnerable to forces and power not entirely within rational control. Moreover, for Williams, as for Honig, 'the question posed to the moral agent by the tragic situation

is not simply what should we do in a tragic situation but what does the tragic situation do to us and how can we survive it with our moral integrity intact?'49 The goal of moral theory is not to guide action or prescribe the normative 'right thing' to do, but rather to help the agent to survive the situation. '**The goal',** Honig writes, **'is to salvage from the wreckage of the situation enough narrative unity for the self to go on**.'50 Arendt's paradox is certainly tragic in this sense. If forgiveness is both violent, in its suddenness, and yet redeeming, in its capacity to release us from what we have violently done, we are left wedged between an impossible choice and a no less compelling imperative to act. If promising is what we do to subdue the unexpected and beckoning chaos of the future, then we must promise not to forgive, not to begin, not to do the violence required of us if we are to enter the world of appearances together and generate the conditions for power's emergence. This tragic situation calls for a theory of survivability and survivance, for a salvaging on behalf of the self. Importantly though, I think there is more than a moral dimension to the tragedy at play in the paradox of Arendt's treatment of violence, power, forgiveness and promising. There is a political face too. A tragic view sacralizes the restlessly ongoing and irresolvable quality of conflict endemic to human experience. It also induces a critical responsiveness to ambivalence, what Richard Seaford calls the 'prevalence of duality over unity'.51 Politics, seen as a tragic condition of human life, is conceived less as a means of foreclosing the conflicts that arise out of difference and disagreement than as a channel through which they might be quickened, elaborated and honed. In this sense, tragedy is attuned to an immensely complex field of powers, pressured encounters and civic possibilities. When conceived politically, which is to say tragically, democracy fosters robust and active modes of citizenship engaged in projects of public and counter-public building. These projects are aware both of the omnipresent and ineliminable quality of conflict and that the dynamism of this conflict is the source of political agency in the perpetually disputed and contingent character of the world held in common. This is a world shimmering with plurality, so long as the tragedy of democratic experience is upheld.

A2 Cant Engage the Surveillance Culture

Forum exists in the FISA Court to challenge the NSA – public advocates prove

Nolan et al. 13 (Andrew Nolan, Richard M. Thompson II, and Vivian S. Chu, Legislative Attorneys of the Congressional Research Service, 10/23/2013, "Introducing a Public Advocate into the Foreign Intelligence Surveillance Act's Courts: Select Legal Issues," https://www.justsecurity.org/wp-content/uploads/2013/10/CRS-Report-FISC-Public-Advocate-Oct.-25-2013.pdf)

It is a basic principle of American constitutional law that with one exception46 the Constitution only applies to the federal government and, via the Fourteenth Amendment and certain other clauses, to the governments of the states.47 Accordingly, before evaluating the constitutional implications of including a public advocate in FISA proceedings a threshold issue is to assess what the exact role of the FISA advocate is as a legal matter and, more specifically, whether the advocate is a sovereign entity that can be subject to the constraints of the Constitution.48 At first blush, one can argue that an opposition advocate in a FISA proceeding cannot be considered a government actor, as a public advocate represents the privacy interests of either the general public or those being targeted. Indeed, as one scholar noted in another context regarding the concept of a public advocate, the institution itself, in actively opposing the position of a government agent, is "so different from the traditional three branches of government" that the advocate "would be like a fourth branch of government, totally different from anything contemplated by the framers at the time of the ratification of the Constitution," and, therefore, free of the constraints of the Constitution.49 Moreover, if one assumes a public advocate is a direct analogue to that of a public defender in a federal criminal case, the adversarial relationship of the FISA advocate with the government arguably prevents consideration of the opposition advocate as an instrument of the federal government.50 Specifically, a public advocate, being bound by the canons of professional responsibility, must exercise independent judgment on behalf of his client – the public – and cannot be considered a "servant of an administrative superior" – i.e., the government.51 Put another way, an opponent of the government's position cannot be converted into its "virtual agent."52 In this light, some proposals for including an advocate have described the advocate's client as not being the government, but the "people of the United States" in "preserving privacy and civil liberties."53

PRISM Topicality Supplement MNDI

NEG T – Curtail

1nc t – curtail vs prism

Interpretation – "curtail" requires eliminating or substantially de-funding a surveillance program – NOT merely regulating it

Dembling 78 – General Counsel @ GAO (Paul Dembling, General Counsel, General Accounting Office, "Oversight Hearing on the Impoundment Control Act of 1974," hearing before the Task Force on Budget Process, Committee on the Budget, U.S. House of Representatives, 6-29-1878, Hein Online)

(3) "Curtail" means to **discontinue**, in whole or in part, the **execution of a program**, resulting in the application of less budget authority in furtherance of the program than provided by law.

Violation – the plan limits the use of PRISM – but does NOT curtail it

Kampmarka 14 – Senior Lecturer @ RMIT University; (Binoy Kampmarka, Senior Lecturer in the School of Global, Urban and Social Studies, teaching within the Bachelor of Social Science, Legal and Dispute Studies program, RMIT University, "Restraining the Surveillance State: A Global Right to Privacy," Journal of Global Faultlines, 2(1), April 2014, http://www.keele.ac.uk/media/keeleuniversity/fachumsocsci/spire/docs/globalfaultlines/volume2/Restraining%20the%20Surveillance%20State%20-A%20Global%20Right%20to%20Privacy.pdf)

The Presidential Policy Directive 28 or **PPD-28** remains even more pertinent than the speech.88 The directive emphasises the technological supremacy of U.S. capabilities, with the need to "preserve and continue to develop a robust and technologically advanced signals intelligence capability to protect our security and that of our partners and allies."89 A modest acknowledgment is made, after outlining a range of interests and aims about taking into account "the legitimate privacy and civil liberties concerns of U.S. citizens and citizens of other nations."90 These are framed in the language of **policy**, rather than the language of rights. Section 1 detailing principles governing the collection of signals intelligence acknowledges that privacy and civil liberties will be "integral considerations in the planning of U.S. signals intelligence activities." Information will not be collected to suppress dissent, disadvantage people based on ethnicity, race, gender, sexual orientation or religion. The main premise for collection will be "to support national and departmental missions".91 The language of the directive suggests modest reform. Where possible, signals intelligence activity would be avoided unless necessary. "Signals intelligence activities shall be tailored as feasible. In determining to collect signals intelligence, the United States shall consider the availability of other information, including from diplomatic and public sources. Such appropriate and feasible alternatives to signals intelligence should be prioritized."92 The directive also **imposes limitations on** the **use** of signals intelligence collected in bulk under section 702 of FISA which will "protect the privacy and civil liberties of all persons, whatever their nationality an regardless of where they might reside." When collected, they will only be used in traditional fashion: combating crime, illicit finance, threats to the U.S. or its allies, terrorism and espionage threats. Annual reviews on how the bulk data is collected will be done.93 The storage of such data would also be outsourced – to a third party contractor.94 A notable feature in PPD-28 is the **restriction on monitoring** foreign citizens, which might be termed the "Merkel" section after it was revealed the German Chancellor's phone was being monitored by the NSA. Section 4 notes a universal, extra-territorial premise: "All persons should be treated with dignity and respect, regardless of their nationality or whether they might reside, and all persons have legitimate privacy interests in the handling of their personal information."

U.S. signals intelligence activities would include **safeguards** to ensure that transterritorial protection.95 Section 4 also serves to create the machinery by which the U.S. will form a "point of contact for foreign governments who wish to raise concerns regarding signals intelligence activities conducted by the United States." In the view of executive director of Amnesty International USA Steven W. Hawkins, the proposals failed to accept "the abusive nature of mass surveillance or put international human rights standards at the centre of US policy".96 The directive does **not** so much **curtail surveillance** as simply **limit aspects of its reach**, attempting to limit the "rogue" enterprise in abusing the use of personal data. **Ex**ecutive **O**rder **12333**, which governs the use of electronic surveillance by the Intelligence community outside the U.S., still affords the President powers to authorise surveillance programs without judicial review.97 The law on surveillance is still subordinate to executive discretion. Congressional critics of the surveillance state, Senators Mark Udall (D-Colo.), Ron Wyden (D-Ore.) and Martin Heinrich (D-N.M.) considered the move by the president to end the government's collection of phone records a "major milestone" but did add that, "The fight to protect liberty and increase security is far from over".98 Perhaps unsurprisingly, Congress was less interested in the extent of privacy protections for non-Americans than Americans themselves. Finally, Obama's address revealed a vital stumbling block in surveillance reform and the issue of an internationally policed privacy right: his assumption that abuses never took place. The president, in effect, ignored what the secret FISA court charged with making orders under the Foreign Surveillance Intelligence Act had found: that the NSA had shown a "poor" record of compliance. A specific example was provided in a declassified decision concerning an unwarranted expansion of its bulk acquisition of internet metadata. According to Judge John Bates, the NSA had engaged in systematic "over collection" and "disregarded the special rules for disseminating United States person information outside of NSA".99 At the very least, section 4 of PPD-28 suggests that there is a global expectation to privacy that cuts across principles of citizenship. That very acknowledgement signals a departure from traditional legal approaches from the U.S. security establishment. Its practice will, however, be something else.

It's a voter –

First, limits – infinite AFFs reshuffle legal authority or impose slightly more stringent conditions, making effective NEG preparation impossible

Second, ground – programmatic reductions guarantee NEG disad links – they make it impossible to leverage any evidence saying PRISM is good

--xt interp

Curtail means eliminating or substantially cutting the funding for a particular surveillance program

Dembling 78 – General Counsel @ GAO (Paul Dembling, General Counsel, General Accounting Office, "Oversight Hearing on the Impoundment Control Act of 1974," hearing before the Task Force on Budget Process, Committee on the Budget, U.S. House of Representatives, 6-29-1878, Hein Online)

Application of curtailment procedure.-The review procedure is triggered by an executive branch decision to 'curtail" a program which has been made subject to the bill. The definition of "curtail" (subsection (a)(3)) requires that the executive branch decision result in a **reduction of budget authority** applied in furtherance of the program. As noted above, the level of budget authority for this purpose would be the amount so specified in an appropriation act. The reduction relates to the use of funds "in furtherance of the program." Thus, although the full amount of budget authority may be spent in some manner, e.g., to pay contract termination costs or other liabilities incident to the curtailment, such a use of funds still involves a reduction in funding for affirmative program purposes which triggers the review provisions. Curtailment review procedure.-The review procedure would generally be similar to the procedure for reviewing deferrals of budget authority under the Impoundment Control Act, except that congressional disapproval would take the form of a concurrent resolution. The President would report a proposed curtailment decision to Congress, together with appropriate information (subsection (b)), and supplementary reports would be made for any revisions (subsection (c)(3)). The proposal, and any supplementary reports, would be printed in the Federal Register (subsection (c)(4)).

--xt definitional predictability

Only our interpretation is grounded in the federal government's interpretation of "curtail" – which references a specific budgetary process by which particular programs are substantially reduced or eliminated – their interpretation is NOT the one actually used by governmental and industry experts, which makes it unpredictable even if it's theoretically preferable – it's just one random individual's opinion – turns all their standards

--xt bright-line

Budget authority sets the only clear bright-line – plan texts should be relatively simple – like "eliminate PRISM" – rather than their incomprehensible legalese

--xt limits

You should write this for yourself

--xt ground

You should write this for yourself

--xt topical version

what would their plan text have to say in order to be topical? which of their offense does this resolve?

--a2 we meet

They don't meet – even if the plan effects a reduction in the size or scope of PRISM, it does so NOT through a programmatic reduction in funding, but through imposing legal conditions – our Kampmarka evidence explicitly contextualizes this distinction to both planks of their plan

Merely reshuffling legal authority is NOT curtailment – even if they can no longer be justified under XO 12-triple-3, the very same programs merely continue under section 702

Dean & Koger 15 – Internet Fellow @ Columbia & Associate Prof @ UMiami (Benjamin Dean, Fellow for Internet Governance and Cyber-security, School of International and Public Affairs at Columbia University, and Gregory Koger, Associate Professor of Political Science at University of Miami, "Patriot Act meltdown: surveillance, politics and Rand Paul," The Conversation, 6-1-2015, http://theconversation.com/patriot-act-meltdown-surveillance-politics-and-rand-paul-42670)

Thirdly, the expiration of section 215 does **not curtail** the bulk collection of Internet and other online communication data and metadata. Moreover, for non-US persons, the expiration of section 215 will have no impact on the collection of their phone or Internet records by US agencies. All these programs will continue given that they are justified under other authorities including section 214 of the Patriot Act, which is still in place, **Ex**ecutive **O**rder **12333** (for non-US persons) and **section 702** of the FISA Amendments Act (also for non-US persons).

At best, the plan stops some practices, but doesn't curtail surveillance programs

Daileda 14 – tech columnist @ Mashable (Colin Daileda, Mashable, "Marc Andreessen: Edward Snowden Is a 'Textbook Traitor'," 6-5-2014, http://mashable.com/2014/06/05/marc-andreessen-edward-snowden-traitor/)

Andreessen's comments fall on the one-year anniversary of the first NSA leaks. Those leaks, provided by former NSA contractor Snowden, have revealed that the United States surveillance agency stores the phone conversations of American citizens, monitors web cam activity, collects text messages and so much more. His comments also clash with an open letter written by tech company executives from Apple, Google and others — including Facebook CEO Mark Zuckerberg — that was directed at members of the Senate and published in the New York Times and the Washington Post on Thursday. In the letter, tech giants call for the Senate to push for greater restrictions on the NSA's capability. The Senate intelligence committee will meet on Thursday to discuss legislation passed by the House of Representatives that would stop some NSA practices but would **not curtail** the agency's bulk data collection.

These distinctions are important – it's the reason they can argue that they make PRISM more effective on the disad – they shouldn't be allowed to do that

--a2 reasonability

Reasonability flows NEG – the standards debate is sufficient to demonstrate their AFF is not reasonable

Reasonability is otherwise impossible to judge objectively – this forces judge intervention – trumps any other scenario for loss of education and proves a reason to prefer our objective criteria for competing interpretations

AFF A2 T – Curtail

2ac t – curtail

1. **We meet- we discontinue all non-702 surveillance, which includes specific programs as outlined by our Wheeler evidence. Their violation assumes we're only applying PPD-28 but our plan also has us limit domestic surveillance to only 702 authorized programs.**

2. **Counter-interpretation-**
   curtail is to "Reduce in extent or quantity; impose a restriction on"

   Oxford Dictionary No Date
   (www.oxforddictionaries.com/us/definition/american_english/curtail)

3. **We meet the counter interpretation- both parts of the plan impose restrictions on domestic surveillance**

4. **Our interpretation is better than theirs-**

   a. Limits- If ending XO 12tripe3 surveillance isn't topical, then no aff would ever meet their interp. The only aff they allow for is one that eliminates ALL surveillance because any elimination of specific programs could be seen as just a limitation of other programs
   b. Ground- The negative obviously gets to say status quo PRISM is good which is why we're having a debate on the terrorism disad. But the aff also obviously gets to say we can place limits on the program without wrecking it. The negs standard would require we concede links to disads, which is an unfair burden.
   c. Bright-line- there's no clear distinction between limiting the use of a program and curtailing it. It's a made up standard which hurts the aff because without a clear distinction on what is and isn't topical, the neg can say any aff is untopical. Our interp sets a better bright-line because it's easy to see if the aff is a restriction.

5. **You should evaluate Topicality under a framework of reasonability- the question shouldn't be which interpretation is better, but whether our interpretation is so unreasonable that it makes debate impossible.**

Topicality- DDI

1NC – Topicality Domestic Surveillance

1. Interpretation - Domestic surveillance is surveillance that physically takes place on the surveilling state's territory, which is distinct from foreign surveillance which is in surveillance across state borders and surveillance entirely overseas.

Deeks, 2015

Ashley. Associate Professor, University of Virginia Law School. "An International Legal Framework for Surveillance." Virginia Journal of International Law 55 (2015): 2014-53.

As a result, this Article is focused on the category of spying that consists of foreign surveillance. "Foreign surveillance" here refers to the clandestine surveillance by one state during peacetime of the communications of another state's officials or citizens (who are located outside the surveilling state's territory) using electronic means, including cyber-monitoring, telecommunications monitoring, satellites, or drones. Foreign surveillance is comprised of two types of surveillance: "transnational surveillance" and "extraterritorial surveillance."13 Transnational surveillance refers to the surveillance of communications that cross state borders, including those that begin and end overseas but incidentally pass through the collecting state. Extraterritorial surveillance refers to the surveillance of communications that take place entirely overseas. For example, if Australia intercepted a phone call between two French nationals that was routed through a German cell tower, this would be extraterritorial surveillance**. In contrast, surveillance that takes place on the surveilling state's territory ("domestic surveillance") against either that state's nationals or any other individual physically present in that state** generally would be regulated by the ICCPR, as discussed below.14 This Article focuses predominately on transnational and extraterritorial surveillance, arguing that states should close the gap between the ways in which they regulate the two.

2. Violation – The NSA collection of internet traffic under 702 is foreign surveillance the communications of at least one party are outside the US.

Simcox 2015

Robin Simcox is a Research Fellow at The Henry Jackson Society "Surveillance After Snowden Effective Espionage in an Age of Transparency" 5/26/2015 Henry Jackson Society http://henryjacksonsociety.org/2015/05/26/surveillance-after-snowden-effective-espionage-in-an-age-of-transparency/

Foreign Intelligence Surveillance Act Section 702 Section 702 of the Foreign Intelligence Surveillance Act (FISA) governs the interception of communications – for the specific purpose of acquiring foreign intelligence information – of those based outside the US. It is widely considered to be more integral to the NSA's work than that of Section 215.

B. The Affirmative interpretation is bad for debate

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. They make the domestic limit meaningless. All surveillance becomes topical by their standards.

C. T is a Voting Issue because the opportunity to prepare promotes better debating

1NC - Embassies not Domestic

Surprise surprise, foreign embassies is considered foreign territory with foreign ambassadors who are not US citizens

US Diplomacy Center at US Department of State NDG

(http://diplomacy.state.gov/discoverdiplomacy/diplomacy101/places/170537.htm)//A>V.

ORIGINALLY , an embassy referred to an ambassador and staff who were sent to represent and advance the interests of their country with another country's government, Today, an embassy is the nerve center for a country's diplomatic affairs within the borders of another nation, serving as the headquarters of the chief of mission, staff and other agencies. An embassy is usually located in the capital city of a foreign nation; there may also be consulates located in provincial or regional cities. U.S. embassies and consulates abroad, as well as foreign embassies and consulates in the United States, have a special status. While diplomatic spaces remain the territory of the host state, an embassy or consulate represents a sovereign state. International rules do not allow representatives of the host country to enter an embassy without permission --even to put out a fire -- and designate an attack on an embassy as an attack on the country it represents. Within the embassy, the ambassador is supported by a deputy chief of mission, Foreign Service Officers and Specialists who perform the full range of mission activities, and representatives of many other U.S. agencies, such as USAID and the Departments of Defense, Commerce, Justice and Agriculture among others. The staffs of all of these agencies report to the ambassador. Consulates, headed by a Consul General who reports to the Ambassador, carry out many of the same functions in provincial or regional capitals that the embassies do in national capitals. Besides the more obvious functions of issuing visas and assisting American citizens abroad, Embassy and consulate staff interact with host governments, local business and nongovernmental organizations, the media and educational institutions, and private citizens to create positive responses to U.S. policy and the U.S. in general. Mission staff report on political and economic issues that affect bilateral relations and possibly impact the U.S. directly, help U.S. businesses to find partners and customers, and sponsor American scientists, scholars, and artists to promote professional, educational and cultural exchanges. Since American officers normally are only assigned to a foreign country for a few years, it is necessary to hire citizens from the host country to fill jobs at both embassies and consulates. These foreign employees are essential to the success of an embassy's mission, both for their professional skills and for the institutional memory they provide for new officers. They used to be known as Foreign Service Nationals, but are now officially called Locally Employed Staff and may include U.S. citizens who are long-time residents of the country.

2NC Cards Domestic

Clear definition of domestic surveillance is critical to good policy making. Yoo and Sulmasy 2007,

Yoo, John, Judge Advocate and Associate Professor of Law, United States Coast Guard Academy. Sulmasy, Glenn, Professor of Law, Boalt Hall School of Law, University of California–Berkeley; visiting scholar, American Enterprise Institute Counterintuitive: Intelligence Operations and International Law. Michigan Journal of International Law, Vol. 28, 2007; UC Berkeley Public Law Research Paper No. 1030763. Available at SSRN: http://ssrn.com/abstract=1030763

Domestically, so many components and issues comprise "intelligence" that it remains difficult to pin down a specific definition.22 Mark Lowenthal, an expert in intelligence gathering, has noted that "[v]irtually every book written on the subject of intelligence begins with a discussion of what the author believes 'intelligence' to mean, or at least how the he or she intends to use the term. This editorial fact tells us much about the field of intelligence."23 Even those who have spent years in the field find the term vague.24 Any international convention on the peacetime conduct of intelligence collection would prove unsuccessful at the very least because of difficulties in defining exactly what it would seek to regulate. Defining intelligence and intelligence gathering often derives from such vague subject terms as counterintelligence, business intelligence, foreign intelligence, espionage, maritime intelligence, space-related intelligence, signals intelligence, and human intelligence. **These subject terms themselves then need an established universal definition and further simplification in order to reduce the ambiguity associated with attempts to regulate the practice**. Currently, the United States defines intelligence as a body of evidence and the conclusions drawn from it. It is often derived from information that is concealed or not intended to be available for use by the inquirer."25 **This vague and overly broad definitional statement reveals the problems with actually articulating what intelligence is and what it is not. Without a clear definition of the term (from the United States or any other state for that matter), we should not expect regulation of intelligence activities at the international level.**

Foreign & Domestic Intelligence are different.

Michael **German and** Dr. John **Elliff 14**, *Dr. John Elliff* was the domestic intelligence task force leader for the Church Committee. He later held postitions in the Central Intelligence Agency, the Defense Department, and the Federal Bureau of Investigation, and served on the staff of the Senate Intelligence and Judiciary Committees. *Michael German* is a fellow with the Brennan Center for Justice's Liberty and National Security Program, Prior to joining the Brennan Center, Mr. German served as the policy counsel for national security and privacy for the American Civil Liberties Union Washington Legislative Office. A sixteen-year veteran of federal law enforcement, Mr. German served as a special agent with the Federal Bureau of Investigation, where he specialized in domestic terrorism and covert operations. As an undercover agent, German twice infiltrated extremist groups using constitutionally sound law enforcement techniques. 12-11-2014, "Military, Foreign, and Domestic Intelligence Are Not the Same,"

Brennan Center for Justice, http://www.brennancenter.org/analysis/military-foreign-and-domestic-intelligence-are-not-same

Dr. Elliff's distinction between military, foreign and domestic intelligence activities is crucial, but often overlooked. **Though they share a last name, military, foreign and domestic intelligence should be treated as three completely different disciplines, with different goals, rules, and toolboxes**.

The propriety of a particular intelligence method will vary significantly depending on whether we're trying to obtain a hostile nation's nuclear attack plans, a foreign trade representative's negotiation strategy, or an American politician's financial records. Investigating the pornography habits or sexual proclivities of a North Korean general to blackmail him into committing espionage might be justifiable. Doing the same thing to foreign religious figures, or innocent Americans is repugnant, if not illegal. Employing tools developed for use against foreign enemies against people who do not pose a national security threat is unnecessarily antagonistic and provocative.

Elliff's ranking of the different disciplines is helpful. Military intelligence, the preparation for war or defense from attack, is most necessary and important. Clandestine intelligence gathering to assist in the development of foreign policy is also needed, but he acknowledges that policy makers have access to other useful information sources, such as newspapers, academic studies, and reports from interest groups, from which to make decisions**. Domestic intelligence collection, he argues, is necessary but only legitimate when it is focused on uncovering criminal activities.**

Elliff warns that the power of military intelligence tools makes them difficult to control through oversight by courts, legislatures, or even agency executives: [VIDEO]

Yet aggressive surveillance tools and spying techniques developed for use by the military often end up getting used for more mundane "intelligence" purposes, a dangerous mission creep where the risk outweighs any potential reward. The NSA wiretapping of German Chancellor Angela Merkel's cellphone was an embarrassing overreach that demonstrated our intelligence officials' failure to consider the potential long-term consequences of their actions. Just because they can doesn't mean they should. The broad scope of U.S. mass surveillance programs have likewise caused political, diplomatic, and legal conflicts with our allies, and inflicted serious economic damage on American commercial interests.

FBI is domestic, NSA is foreign.

Jacob R. **Lilly 2013**

JD Cornell, 2003 "National Security at What Price? A Look into Civil Liberty Concerns in the Information Age under the USA Patriot Act" in Information Ethics : Privacy, Property, and Power edited by Adam D. Moore, 2013. ProQuest ebrary.

E. Basic Elements of Electronic Surveillance in the United States

In the U.S. legal system, four basic methods of electronic surveillance exist. 73 These methods are (1) warrants authorizing the interception of communications, (2) search warrants authorizing the search of physical premises, (3) trap- and- trace devices 74 and pen- traps, 75 and (4) subpoenas

requiring the production of tangible records, such as printed e-mails or telephone logs. 76 When the surveillance is conducted for domestic reasons, these require a sliding scale of proof in order to be activated. 77 Interception orders and search warrants must meet the Fourth Amendment's probable cause standard. 78 Court orders for certain documents, such as ISP 79 e- mail logs, require a lower standard. The government merely has to show reasonable grounds for believing that the information being sought is relevant and material. 80 Pen- trap surveillance uses an even lower standard in requiring only a sworn government declaration as to the relevance of the information being sought. 81 Each of these standards applies only when the surveillance conducted is of a domestic nature. 82

Domestic surveillance within the United States and abroad is carried out by a variety of federal agencies. The Federal Bureau of Investigation (FBI) is the primary federal agency responsible for domestic activities, 83 with the National Security Agency (NSA) 84 and the Central Intelligence Agency (CIA) 85 forbidden by U.S. law from monitoring domestic activities and able only to operate outside the United States. 86 All three agencies are responsible for overseas surveillance, assisted by the Departments of State, Treasury, and Justice. 87

NSA = Foreign

Rajesh **De**, General Counsel, National Security Agency, 10-16-**2014**, "The NSA and Accountability in an Era of Big Data," Journal Of National Security Law & Policy, http://search.proquest.com/docview/1547942293/D7CD0D4112B54FC9PQ/2?accountid=10422

As noted earlier**, NSA is a foreign intelligence agency**. Executive Order 12333 defines foreign intelligence as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." This language largely mirrors that which Congress adopted in the National Security Act of 1947. FISA contains a more intricate definition of foreign intelligence information for the specific purposes of that statutory scheme, but all support the same overall conclusion - **NSA's mission is neither open-ended, nor is it discretionary. NSA may only collect signals intelligence for a foreign purpose.**

1NC Search isn't Surveillance

1. Interpretation – Surveillance is to closely watch a person, place or thing for the purpose of investigation and is distinct from a Search, which intrudes on an expectation of privacy.

Hutchins, 2007, Mark, Alameda County District Attorney's Office "Police Surveillance" http://le.alcoda.org/publications/files/SURVEILLANCE.pdf

Before we begin, a word about terminology. As used in this article, the term "surveillance" means to "closely watch" a person, place, or thing for the purpose of obtaining information in a criminal investigation.5 It also includes recording the things that officers see or hear, and gaining access to public and private places from which they can make their observations. It does not include wiretapping and bugging which, because of their highly-intrusive nature, are subject to more restrictive rules.6 THE TEST: "Plausible vantage point" Surveillance becomes a "search"—which requires a warrant—if it reveals sights or sounds that the suspect reasonably believed would be private.7 As the court explained in People v. Arno, "[T]he test of validity of the surveillance [turns upon] whether that which is perceived or heard is that which is conducted with a reasonable expectation of privacy."8 Thus, a warrant is unnecessary if the suspect knew, or should have known, there was a reasonable possibility that officers or others might have seen or heard him.9 In the words of the Supreme Court, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."10

2. Violation - Prison body cavity searches are not surveillance.

Anthony Kennedy, Supreme Court Justice 2012, Anthony, Opinion of the Majority, 4/2/12, https://www.law.cornell.edu/supremecourt/text/10-945

The Court's opinion in Bell v. Wolfish, 441 U. S. 520 (1979) , is the starting point for understanding how this framework applies to Fourth Amendment challenges. That case addressed a rule requiring pretrial detainees in any correctional facility run by the Federal Bureau of Prisons "to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from outside the institution." Id., at 558. Inmates at the federal Metropolitan Correctional Center in New York City argued there was no security justification for these searches. Officers searched guests before they entered the visiting room, and the inmates were under constant surveillance during the visit. Id., at 577–578 (Marshall, J., dissenting). There had been but one instance in which an inmate attempted to sneak contraband back into the facility. See id., at 559 (majority opinion). The Court nonetheless upheld the search policy. It deferred to the judgment of correctional officials that the inspections served not only to discover but also to deter the smuggling of weapons, drugs, and other prohibited items inside. Id., at 558. The Court explained that there is no mechanical way to determine whether intrusions on an inmate's privacy are reasonable. Id., at 559. The need for a particular search must be balanced against the resulting invasion of personal rights. Ibid.

Prefer our interpretation

A. Brightline – our interepretation creates a clear and precise limit on the types of affirmatives that are topical, their interpretation opens up to anything the government does that might be icky.

B. Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including searches adds an entirely different legal regime with different laws, judicial standards, and other issues for THOUSANDS of different crimes.

Topicality is a Voting Issue.

1NC – T Surveillance v. Backdoors

1. Interpretation – Surveillance is systematic and routine attention to personal details for the purpose or influence or detention.

Richards, 2013 Neil M. Professor of Law, Washington University. "The Dangers of Surveillance" Harv. L. Rev. 126 1934 http://www.harvardlawreview.org/wp-content/uploads/pdfs/vol126_richards.pdf

What, then, is surveillance? Scholars working throughout the English-speaking academy have produced a thick descriptive literature examining the nature, causes, and implications of the age of surveillance.6 Working under the umbrella term of "surveillance studies," these scholars represent both the social sciences and humanities, with sociologists making many of the most significant contributions.7 Reviewing the vast surveillance studies literature, Professor David Lyon concludes that surveillance is primarily about power, but it is also about personhood.8 Lyon offers a definition of surveillance as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction."9 Four aspects of this definition are noteworthy, as they expand our understanding of what surveillance is and what its purposes are. First, it is focused on learning information about individuals. **Second, surveillance is systematic; it is intentional rather than random or arbitrary**. Third, surveillance is routine — a part of the ordinary administrative apparatus that characterizes modern societies.10 Fourth, surveillance can have a wide variety of purposes — rarely totalitarian domination, but more typically subtler forms of influence or control.11

2. Violation – Backdoors are not surveillance because there is no observation of personal information.

David **Omand 15**, 3-19-2015, visiting professor at King's College London. "Understanding Digital Intelligence and the Norms That Might Govern It," Global Commission On Internet Governance Paper Series: no. 8 — March 2015 , https://www.cigionline.org/publications/understanding-digital-intelligence-and-norms-might-govern-it

The second issue concerns how an invasion of privacy of digital communications is defined. Is it when the computer of an intercepting agency accesses the relevant packets of data along with the rest of the streams of digital information on a fibre optic cable or other bearer? Or is it when a sentient being, the intelligence analyst, can actually see the resulting information about the communication of the target? Perhaps the most damaging loss of trust from the Snowden allegations has come from the common but unwarranted assumption that access in bulk to large volumes of digital communications (the "haystack") in order to find the communications of intelligence targets (the wanted "needles") is evidence of mass surveillance of the population, which it is not.

The distinction is between authorizing a computer to search through bulk data on the basis of some discriminating algorithm to pull out sought-for communications (and discard the rest) and authorizing an analyst to examine the final product of the material thus filtered and selected. It is the latter step that governs the extent of, and justification for, the intrusion into personal privacy. The computer filtering is, with the right discriminator, capable (in theory, of course, not in actual practice) of selecting out any sought

for communication. But that does not mean the population is under mass surveillance.47 Provided the discriminator and selection program chosen and used by the accessing computer only selects for human examination the material that a warrant has authorized, and the warrant is legally justified, then the citizens' privacy rights are respected. Of course, if the selectors were set far too broadly and trawled in too much for sentient examination, then the exercise would fail to be proportionate (and would be unlawful, therefore, in most jurisdictions).

3. Prefer our interpretation

A. Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big.

B. Including data gathering as surveillance makes the topic unmanageable and undebateable for the negative.

4. Topicality is a voting issue.

1NC - T-its(short shell)

A.Interpretation: "Its" implies possession

Corpus Juris Secundum, 1981 (Volume 48A, p. 247), jono yo

> Its. The possessive case of the neuter pronoun "it." Also, as an adjective, meaning of or belonging to it. Sometimes referred to as the possessive word, but it does not necessarily imply ownership in fee, but may indicate merely a right to use.

B.Violation: the plan does not decrease surveillance of the usfg, the surveillance belongs to private companies.

C. the affirmative interpretation is bad for debate

Limits are key to negative preparation and clash.

T IS A VOTER because the opportunity to prepare promotes better debating

1NC Plan Flaw

1. Violation- The plan uses I-T-*apostrophe*-S not I-T-S

2. It's means – it is; Its is possessive.

Oxford dictionaries, no date "'Its' versus 'it's'?"
http://www.oxforddictionaries.com/us/words/its-or-it-s

The word it's is always short for 'it is' (as in it's raining), or in informal speech, for 'it has' (as in it's got six legs).

The word its means 'belonging to it' (as in hold its head still while I jump on its back). It is a possessive pronoun like his.

3. Void for Vagueness – Errors in the law would be struck down by the Court.

Justia, no date "Clarity in Criminal Statutes: The Void-for-Vagueness Doctrine"
http://law.justia.com/constitution/us/amendment-14/54-void-for-vagueness-doctrine.html

Clarity in Criminal Statutes: The Void-for-Vagueness Doctrine.—Criminal statutes which lack sufficient definiteness or specificity are commonly held "void for vagueness."983 Such legislation "may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."984 "~~Men~~ of common intelligence cannot be required to guess at the meaning of [an] enactment.'985

4. This means the plans isn't topical because it doesn't curtail Usfg surveillance.

2NC – Plan Flaw

Typos in the law mean zero solvency – a transportation bill that required people to be locked in boxes, proves. Congress would have to pass an entirely new law to fix it.

Pergram, 09,
"Typo in Law Establishes Mandate to Lock Gun-Toting Train Passengers in Boxes", Fox News, 12-17-2009, http://www.foxnews.com/politics/2009/12/16/typo-law-establishes-mandate-lock-gun-toting-train-passengers-boxes/

It may sound absurd. But President Obama signed a bill into law Wednesday that requires passengers who carry firearms aboard Amtrak be locked in boxes for their journey. It's a mistake in the law's wording. But for now, the clerical error is the law of the land. Earlier this week, Congress sent the president a massive spending bill that funded dozens of federal departments. Tucked into the transportation section of the legislation are safety requirements for Amtrak customers who carry firearms on board the government-backed train system. The bill Congress passed mandates that passengers with firearms declare they have weapons with them in advance and stow them in locked boxes while on the train. The bill text was correct when the House approved the legislation last week. The Senate followed suit Sunday, but somewhere along the line, the language that referred to putting the guns in locked boxes morphed into stuffing "passengers" into locked boxes. Aides to House Speaker Nancy Pelosi, D-Calif., became aware of the problem Wednesday night as the House voted on its final slate of bills for the year. Pelosi's staff tried to negotiate with Republican aides to see if they would agree to change the text of the bill without revoting the entire piece of legislation. But it was all for naught as Obama had already signed the measure into law. It's clear the typo alters the legislation's mandate. But no one quite knows the origin of the mistake. Senior Congressional sources familiar with the error suggested the problem may have been introduced in the "enrolling" process of bills. Once both the House and Senate approve the final version of a bill, the text of the legislation is sent to an "enrolling clerk" who actually copies the bill onto parchment paper. The parchment version of the package is then sent to the White House for the president to sign into law. Another theory is that the mistake could be something as simple as a printing error. The House and Senate run multiple versions of bills before they send the final copy to the White House to become law. Another possibility is that Congress sent President Obama the wrong, non-proofed version of the bill to sign. The misfire is fixable. But probably not until early next year. The House late Wednesday completed what it expects to be its final session of the year. The Senate remains in session debating health care reform. But both the House and Senate would have to agree to a technical correction of the text that missed its mark.

ASPEC

A. Violation – The Affirmative plan text does not specify an agent beyond the United States federal government.

The United States Federal Government consists of 3 branches:
"The Executive, Legislative, or Judicial Branches"

Dictionary of Politics, '73

B. Voting Issue –

1. Aff Conditionality – vagueness allows the aff to manipulate plan implementation to avoid Disads and Counterplans. This is uniquely abusive because in order for us to be able to debate the plan must stay stable throughout the round.

2. Policy Analysis – No policy is ever proposed without explicit reference to the mechanism of implementation. Refusing to engage in this discussion guts any educational policy analysis because you have no idea what the policy will actually look like if you vote Aff.

3. Evaluate competing interpretations of how debate should be – it's not what you do but what you justify.

4. Plan text focus comes first – any disclaimers or enforcement clarifications are illegit because it allows infinite clarification. Plan text is all we get for pre-round prep.

5. Specification accounts for 90% of solvency.

Elmore, Prof of Public Affairs, Univ. of Washington, 19**80**

(Political Science Quarterly, 79-80, pg. 605)

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. **Analysis of policy choices matters very little if the mechanism for implementing those choices is poorly understood.** In answering the question, "What percentage of the work of **achieving a desired governmental action is done** when the preferred analytic alternative has been identified?" Allison estimated

that, in the normal case, it was about 10 percent, leaving the remaining **90 percent in the realm of implementation.**

Topicality DDIx

VIOLATIONS

COMMON CRIMINAL SURVEILLANCE NOT TOPICAL

T – NOT DOMESTIC SURVEILLANCE

A. COMMON CRIMES ARE NOT MATTERS OF DOMESTIC SURVEILLANCE

1. DOMESTIC SURVEILLANCE IS INTELLIGENCE GATHERING

The modifers "foreign" and "domestic" distinguish the type of security threat, not the geographic location of the surveillance

Small 8 MATTHEW L. SMALL. United States Air Force Academy 2008 Center for the Study of the Presidency and Congress, Presidential Fellows Program paper "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

> Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

2. DOMESTIC SURVEILLANCE IS DISTINCT FROM ORDINARY CRIME

Pfeiffer 4 Constance Pfeiffer, Juris Doctor candidate, The University of Texas School of Law, May 2004
The Review of Litigation Winter, 2004 23 Rev. Litig. 209 NOTE: Feeling Insecure?: United States v. Bin Laden and the Merits of a Foreign-Intelligence Exception For Searches Abroad lexis

> Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases. Certainly courts can recognize that domestic surveillance involves different considerations from the surveillance of "ordinary crime." If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance. n141

3. THE NATURE OF THE SURVEILLANCE IS DIFFERENT

Bazan 7 Elizabeth B. Bazan, Congressional Research Service Legislative Attorney, American Law Division

CRS Report The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and U.S. Foreign Intelligence Surveillance Court and U.S. Foreign Intelligence Surveillance Court of Review Decisions

Updated February 15, 2007 https://www.fas.org/sgp/crs/intel/RL30465.pdf

Investigations for the purpose of gathering foreign intelligence give rise to a tension between the Government's legitimate national security interests and the protection of privacy interests.6 The stage was set for legislation to address these competing concerns in part by Supreme Court decisions on related issues. In Katz v. United States , 389 U.S. 347 (1967), the Court held that the protections of the Fourth Amendment extended to circumstances involving electronic surveillance of oral communications without physical intrusion.7 The Katz Court stated, however, that its holding did not extend to cases involving national security.8 In United States v. United States District Court, 407 U.S. 297 (1972) (the Keith case), the Court regarded Katz as "implicitly recogniz[ing] that the broad and unsuspected governmental incursions into conversational privacy which electronic surveillance entails necessitate the application of Fourth Amendment safeguards."9 Mr. Justice Powell, writing for the Keith Court, framed the matter before the Court as follows: The issue before us is an important one for the people of our country and their Government. It involves the delicate question of the President's power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without prior judicial approval. Successive Presidents for more than one-quarter of a century have authorized such surveillance in varying degrees, without guidance from the Congress or a definitive decision of this Court. This case brings the issue here for the first time. Its resolution is a matter of national concern, requiring sensitivity both to the Government's right to protect itself from unlawful subversion and attack and to the citizen's right to be secure in his privacy against unreasonable Government intrusion.10

The Court held that, in the case of intelligence gathering involving domestic security surveillance, prior judicial approval was required to satisfy the Fourth Amendment.11 Justice Powell emphasized that the case before it "require[d] no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers, within or without the country."12 The Court expressed no opinion as to "the issues which may be involved with respect to activities of foreign powers or their agents."13 However, the guidance which the Court provided in Keith with respect to national security surveillance in a domestic context to some degree presaged the approach Congress was to take in foreign intelligence surveillance. The Keith Court observed in part:

...We recognize that **domestic surveillance may involve different policy and practical considerations from the surveillance of "ordinary crime."** The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III [of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510 et seq.]. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of **domestic surveillance** may be less precise than that directed against more conventional types of crimes. Given these potential distinctions between Title III criminal surveillances and those involving domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified

crimes in Title III. Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the governmental interest to be enforced and the nature of citizen rights deserving protection.... It may be that Congress, for example, would judge that the application and affidavit showing probable cause need not follow the exact requirements of § 2518 but should allege other circumstances more appropriate to domestic security cases; that the request for prior court authorization could, in sensitive cases, be made to any member of a specially designated court...; and that the time and reporting requirements need not be so strict as those in § 2518. The above paragraph does not, of course, attempt to guide the congressional judgment but rather to delineate the present scope of our own opinion. We do not attempt to detail the precise standards for domestic security warrants any more than our decision in Katz sought to set the refined requirements for the specified criminal surveillances which now constitute Title III. We do hold, however, that prior judicial approval is required for the type of domestic surveillance involved in this case and that such approval may be made in accordance with such reasonable standards as the Congress may prescribe. 14

B. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including surveillance of common crimes adds an entirely different legal regime with different laws, judicial standards, and other issues for THOUSANDS of different crimes.

C. T IS A VOTER because the opportunity to prepare promotes better debating

BORDER SURVEILLANCE NOT TOPICAL

T – NOT DOMESTIC SURVEILLANCE

A. DOMESTIC SURVEILLANCE IS SURVEILLANCE OF US PERSONS

Small 8 MATTHEW L. SMALL. United States Air Force Academy 2008 Center for the Study of the Presidency and Congress, Presidential Fellows Program paper "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

> Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

B. UNDOCUMENTED PERSONS ARE NOT US PERSONS

Jackson et al 9 Brian A. Jackson, Darcy Noricks, and Benjamin W. Goldsmith, RAND Corporation
The Challenge of Domestic Intelligence in a Free Society RAND 2009 BRIAN A. JACKSON, EDITOR

http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG804.pdf

> 3 Federal law and executive order define a U.S. person as "a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association with a substantial number of members who are citizens of the U.S. or are aliens lawfully admitted for permanent residence, or a corporation that is incorporated in the U.S." (NSA, undated). Although this definition would therefore allow information to be gathered on U.S. persons located abroad, our objective was to examine the creation of a domestic intelligence organization that would focus on—and whose activities would center around—individuals and organizations located inside the United States . Though such an agency might receive information about U.S. persons that was collected abroad by other intelligence agencies, it would not collect that information itself.

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Immigration is a huge area, big enough to be a topic itself, and all the issues are completely different.

D. T IS A VOTER because the opportunity to prepare promotes better debating

COMMUNICATION NOT WHOLLY IN THE US IS NOT TOPICAL

T – NOT DOMESTIC SURVEILLANCE

A. COMMUNICATION NOT EXCLUSIVELY WITHIN THE US IS NOT DOMESTIC SURVEILLANCE

1. COMMUNICATION MUST BE INSIDE THE US

HRC 14 Human Rights Council 2014 IMUNC2014
https://imunc.files.wordpress.com/2014/05/hrc-study-guide.pdf

Domestic surveillance: Involves the monitoring, interception, collection, analysis, use, preservation, retention of, interference with, or access to information that includes, reflects, or arises from or a person's communications in the past, present or future with or without their consent or choice, **existing or occurring inside a particular country.**

2. ANY FOREIGN ELEMENT IS NOT DOMESTIC

Olberman 6 Countdown with Keith Olberman, msnbc.com updated 1/26/2006 7:05:00 PM ET White House defines 'domestic' spying
http://www.nbcnews.com/id/11048359/ns/msnbc-countdown_with_keith_olbermann/t/white-house-defines-domestic-spying/#.VU1lZJOYF2A

The White House is trying to sell this so hard that it actually issued an official press release titled, "Setting the Record Straight, Charges of Domestic Spying."

Look, your tax dollars in action. Word wealth, SAT training class. As a public service, COUNTDOWN will now review, and, where applicable, provide translations of the White House take on what "domestic" means versus what "international" means, and then we'll add a few bonus examples of our own.

Quoting, "Deputy Director Of National Intelligence General Michael Hayden," semicolon; "One End Of Any Call Targeted Under This Program Is Always Outside The United States."

This is the glass-is-half-full view of warrantless eavesdropping, much as if a U.S. soldier, who, like the average human male, has about 12 pints of blood in his body, would lose six of those pints.

Critics of the NSA terrorist surveillance program would say, That soldier is half empty. The White House would remind you that that soldier is half full.

Anyway, the press release actually gives several examples of the differences between the meanings of these two words. "Definition, Domestic Versus International. Domestic Calls are calls inside the United States. International Calls are calls either to or from the United States."

And don't forget to deposit $2 for the first five minutes, and an extra $2 to cover the cost of the guy listening in at the NSA.

"Domestic Flights," the White House reminds us, "are flights from one American city to another. International Flights are flights to or from the United States."

So what happens if I call a domestic airline about a flight to Europe, but they've outsourced their reservation agents to India? Is that a domestic call about an international flight, or an international call about a domestic flight?

Wait, there's more. "Domestic Mail consists of letters and packages sent within the United States," the press release reads. "International Mail consists of letters and packages sent to or from the United States."

And don't forget, we can not only open either kind, kind if we damn well feel like it, but if you're using an international stamp and we need it for our collection, we're keeping it.

One more item from the press release, "Domestic Commerce involves business within the United States. International Commerce involves business between the United States and other countries."

International commerce. You know, the kind of stuff Jack Abramoff did for the -- Huh, leave Abramoff out of it? Gotcha, sorry.

3. NSA TERRORISM SURVEILLANCE IS NSA NOT DOMESTIC

Casey 7 LEE A. CASEY, PARTNER, BAKER HOSTETLER, TESTIMONY House Subcommittee on the Constitution, Civil Rights and Civil Liberties, House Committee on the Judiciary, June 7, 2007 hearings "Constitutional Limitations on Domestic Surveillance" page 43
http://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/ http%3A$2f$2fprod.cosmos.dc4.bowker-dmz.com$2fapp-bin$2fgis-hearing$2f3$2f7$2f2$2f7$2fhrg-2007-hjh-0042_from_1_to_156.pdf/entitlementkeys=1234|app-gis|hearing|hrg-2007-hjh-0042

Mr. CASEY. Thank you, Mr. Chairman. I appreciate the opportunity to appear today to discuss the constitutional limitations on domestic surveillance.

Ironically, the most controversial surveillance over the past several years has not been domestic at all, but rather the international surveillance involved in the NSA's Terrorist Surveillance Program. It is to the legal issues surrounding that program that I will address my remarks.

I should make clear that I am speaking here on my own behalf.

Let me begin by stating that I believe President Bush was fully within his constitutional and statutory authority when he authorized the TSP. The President's critics have variously described this program as widespread, domestic and illegal. Based upon the published accounts, it is none of these things. Rather, it is a targeted program on the international communications of individuals engaged in an armed conflict with the United States and is fully consistent with FISA.

In assessing the Administration's actions here, it is important to highlight how narrow is the actual dispute over the NSA program. Few of the President's critics claim that he should not have ordered the interception of al-Qaida's global communications or that he needed the FISA Court's permission to intercept al-Qaida commu- nications abroad. It is only with respect to communications actually intercepted inside the United States or where the target is a United States person in the United States, that FISA is relevant at all to this national discussion.

Since this program involves only international communications, where at least one party is an al-Qaida operative, it is not clear that any of these intercepts would properly fall within FISA's terms. This is not the pervasive dragnet of American domestic communications about which so many of the President's critics have fantasized.

B. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including communications going outside or coming into the US expands the topic too much.

C. T IS A VOTER because the opportunity to prepare promotes better debating

FOREIGN SECURITY THREATS TO THE US NOT TOPICAL

T – NOT DOMESTIC SURVEILLANCE

A. DOMESTIC SURVEILLANCE DEALS WITH DOMESTIC SECURITY THREATS

1. FOREIGN AND DOMESTIC DISTINGUISHES THE THREATS, NOT THE LOCATION OF THE SURVEILLANCE

Cardy 8 Emily Arthur Cardy, law student Fall, 2008 Boston University Public Interest Law Journal 18 B.U. Pub. Int. L.J. 171 NOTE: THE UNCONSTITUTIONALITY OF THE PROTECT AMERICA ACT OF 2007 lexis

1. Foreign Intelligence Defined

The definition of "foreign intelligence" is critical to the constitutional analysis of the Protect America Act. The Act does not provide a different definition of "foreign intelligence" from the one provided in FISA; thus in interpreting the Protect America Act, FISA's definition of "foreign intelligence" applies. n84 In FISA's definition, "foreign" applies to the content of the information gathered, and not to the location in (or from) which the information is gathered, or the nationality of the sources from which it is gathered. n85 Instead, "foreign intelligence" means "information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against ... " harms or clandestine operations against the United States. n86 The definition [*184] does not contain any language limiting the country from which the information may be collected. n87 Thus, while the Act's asserted purpose is to collect foreign intelligence, the Act's definition of foreign intelligence does not provide inherent protection against domestic surveillance - domestic surveillance is not precluded from the definition of foreign surveillance. How an act defines its terms, rather than the terms themselves out of context, dictates the Act's application; this is a critical point in understanding the Protect America Act's far-reaching implications.

2. SURVEILLANCE OF FOREIGN AGENTS IS NOT DOMESTIC SURVEILLANCE, EVEN IF IN THE US

McCarthy 6 Andrew C. McCarthy former assistant U.S. attorney, now contributing editor of National Review and a senior fellow at the National Review Institute. May 15, 2006 National Review It's Not "Domestic Spying"; It's Foreign Intelligence Collection http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

Eggen also continues the mainstream media's propagandistic use of the term "domestic surveillance [or 'spying'] program." In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not "domestic." A call is not considered "domestic" just because one party to it happens to be inside the U.S., just as an investigation is not "domestic" just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been "domestic spying."

The calls NSA eavesdrops on are "international," not "domestic." If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror

organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating both within and without the U.S.
That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence.
That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not "domestic surveillance."

B. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. They make the domestic limit meaningless. All surveillance becomes topical by their standards

C. T IS A VOTER because the opportunity to prepare promotes better debating

BANNING DRONES NOT TOPICAL

T – NOT CURTAIL SURVEILLANCE

A. INTERPRETATION

The topic requires the affirmative to reduce surveillance itself, not to just limit the methods of surveillance

1. CURTAIL MEANS DECREASE

Burton's 7 Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc. http://legal-dictionary.thefreedictionary.com/curtail

> curtail verb abate, abbreviate, abridge, clip, coartare, cut, cut down, cut short, decrease, diminish, halt, lessen, lop, make smaller, minuere, pare, pare down, retrench, shorten, subtract, trim See also: abate, abridge, allay, arrest, attenuate, bowdlerize, commute, condense, decrease, diminish, discount, lessen, minimize, palliate, reduce, restrain, retrench, stop

2. SURVEILLANCE IS PROCESS OF GATHERING INFORMATION, AS DISTINGUISHED FROM THE TECHNIQUES OF GATHERING

Webster's New World Law 10 Webster's New World Law Dictionary Copyright © 2010 by Wiley Publishing, Inc., Hoboken, New Jersey. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/surveillance

> surveillance - Legal Definition n
> A legal investigative process entailing a close observing or listening to a person in effort to gather evidentiary information about the commission of a crime, or lesser improper behavior (as with surveillance of wayward spouse in domestic relations proceedings). Wiretapping, eavesdropping, shadowing, tailing, and electronic observation are all examples of this law-enforcement technique.

B. PLAN VIOLATES

Limiting use of drones restricts the techniques for surveillance, but not the process itself. Nothing under the plan stops gathering information in other ways

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Permitting limits on methods of surveillance, but not surveillance itself, permits the affirmative to avoid the issues of less surveillance and forces the negative to debate a huge number of different techniques

Constitution Committee 9 Constitution Committee, House of Lords, Parliament, UK 2009, Session 2008-09 Publications on the internet, Constitution Committee - Second Report, Surveillance: Citizens and the State Chapter 2 http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

18. The term "surveillance" is used in different ways. A literal definition of surveillance as "watching over" indicates monitoring the behaviour of persons, objects, or systems. However surveillance is not only a visual process which involves looking at people and things. Surveillance can be undertaken in a wide range of ways involving a variety of technologies. The instruments of surveillance include closed-circuit television (CCTV), the interception of telecommunications ("wiretapping"), covert activities by human agents, heat-seeking and other sensing devices, body scans, technology for tracking movement, and **many others**.

D. T IS A VOTER because the opportunity to prepare promotes better debating

REGULATIONS / STANDARDS NOT TOPICAL

T – NOT CURTAIL

A. CURTAIL REQUIRES THAT THE PLAN, ON FACE, REDUCES SURVEILLANCE

Webster's 10 Webster's New World College Dictionary Copyright © 2010 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/curtail#websters

> Curtail transitive verb
> to cut short; reduce; abridge

B. THE PLAN DOES NOT CURTAIL ON FACE

The plan itself does not cut short. Merely looking at the plan does not indicate a reduction. All surveillance could continue if it meets the regulatory standards. It could even increase. At most, there might be a decrease by effects, But not by the plan itself. Curtail goes beyond regulation

BusinessWorld 14 BusinessWorld June 18, 2014 Wednesday Gov't agencies told to comment on petition vs higher traffic fines lexis

> Ximex Delivery Express, Inc. (XDE) said the transportation agencies went beyond their mandate as the order does not regulate but instead "curtails" an individual's right to earn a living.
> "[The new rules] deprive the owners of the fleets ... from pursuing what could be the only means of livelihood that they know," XDE said..

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Permitting reduction by effect is unlimiting. All sorts of things affect surveillance. For example, the economy affects government spending and budgeting for surveillance, and just about everything affects the economy.

D. T IS A VOTER because the opportunity to prepare promotes better debating

NOT SUBSTANTIALLY NOT TOPICAL

T – SUBSTANTIALLY

A. SUBSTANTIALLY REQUIRES AT LEAST A 2% REDUCTION --- THIS IS THE SMALLEST PERCENTAGE WE COULD FIND

Word and Phrases 1960

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App.

B. PLAN VIOLATES

It isn't even 2% of the billions of instances of surveillance that occur daily

Stray 13 Jonathan Stray, Special to ProPublica, Aug. 5, 2013, 3:20 p.m. FAQ: What You Need to Know About the NSA's Surveillance Programs http://www.propublica.org/article/nsa-data-collection-faq

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because there is no fully reliable automatic way to separate domestic from international communications, this program also captures some amount of U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make.

C. THE AFFIRMATIVE MUST DEFEND AN INTERPRETATION

They cannot just quibble with our deinition. They have to counter-define and defend the limits of their definition. Substantially must be given meaning

CJS 83 Corpus Juris Secundum, 1983 , 765.

"Substantially. A relative and elastic term which should be interpreted in accordance with the context in which it isused. While it must be employed with care and discrimination, it must, nevertheless, be given effect." 48

D. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Permitting minor changes like the plan permits a huge number of cases.

E. T IS A VOTER because the opportunity to prepare promotes better debating

DEFINITIONS

CURTAIL

CURTAIL MEANS REDUCE OR LIMIT

Curtail means reduce or limit

Merriam-Webster 15 © 2015 Merriam-Webster, Incorporated http://www.merriam-webster.com/dictionary/curtail

Curtail verb cur·tail \(ˌ)kər-ˈtāl\
: to reduce or limit (something)
Full Definition of CURTAIL
transitive verb
: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

Curtail is to reduce or limit

Cambridge 15 (Definition of curtail from the Cambridge Academic Content Dictionary © Cambridge University Press) http://dictionary.cambridge.org/us/dictionary/american-english/curtail

Curtail verb [T] us /kərˈteɪl/
› to reduce or limit something, or to stop something before it is finished: He had to curtail his speech when time ran out.

Curtail means reduce or limit something

Macmillan 15 Macmillan Dictionary 2015
http://www.macmillandictionary.com/us/dictionary/american/curtail

curtail - definition and synonyms
Using the thesaurus
verb [transitive] formal curtail pronunciation in American English /kɜrˈteɪl/Word Forms
Contribute to our Open Dictionary
to reduce or limit something, especially something good
a government attempt to curtail debate
Synonyms and related words
To limit or control something or someone:draw a line in the sand, limit, control...
Explore Thesaurus
Synonyms and related words
To reduce something:salami-slice, top-slice, cut back...
Explore Thesaurus

CURTAIL MEANS DECREASE

Curtail means decrease

curtail verb abate, abbreviate, abridge, clip, coartare, cut, cut down, cut short, decrease, diminish, halt, lessen, lop, make smaller, minuere, pare, pare down, retrench, shorten, subtract, trim See also: abate, abridge, allay, arrest, attenuate, bowdlerize, commute, condense, decrease, diminish, discount, lessen, minimize, palliate, reduce, restrain, retrench, stop

CURTAIL MEANS CUT SHORT OR REDUCE

Curtail means cut short or reduce

Webster's 10 Webster's New World College Dictionary Copyright © 2010 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/curtail#websters

Curtail transitive verb
to cut short; reduce; abridge

curtail is to cut short or reduce

American Heritage 13 The American Heritage® Dictionary of the English Language, 5th edition Copyright © 2013 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved. http://www.yourdictionary.com/curtail#websters

curtail transitive verb cur·tailed, cur·tail·ing, cur·tails
To cut short or reduce: We curtailed our conversation when other people entered the room.
See Synonyms at shorten.

Curtail means cut short or abridge

Collins 12 Collins English Dictionary - Complete & Unabridged 2012 Digital Edition © William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins Publishers 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012 Cite This Source http://dictionary.reference.com/browse/curtail?s=t

Curtail /kɜːˈteɪl/ verb
1. (transitive) to cut short; abridge

Curtail means shorten or abridge

WordSense 15 2015 WordSense.eu Dictionary http://www.wordsense.eu/curtail/

curtail (English)
Verb
curtail (third-person singular simple present curtails, present participle curtailing, simple past and past participle curtailed) transitive
obsolete - To cut short the tail of an animal
Curtailing horses procured long horse-hair.
To shorten or abridge the duration of something; to truncate.
When the audience grew restless, the speaker curtailed her speech.
figuratively - To limit or restrict, keep in check.
Their efforts to curtail spending didn't quite succeed.

CURTAIL MEANS CUT OFF PART

Curtail can mean to cut off part

Random House 15 Dictionary.com Unabridged Based on the Random House Dictionary, © Random House, Inc. 2015. Cite This Source
http://dictionary.reference.com/browse/curtail?s=t

curtail1
[ker-teyl]
verb (used with object)
1. to cut short; cut off a part of; abridge; reduce; diminish.

Curtail is to make less by cutting away part

Merriam-Webster 15 © 2015 Merriam-Webster, Incorporated http://www.merriam-webster.com/dictionary/curtail

Curtail verb cur·tail \(ˌ)kər-ˈtāl\
: to reduce or limit (something)
Full Definition of CURTAIL
transitive verb
: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

CURTAILS CAN MEAN STOP

Curtail includes stopping

YourDictionary 15 YourDictionary definition and usage example. Copyright © 2015 by LoveToKnow Corp

http://www.yourdictionary.com/curtail#websters

curtail [kər tāl′] verb
To curtail is defined as to restrict something, **stop something** or deprive of something.

An example of curtail is when a town wants to stop drunk driving.

Curtail can mean stop entirely

Vocabulary,com 15 2015 Vocabulary.com http://www.vocabulary.com/dictionary/curtail

curtail
To curtail something is to slow it down, put restrictions on it, or stop it entirely. If I give up cake, I am curtailing my cake-eating.
Curtail is an official-sounding word for stopping or slowing things down. The police try to curtail crime — they want there to be less crime in the world. A company may want to curtail their employees' computer time, so they spend more time working and less time goofing around. Teachers try to curtail whispering and note-passing in class. When something is curtailed, it's either stopped entirely or stopped quite a bit — it's cut short.

Curtail can mean halt or stop

Burton's 7 Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc. http://legal-dictionary.thefreedictionary.com/curtail

curtail verb abate, abbreviate, abridge, clip, coartare, cut, cut down, cut short, decrease, diminish, halt, lessen, lop, make smaller, minuere, pare, pare down, retrench, shorten, subtract, trim See also: abate, abridge, allay, arrest, attenuate, bowdlerize, commute, condense, decrease, diminish, discount, lessen, minimize, palliate, reduce, restrain, retrench, stop

Curtail can mean terminate

WordNet 12 Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

http://www.thefreedictionary.com/curtail

Verb1. curtail - place restrictions on; "curtail drinking in school"
restrict, curb, cut back
circumscribe, confine, limit - restrict or confine, "I limit you to two visits to the pub a day"
abridge - lessen, diminish, or curtail; "the new law might abridge our freedom of expression"
immobilise, immobilize - cause to be unable to move; "The sudden storm immobilized the traffic"

2. curtail - terminate or abbreviate before its intended or proper end or its full extent; "My speech was cut short"; "Personal freedom is curtailed in many countries"
cut short, clip
shorten - make shorter than originally intended; reduce or retrench in length or duration; "He shortened his trip due to illness"

curtail means stopping something

Cambridge 15 (Definition of curtail from the Cambridge Academic Content Dictionary © Cambridge University Press) http://dictionary.cambridge.org/us/dictionary/american-english/curtail

Curtail verb [T] us /kərˈteɪl/
› to reduce or limit something, or to stop something before it is finished: He had to curtail his speech when time ran out.

CURTAIL DOES NOT MEAN ABOLISH OR ELIMINATE

Curtail does not include abolish

Goldberg 83 Steven Goldberg, Associate Professor of Law, Georgetown University Law Center;

Washington Law Review APRIL, 1983 58 Wash. L. Rev. 343 SYMPOSIUM ON ENERGY ISSUES IN THE PACIFIC NORTHWEST: UNCONSCIONABILITY IN A COMMERCIAL SETTING: THE ASSESSMENT OF RISK IN A CONTRACT TO BUILD NUCLEAR REACTORS. lexis

> Indeed, thorough interpretation will require a court to examine the hell-or-high-water clause carefully in the context of the entire contract. The clause does not, for example, speak of "termination" of the projects even though that term is used elsewhere in the agreement. n11 Indeed, the clause, rather than speaking of "termination" or "cancellation," speaks only of "reduction or curtailment . . . in whole or in part." n12 These words might cover the ending of the projects, but it is worth noting that as basic a source as Black's Law Dictionary defines curtail as "to shorten, abridge, diminish, lessen, or reduce; and . . . has no such meaning as abolish." n13

Curtail does not mean abolish

O'Niell 45 O'Niell, Chief Justice. **OPINION BY:** O'NIELL STATE v. EDWARDS No. 37719

Supreme Court of Louisiana 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783 February 19, 1945 lexis

> The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Curtail does not mean terminate

Clark 49 CLARK, Circuit Judge (dissenting). COMMISSION OF DEPARTMENT OF PUBLIC UTILITIES OF COMMONWEALTH OF MASSACHUSETTS v. NEW YORK, N.H. & H.R. CO. No. 40, Docket 21392

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 178 F.2d 559; 1949 U.S. App. LEXIS 3864 November 10, 1949, Argued December 13, 1949, Decided lexis

When these provisions are read in the light of the background stated and particularly the rejection of express provisions for the power now claimed by the New Haven, it is obviously difficult to accept the New Haven's present view that a complete abandonment of passenger service was not intended. Even the words used point to the decisive and- under the circumstances- clean-cut step. The word 'discontinue' is defined by Webster's New International [**29] Dictionary, 2d Ed. 1939, as meaning ' * * * to put an end to; to cause to cease; to cease using; to give up'- meanings quite other than the connotations implicit in the word 'curtail,' which it defines ' * * * to shorten; abridge; diminish; lessen; reduce.' It goes on to give the meaning of 'discontinue' at law as being 'to abandon or terminate by a discontinuance'- an even more direct interpretation of the critical term. An interesting bit of support from the court itself for this view is found in Art. XI, §. 2(m), of the final Consummation Order and Decree, which reserved jurisdiction in the District Court: 'To consider and act on any question respecting the 'Critical Figures' established by the Plan with respect to the termination by the Reorganized Company of passenger service on the Old Colony Lines.' A 'termination' is quite different from a 'reduction.'

Curtail does not mean eliminate

Simons 94 OPINION BY: SIMONS, J. RUSSELL J. NOTIDES, Plaintiff and Appellant, v. WESTINGHOUSE CREDIT CORPORATION et al., Defendants and Respondents. No. A062773. COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO 40 Cal. App. 4th 148; 37 Cal. Rptr. 2d 585; 1994 Cal. App. LEXIS 1321 December 12, 1994, Decided lexis

Appellant suggests that Jenkins knew that the problem would be handled by curtailing new deals, not simply being selective. In his deposition he stated that "the step of curtailing new business is a logical one to take." Appellant seems to misunderstand the word "curtail" to mean "eliminate." Even if Jenkins made the same error, he said that this decision to curtail was not made until the Fall of 1990, several months after the hiring and shortly before Notides was informed of the decision.

CURTAIL CAN MEAN TO PLACE RESTRICTIONS ON

Curtail is to place restrictions on

WordNet 12 Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

http://www.thefreedictionary.com/curtail

Verb1. curtail - place restrictions on; "curtail drinking in school"
restrict, curb, cut back
circumscribe, confine, limit - restrict or confine, "I limit you to two visits to the pub a day"
abridge - lessen, diminish, or curtail; "the new law might abridge our freedom of expression"
immobilise, immobilize - cause to be unable to move; "The sudden storm immobilized the traffic"

2. curtail - terminate or abbreviate before its intended or proper end or its full extent; "My speech was cut short"; "Personal freedom is curtailed in many countries"
cut short, clip
shorten - make shorter than originally intended; reduce or retrench in length or duration; "He shortened his trip due to illness"

curtail means impose restrictions

Oxford 15 See definition in Oxford Advanced Learner's Dictionary

http://www.oxforddictionaries.com/us/definition/american_english/curtail

curtail Syllabification: cur·tail Pronunciation: /kərˈtāl/
Definition of curtail in English: verb [with object]
1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

CURTAIL IS NOT TO REGULATE

Curtail goes beyond regulation

BusinessWorld 14 BusinessWorld June 18, 2014 Wednesday Gov't agencies told to comment on petition vs higher traffic fines lexis

THE SUPREME COURT has ordered transport agencies to comment on a petition questioning the validity of higher fines for traffic violations, particularly with regard to public vehicles operating without valid franchises.

The Department of Transportation and Communications, Land Transportation Franchising and Regulatory Board and the Land Transportation Office were told to respond to a filing by the Angat Tsuper/Stop and Go group, which wants Joint Administrative Order (JAO) 2014-001 declared unconstitutional.

The group claims the JAO contains "vague" provisions, among others not specifying who will pay the penalties of violators of vehicles operating as a public transport without the requisite certificates of public convenience.

Angat Tsuper likewise claimed the JAO violated the right to due process by raising the fines substantially, to as high as P1 million for buses operating without a valid CPC, P200,000 for trucks, P50,000 for jeepneys, P200,000 for vans, P120,000 for sedans and P6,000 for motorcycles.

A trucking company, meanwhile has joined in the fight by filing another petition for review. Ximex Delivery Express, Inc. (XDE) said the transportation agencies went beyond their mandate as the order does not regulate but instead "curtails" an individual's right to earn a living.

"[The new rules] deprive the owners of the fleets ... from pursuing what could be the only means of livelihood that they know," XDE said..

Curtail is different from regulate

Wanzala 15 OUMA WANZALA -1 Daily Nation (Kenya) April 8, 2015 Wednesday

State ready to hold talks over new media laws lexis

Dr Matiang'i yesterday insisted that the Jubilee administration supports and believed in the freedom of the media. He said the government had not banned any media outlet like Kenya's neighbours did.

"We have been criticised unfairly but we have been tolerant," he said.

The government had achieved a lot in the past two years but media firms were only looking at its failures, according to Dr Matiang'i.

He said foreign journalists working in Kenya should report fairly and accurately but the government had no intention of victimising them or shutting them down. Kenya Editors Guild chairman Linus Kaikai differed with Dr Matiang'i on media freedom in Kenya, saying it had been a tough two years for media. "The industry has been swinging between hope and despair. The legislative agenda has consistently been one that seeks not to regulate but to curtail the very freedom that makes the work of journalists possible.

"We consider these pieces of retrogressive legislation as a polite way of rolling back the progress of our industry and that of the country," Mr Kaikai said.

Curtail excludes regulation

Moore 85 By Steve Moore, senior writer for On Communications. Network World January, 1985

Total Deregulation lexis

> "Even in the light of divestiture," a House Telecommunications Subcommittee aide noted, "the subcommittee not only chose not to regulate computers and DP, but to explicitly curtail or restrict the power of the FCC and the state utility commissions to stray into that -- with one exception."

DOMESTIC SURVEILLANCE

GATHERING INTELLIGENCE ON US PERSONS IS DOMESTIC SURVEILLANCE

Domestic surveillance is info gathering on US persons

IT Law Wiki 15 IT Law Wiki 2015 http://itlaw.wikia.com/wiki/Domestic_surveillance

Definition Edit

Domestic surveillance is the acquisition of nonpublic information concerning United States persons.

Domestic surveillance is intelligence gathering on US persons

Small 8 MATTHEW L. SMALL. United States Air Force Academy 2008 Center for the Study of the Presidency and Congress, Presidential Fellows Program paper "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

US PERSONS DEFINED

US person defined

Jackson et al 9 Brian A. Jackson, Darcy Noricks, and Benjamin W. Goldsmith, RAND Corporation
The Challenge of Domestic Intelligence in a Free Society RAND 2009 BRIAN A. JACKSON, EDITOR

http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG804.pdf

3 Federal law and executive order define a U.S. person as "a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association with a substantial number of members who are citizens of the U.S. or are aliens lawfully admitted for permanent residence, or a corporation that is incorporated in the U.S." (NSA, undated). Although this definition would therefore allow information to be gathered on U.S. persons located abroad, our objective was to examine the creation of a domestic intelligence organization that would focus on—and whose activities would center around—individuals and organizations located inside the United States . Though such an agency might receive information about U.S. persons that was collected abroad by other intelligence agencies, it would not collect that information itself.

GATHERING INFO ON US CITIZENS IS DOMESTIC SURVEILLANCE

Domestic surveillance is whatever is needed to complete dossiers on US citizens

Jones 8 Chris Jones October 7, 2008 Prison Planet Forum FBI creates panic to justify their lawless Police State Fascism http://forum.prisonplanet.com/index.php?topic=63282.0

> Domestic surveillance includes every aspect necessary to complete dossiers on American citizens to include phone tapping, internet, credit, finances, property,sexual preference and the company kept.

SURVEILLANCE DONE IN THE US IS DOMESTIC SURVEILLANCE

Domestic surveillance is surveillance within national borders

Avilez et al 14 Marie Avilez et al, Carnegie Mellon University December 10, 2014 Ethics, History, and Public Policy Senior Capstone Project Security and Social Dimensions of City Surveillance Policy

http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf

> Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity within national borders; this can be carried out by federal, state and/or local officials

Domestic refers to surveillance done in the US

Truehart 2 Carrie Truehart, J.D., Boston University School of Law, 2002. Boston University Law Review April, 2002 82 B.U.L. Rev. 555 CASE COMMENT: UNITED STATES v. BIN LADEN AND THE FOREIGN INTELLIGENCE EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF "UNITED STATES PERSONS" ABROAD lexis

> n18. 50 U.S.C. 1801-1829 (1994 & Supp. V 1999). This Case Comment uses the word "domestic" to refer to searches and investigations conducted within the United States. The term "domestic foreign intelligence investigations" at first glance seems like an oxymoron, but it is not. As used in this Case Comment, the term refers to investigations conducted within the United States to obtain foreign intelligence information - that is, information pertaining to foreign nationals and their respective governments or international groups - as opposed to investigations conducted within the United States to obtain domestic intelligence information - that is, information pertaining to United States persons only. Notice that a United States person residing in the United States, however, could become the target of a foreign intelligence investigation if the Government were investigating that individual's relationship with a foreign government or international terrorist group. In other words, the difference between whether an investigation is a "domestic foreign intelligence investigation" or a "domestic intelligence investigation" turns on whether the investigation focuses in part on a foreign government or international group.

Domestic surveillance is surveillance in the US

Jordan 6 DAVID ALAN JORDAN, LL.M., New York University School of Law (2006); J.D., cum laude, Washington and Lee University School of Law (2003). Member of the District of Columbia Bar.
Boston College Law Review May, 2006 47 B.C. L. Rev 505 ARTICLE: DECRYPTING THE FOURTH AMENDMENT: WARRANTLESS NSA SURVEILLANCE AND THE ENHANCED EXPECTATION OF PRIVACY PROVIDED BY ENCRYPTED VOICE OVER INTERNET PROTOCOL lexis

> n100 See FISA, 50 U.S.C. § 1801(f). Section 1801(f) of FISA defines four types of conduct that are considered "electronic surveillance" under FISA. Signals collection operations that target

U.S. persons outside the United States do not fit within any of these four definitions. The first three definitions require the targeted individual to be located inside of the United States to be considered "electronic surveillance." The fourth definition applies only to the use of surveillance devices within the United States. Therefore, the NSA's signals monitoring stations in the United Kingdom, Canada, Australia, and New Zealand are not regulated by FISA. U.S. personnel located at these foreign stations presumably may monitor U.S. persons who are outside the United States, and that conduct technically would not be considered electronic surveillance under FISA's definitions. This highlights the fact that FISA was meant to govern only domestic surveillance taking place within U.S. borders. Although such efforts would not fall under FISA's definition of "electronic surveillance," USSID 18's minimization procedures still would apply and offer some protection to the rights of U.S. persons abroad. See generally USSID 18, supra note 13.

COMMUNICATION TO OR FROM THE US IS INCLUDED IN DOMESTIC SURVEILLANCE

Domestic surveillance includes transmission to or from abroad and can be for foreign intelligence

Seamon 8 Richard Henry Seamon, Professor, University of Idaho College of Law. Hastings Constitutional Law Quarterly Spring, 2008 35 Hastings Const. L.Q. 449 ARTICLE: Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits lexis

> First, FISA generally falls within Congress's power to regulate domestic surveillance for foreign intelligence information. That power comes from the Commerce Clause, to the extent that the surveillance involves interception of information that travels through channels of interstate or foreign commerce such as telephone lines. n188 Additional power flows from congressional powers associated with war and foreign affairs as amplified by the Necessary and Proper Clause. n189 Indeed, the executive branch has never questioned that FISA generally falls within Congress's power, except to the extent that it infringes on the President's congressionally irreducible power under the Constitution. n190

Calls to, from, or within the US is domestic surveillance

Kravets 14 David Kravets 03.12.14. CIA Hack Scandal Turns Senate's Defender of Spying Into a Critic

http://www.wired.com/2014/03/feinstein-blasts-cia-snooping/

> Feinstein's statements criticizing the CIA have particular significance because she is perhaps the biggest senatorial cheerleader for domestic surveillance, including the telephone snooping program in which metadata from calls to, **from** and within the United States is forwarded in bulk to the National Security Agency without probable cause warrants. A federal judge declared such snooping unlawful last year but stayed the decision pending appeal. The case is before the U.S. Supreme Court.

Communication from the US are domestic surveillance

Carter 13 Chelsea J. Carter and Jessica Yellin, CNN August 10, 2013 Obama: Snowden can 'make his case' in court; no Olympics boycott

http://www.cnn.com/2013/08/09/politics/obama-news-conference/

> Since Snowden leaked secret documents to the media, critics have called the NSA's domestic surveillance -- including a program that monitors the metadata of domestic phone calls -- a government overreach. Many of those same critics have asked the Obama administration and Congress to rein in the programs.

DOMESTIC SURVEILLANCE IS INFORMATION EXCLUSIVELY WITHIN THE US

Domestic surveillance deals with information transmitted within a country

HRC 14 Human Rights Council 2014 IMUNC2014
https://imunc.files.wordpress.com/2014/05/hrc-study-guide.pdf

> Domestic surveillance: Involves the monitoring, interception, collection, analysis, use, preservation, retention of, interference with, or access to information that includes, reflects, or arises from or a person's communications in the past, present or future with or without their consent or choice, **existing or occurring inside a particular country.**

Any foreign element means it is not domestic

Olberman 6 Countdown with Keith Olberman, msnbc.com updated 1/26/2006 7:05:00 PM ET White House defines 'domestic' spying
http://www.nbcnews.com/id/11048359/ns/msnbc-countdown_with_keith_olbermann/t/white-house-defines-domestic-spying/#.VU1lZJOYF2A

> The White House is trying to sell this so hard that it actually issued an official press release titled, "Setting the Record Straight, Charges of Domestic Spying."
> Look, your tax dollars in action. Word wealth, SAT training class. As a public service, COUNTDOWN will now review, and, where applicable, provide translations of the White House take on what "domestic" means versus what "international" means, and then we'll add a few bonus examples of our own.
> Quoting, "Deputy Director Of National Intelligence General Michael Hayden," semicolon; "One End Of Any Call Targeted Under This Program Is Always Outside The United States."
> This is the glass-is-half-full view of warrantless eavesdropping, much as if a U.S. soldier, who, like the average human male, has about 12 pints of blood in his body, would lose six of those pints.
> Critics of the NSA terrorist surveillance program would say, That soldier is half empty. The White House would remind you that that soldier is half full.
> Anyway, the press release actually gives several examples of the differences between the meanings of these two words. "Definition, Domestic Versus International. Domestic Calls are calls inside the United States. International Calls are calls either to or from the United States."
> And don't forget to deposit $2 for the first five minutes, and an extra $2 to cover the cost of the guy listening in at the NSA.
> "Domestic Flights," the White House reminds us, "are flights from one American city to another. International Flights are flights to or from the United States."
> So what happens if I call a domestic airline about a flight to Europe, but they've outsourced their reservation agents to India? Is that a domestic call about an international flight, or an international call about a domestic flight?
> Wait, there's more. "Domestic Mail consists of letters and packages sent within the United States," the press release reads. "International Mail consists of letters and packages sent to or from the United States."
> Advertise
> And don't forget, we can not only open either kind, kind if we damn well feel like it, but if you're using an international stamp and we need it for our collection, we're keeping it.

One more item from the press release, “Domestic Commerce involves business within the United States. International Commerce involves business between the United States and other countries.”

International commerce. You know, the kind of stuff Jack Abramoff did for the -- Huh, leave Abramoff out of it? Gotcha, sorry.

Well, anyway, if you‘re still not clear on this domestic-versus-international stuff, as promised, a couple of more definitions to help pull you through.

Domestic is an adjective describing your dog or cat or any other animal you have as a pet, like a tiger or a boa constrictor. “The Internationale,” meanwhile, is the worldwide anthem of those socialists and communists.

Internationals are soccer players who play in countries in which they were not born.

Domestics is an old-timey kind of term for people who cleaned your house.

International is the kind of law that lets us take terror suspects to old Soviet-era gulags in Eastern Europe and beat the crap out of them, while domestic is the kind of wine they bottle in California.

Thank you for your attention. Please pass your examination papers forward.

Statutes define domestic as wholly in the US

Mayer 14 Jonathan Mayer PhD candidate in computer science & law lecturer at Stanford. December 3, 2014 Web Policy Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier

http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/

Once again unpacking the legalese, these parallel provisions establish exclusivity for 1) “electronic surveillance” and 2) interception of “domestic” communications. As I explained above, intercepting a two-end foreign wireline communication doesn’t constitute “electronic surveillance.” As for what counts as a “domestic” communication, the statutes seem to mean a communication wholly within the United States.7 A two-end foreign communication would plainly flunk that definition.

So, there’s the three-step maneuver. If the NSA intercepts foreign-to-foreign voice or Internet traffic, as it transits the United States, that isn’t covered by either FISA or the Wiretap Act. All that’s left is Executive Order 12333.

NSA IS NOT DOMESTIC SURVEILLANCE

NSA Terrorist Surveillance Program is NOT DOMESTIC surveillance

Casey 7 LEE A. CASEY, PARTNER, BAKER HOSTETLER, TESTIMONY House Subcommittee on the Constitution, Civil Rights and Civil Liberties, House Committee on the Judiciary, June 7, 2007 hearings "Constitutional Limitations on Domestic Surveillance" page 43
http://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/ http%3A$2f$2fprod.cosmos.dc4.bowker-dmz.com$2fapp-bin$2fgis-hearing$2f3$2f7$2f2$2f7$2fhrg-2007-hjh-0042_from_1_to_156.pdf/entitlementkeys=1234|app-gis|hearing|hrg-2007-hjh-0042

Mr. CASEY. Thank you, Mr. Chairman. I appreciate the opportunity to appear today to discuss the constitutional limitations on domestic surveillance.

Ironically, the most controversial surveillance over the past several years has not been domestic at all, but rather the international surveillance involved in the NSA's Terrorist Surveillance Program. It is to the legal issues surrounding that program that I will address my remarks.

I should make clear that I am speaking here on my own behalf.

Let me begin by stating that I believe President Bush was fully within his constitutional and statutory authority when he authorized the TSP. The President's critics have variously described this program as widespread, domestic and illegal. Based upon the published accounts, it is none of these things. Rather, it is a targeted program on the international communications of individuals engaged in an armed conflict with the United States and is fully consistent with FISA.

In assessing the Administration's actions here, it is important to highlight how narrow is the actual dispute over the NSA program. Few of the President's critics claim that he should not have ordered the interception of al-Qaida's global communications or that he needed the FISA Court's permission to intercept al-Qaida commu- nications abroad. It is only with respect to communications actually intercepted inside the United States or where the target is a United States person in the United States, that FISA is relevant at all to this national discussion.

Since this program involves only international communications, where at least one party is an al-Qaida operative, it is not clear that any of these intercepts would properly fall within FISA's terms. This is not the pervasive dragnet of American domestic communications about which so many of the President's critics have fantasized.

If either party in a transmission is outside the US, interception is NOT DOMESTIC surveillance

Franks 7 Trent Franks, Representative, ranking member, House Subcommittee on the Constitution, Civil Rights and Civil Liberties, House Committee on the Judiciary, June 7, 2007 hearings "Constitutional Limitations on Domestic Surveillance" page 4
http://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/ http%3A$2f$2fprod.cosmos.dc4.bowker-dmz.com$2fapp-bin$2fgis-hearing$2f3$2f7$2f2$2f7$2fhrg-2007-hjh-0042_from_1_to_156.pdf/entitlementkeys=1234|app-gis|hearing|hrg-2007-hjh-0042

Critics have portrayed the NSA's Terrorist Surveillance Program as "domestic spying," but that is not an accurate description of what we know at this

classified program. As the Justice Department has explained, the President has authorized the NSA to intercept international communications into and out of the United States where there is a reasonable basis for believing that one of those persons is linked to al-Qaida or related terrorist organiza- tions. The program only applies to communications where one party is located outside of the United States.

NSA is limited to communications with at least one outside the US

Stray 13 Jonathan Stray, Special to ProPublica, Aug. 5, 2013, 3:20 p.m. FAQ: What You Need to Know About the NSA's Surveillance Programs http://www.propublica.org/article/nsa-data-collection-faq

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because there is no fully reliable automatic way to separate domestic from international communications, this program also captures some amount of U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make.

The contents of an unknown number of phone calls There have been several reports that the NSA records the audio contents of some phone calls and a leaked document confirms this. This reportedly happens "on a much smaller scale" than the programs above, after analysts select specific people as "targets." Calls to or from U.S. phone numbers can be recorded, as long as the other end is outside the U.S. or one of the callers is involved in "international terrorism". There does not seem to be any public information about the collection of text messages, which would be much more practical to collect in bulk because of their smaller size.

The NSA has been prohibited from recording domestic communications since the passage of the Foreign Intelligence Surveillance Act but at least two of these programs -- phone records collection and Internet cable taps -- involve huge volumes of Americans' data.

GEOGRAPHY BASED DISTINCTION ELIMINATED BY INTERNET

Internet routing eliminates the foreign – domestic distinction based on geography

ACLU 6 American Civil Liberties Union 2006 Eavesdropping 101: What Can the NSA Do https://www.aclu.org/files/pdfs/eavesdropping101.pdf

> The Internet and technologies that rely upon it (such as electronic mail, web surfing and Internet-based telephones known as Voice over IP or VOIP) works by breaking information into small "packets." Each packet is then routed across the network of computers that make up the Internet according to the most efficient path at that moment, like a driver trying to avoid traffic jams as he makes his way across a city. Once all the packets – which are labeled with their origin, destination and other "header" information – have arrived, they are then reassembled.
>
> An important result of this technology is that on the Internet, there is no longer a meaningful distinction between "domestic" and "international" routes of a communication. It was once relatively easy for the NSA, which by law is limited to "foreign intelligence," to aim its interception technologies at purely "foreign" communications. But now, an e-mail sent from London to Paris, for example, might well be routed through the west coast of the Uned States (when, for example, it is a busy mid-morning in Europe but the middle of the night in California) along the same path traveled by mail between Los Angeles and San Francisco. That system makes the NSA all the more eager to get access to centralized Internet exchange points operated by a few telecommunications giants. But because of the way this technology works, eavesdropping on an IP communication is a completely different ballgame from using an old-fashioned "wire-tap" on a single line. The packets of interest to the eavesdropper are mixed in with all the other traffic that crosses through that path-way – domestic and international.

Surveillance can no longer be categorized by geography

Sanchez 14 Julian Sanchez is a Senior Fellow at the Cato Institute June 5, 2014 Lead Essay Snowden: Year One http://www.cato-unbound.org/2014/06/05/julian-sanchez/snowden-year-one

> The second basic fact is that modern communications networks obliterate many of the assumptions about the importance of geography that had long structured surveillance law. A "domestic" Internet communication between a user in Manhattan and a server in Palo Alto might, at midday in the United States, be routed through nocturnal Asia's less congested pipes, or to a mirror in Ireland, while a "foreign" e-mail service operated from Egypt may be hosted in San Antonio. "What we really need to do is all the bad guys need to be on this section of the Internet," former NSA director Keith Alexander likes to joke. "And they only operate over here. All good people operate over here. All bad guys over here." It's never been quite that easy—but General Alexander's dream scenario used to be closer to the truth. State adversaries communicated primarily over dedicated circuits that could be intercepted wholesale without much worry about bumping into innocent Americans, whereas a

communication entering the United States could generally be presumed to be with someone in the United States. The traditional division of intelligence powers by physical geography—particularized warrants on this side of the border, an interception free-for-all on the other—no longer tracks the reality of global information flows.

Geographic distinctions are antiquated due to modern communication

Bedan 7 Matt Bedan, J.D. Candidate, Indiana University School of Law--Bloomington. Federal Communications Law Journal March, 2007 59 Fed. Comm. L.J. 425 NOTE: ECHELON'S EFFECT: THE OBSOLESCENCE OF THE U.S. FOREIGN INTELLIGENCE LEGAL REGIME lexis

Apart from the issue of private corporations gathering and sharing intelligence, FISA's surveillance definition is antiquated due to the distinction it makes between data acquired inside or outside of the U.S. Again, government observation only qualifies as surveillance if the data is acquired inside the U.S. or if one or more of the parties is a known U.S. person, inside the U.S., who the government is targeting intentionally. In other words, unrestrained and indiscriminate eavesdropping by the NSA is allowed under FISA as long as the communication is not physically intercepted within the U.S., and the target is either: (1) someone known to be a non-U.S. person, (2) someone who is intentionally targeted but whose identity is unknown, or (3) anyone else in the world who is not intentionally being targeted.

Today, the requirement that the interception of electronic communications takes place outside U.S. borders is hardly an obstacle to intelligence agencies. The proliferation of the Internet and other global communication networks has made physical distance and political borders a nonfactor in the realm of communications. To increase efficiency, Internet traffic is often routed through the least congested server regardless of the server's physical location. n58 For instance, two neighbors in Nebraska chatting on an instant messenger program might have their communications routed through servers in Hong Kong and back, despite being only 30 feet apart.

Internet has eliminated the geographic based distinction between foreign and domestic

Tracy 15 Sam Tracy March 18, 2015 Digital Fourth NSA Whistleblower John Tye Explains Executive Order 12333 http://warrantless.org/2015/03/tye-12333/

That's the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled "Why I spoke out against the NSA." Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 governs data collected overseas, as opposed to domestic surveillance which is authorized by statute. However, because Americans' emails and other communications are stored in servers all over the globe, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

Internet routes communications through the US

Mayer 14 Jonathan Mayer PhD candidate in computer science & law lecturer at Stanford. December 3, 2014 Web Policy Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier

http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/

> The United States is the world's largest telecommunications hub. Internet traffic and voice calls are routinely routed through the country, even though both ends are foreign. According to leaked documents, the NSA routinely scoops up many of these two-end foreign communications as they flow through American networks.2 The agency calls it "International Transit Switch Collection," operated under "Transit Authority." That authority stems from Executive Order 12333, not the Foreign Intelligence Surveillance Act.

Data cannot be distinguished by geography

Wheeler 14 Marcy Wheeler, independent journalist specializing in civil liberties, technology, and national security. She holds a BA from Amherst College and a Ph.D. from the University of Michigan. June 16, 2014

Response Essays The Drama Ahead: Google versus America http://www.cato-unbound.org/contributors/marcy-wheeler

> That's an important implication of Sanchez' point that "modern communications networks obliterate many of the assumptions about the importance of geography." American tech companies now store data overseas, as well as in the United States. Americans' data is mixed in with foreigners' data overseas. Many of the more stunning programs described by Snowden's documents – the collection of 5 billion records a day showing cell location, NSA partner GCHQ's collection of millions of people's intimate webcam images, and, of course, the theft of data from Google and Yahoo's servers – may suck up Americans' records too. Plus there's evidence the NSA is accessing U.S. person data overseas. The agency permits specially trained analysts to conduct Internet metadata contact chaining including the records of Americans from data collected overseas. And in a Senate Intelligence Committee hearing earlier this year, Colorado Senator Mark Udall asked hypothetically what would happen with a "a vast trove of U.S. person information" collected overseas; the answer was such data would not get FISA protection (California Senator Dianne Feinstein, the Intelligence Committee Chair, asked an even more oblique question on the topic).

FOREIGN / DOMESTIC IS DEFINED BY THE NATURE OF THE INFORMATION, NOT LOCATION

"Foreign" refers to the nature of the information, not the location

Cardy 8 Emily Arthur Cardy, law student Fall, 2008 Boston University Public Interest Law Journal 18 B.U. Pub. Int. L.J. 171 NOTE: THE UNCONSTITUTIONALITY OF THE PROTECT AMERICA ACT OF 2007 lexis

1. Foreign Intelligence Defined

The definition of "foreign intelligence" is critical to the constitutional analysis of the Protect America Act. The Act does not provide a different definition of "foreign intelligence" from the one provided in FISA; thus in interpreting the Protect America Act, FISA's definition of "foreign intelligence" applies. n84 In FISA's definition, "foreign" applies to the content of the information gathered, and not to the location in (or from) which the information is gathered, or the nationality of the sources from which it is gathered. n85 Instead, "foreign intelligence" means "information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against ... " harms or clandestine operations against the United States. n86 The definition [*184] does not contain any language limiting the country from which the information may be collected. n87 Thus, while the Act's asserted purpose is to collect foreign intelligence, the Act's definition of foreign intelligence does not provide inherent protection against domestic surveillance - domestic surveillance is not precluded from the definition of foreign surveillance. How an act defines its terms, rather than the terms themselves out of context, dictates the Act's application; this is a critical point in understanding the Protect America Act's far-reaching implications.

SURVEILLANCE OF FOREIGN THREATS IS NOT DOMESTIC SURVEILLANCE

Surveillance of foreign agents is not domestic surveillance even if in the US

McCarthy 6 Andrew C. McCarthy former assistant U.S. attorney, now contributing editor of National Review and a senior fellow at the National Review Institute. May 15, 2006 National Review It's Not "Domestic Spying"; It's Foreign Intelligence Collection http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

> Eggen also continues the mainstream media's propagandistic use of the term "domestic surveillance [or 'spying'] program." In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not "domestic." A call is not considered "domestic" just because one party to it happens to be inside the U.S., just as an investigation is not "domestic" just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been "domestic spying."
>
> The calls NSA eavesdrops on are "international," not "domestic." If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating both within and without the U.S.
>
> That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence.
>
> That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not "domestic surveillance."

Foreign intelligence is NOT DOMESTIC surveillance

Nadler 7 Jerrold Nadler, Chair, House Subcommittee on the Constitution, Civil Rights and Civil Liberties, House Committee on the Judiciary, June 7, 2007 hearings "Constitutional Limitations on Domestic Surveillance" page 2 http://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/http%3A$2f$2fprod.cosmos.dc4.bowker-dmz.com$2fapp-bin$2fgis-hearing$2f3$2f7$2f2$2f7$2fhrg-2007-hjh-0042_from_1_to_156.pdf/entitlementkeys=1234|app-gis|hearing|hrg-2007-hjh-0042

> The FISA reflects timeless understanding that the conduct of foreign intelligence activities is fundamentally different from domestic surveillance. It nonetheless also reflects one of our Nation's founding principles
>
> that power, especially the power to invade people's privacy, must never be exercised unchecked

Foreign surveillance includes American citizens

L I I 15 Legal Information Institute LII a small research, engineering, and editorial group housed at the Cornell Law School 2015 Electronic Surveillance
https://www.law.cornell.edu/wex/electronic_surveillance

Foreign Surveillance Legislation

Case law is split regarding the constitutionality of wiretapping's use on foreign nationals for obtaining foreign intelligence; courts agree, however, that wiretapping for the purpose of domestic security does not pass constitutional muster.

In 1978, Congress passed the Foreign Intelligence Surveillance Act (FISA). The Act lowers the evidentiary showing needed to obtain a surveillance warrant with regard to foreign intelligence gathering and describes other procedures relating to physical and electronic surveillance relating to foreign intelligence. The Act's provisions also applies to American citizens suspected of espionage.

FISA – EXECUTIVE ORDER DISTINCTION FAILS

The FISA / Excutive Order distinction fails

Mayer 14 Jonathan Mayer PhD candidate in computer science & law lecturer at Stanford. December 3, 2014 Web Policy Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier

http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/

> When the National Security Agency collects data inside the United States, it's regulated by the Foreign Intelligence Surveillance Act. There's a degree of court supervision and congressional oversight.
> When the agency collects data outside the United States, it's regulated by Executive Order 12333. That document embodies the President's inherent Article II authority to conduct foreign intelligence. There's no court involvement, and there's scant legislative scrutiny.
> So, that's the conventional wisdom. American soil: FISA. Foreign soil: EO 12333.
> Unfortunately, the legal landscape is more complicated.
> In this post, I'll sketch three areas where the NSA collects data inside the United States, but under Executive Order 12333. I'll also note two areas where the NSA collects data outside the United States, but under FISA.

INVESTIGATION OF COMMON CRIMES IS NOT DOMESTIC SURVEILLANCE

Domestic surveillance is distinct from ordinary crime

Pfeiffer 4 Constance Pfeiffer, Juris Doctor candidate, The University of Texas School of Law, May 2004

The Review of Litigation Winter, 2004 23 Rev. Litig. 209 NOTE: Feeling Insecure?: United States v. Bin Laden and the Merits of a Foreign-Intelligence Exception For Searches Abroad lexis

> Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases. Certainly courts can recognize that domestic surveillance involves different considerations from the surveillance of "ordinary crime." If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance. n141

Domestic surveillance excludes criminal acts

Jackson et al 9 Brian A. Jackson, Darcy Noricks, and Benjamin W. Goldsmith, RAND Corporation

The Challenge of Domestic Intelligence in a Free Society RAND 2009 BRIAN A. JACKSON, EDITOR

http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG804.pdf

> To guide the work reported in this volume, we define domestic intelligence as efforts by government organizations to gather, assess, and act on information about individuals or organizations in the United States or U.S. persons elsewhere 3 that are not related to the investigation of a known past criminal act or specific planned criminal activity
>
> .

Supreme Court distinguishes domestic surveillance from criminal surveillance

Bazan 7 Elizabeth B. Bazan, Congressional Research Service Legislative Attorney, American Law Division

CRS Report The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and U.S. Foreign Intelligence Surveillance Court and U.S. Foreign Intelligence Surveillance Court of Review Decisions

Updated February 15, 2007 https://www.fas.org/sgp/crs/intel/RL30465.pdf

> Investigations for the purpose of gathering foreign intelligence give rise to a tension between the Government's legitimate national security interests and the protection of privacy interests.6 The stage was set for legislation to address these competing concerns in part by Supreme Court decisions on related issues. In Katz v. United States , 389 U.S. 347 (1967), the Court held that the protections of the Fourth Amendment extended to circumstances involving electronic surveillance of oral communications without physical intrusion.7 The Katz Court stated, however, that its holding did not extend to cases involving national security.8 In United States v. United States District Court, 407 U.S. 297 (1972) (the Keith case), the Court regarded Katz as "implicitly recogniz[ing] that the broad and unsuspected governmental incursions into conversational privacy which electronic

surveillance entails necessitate the application of Fourth Amendment safeguards."9 Mr. Justice Powell, writing for the Keith Court, framed the matter before the Court as follows: The issue before us is an important one for the people of our country and their Government. It involves the delicate question of the President's power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without prior judicial approval. Successive Presidents for more than one-quarter of a century have authorized such surveillance in varying degrees, without guidance from the Congress or a definitive decision of this Court. This case brings the issue here for the first time. Its resolution is a matter of national concern, requiring sensitivity both to the Government's right to protect itself from unlawful subversion and attack and to the citizen's right to be secure in his privacy against unreasonable Government intrusion.10

The Court held that, in the case of intelligence gathering involving domestic security surveillance, prior judicial approval was required to satisfy the Fourth Amendment.11 Justice Powell emphasized that the case before it "require[d] no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers, within or without the country."12 The Court expressed no opinion as to "the issues which may be involved with respect to activities of foreign powers or their agents."13 However, the guidance which the Court provided in Keith with respect to national security surveillance in a domestic context to some degree presaged the approach Congress was to take in foreign intelligence surveillance. The Keith Court observed in part:

...We recognize that **domestic surveillance** may involve different policy and practical considerations from the surveillance of "ordinary crime." The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III [of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510 et seq.]. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of **domestic surveillance** may be less precise than that directed against more conventional types of crimes. Given these potential distinctions between Title III criminal surveillances and those involving domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified crimes in Title III. Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the governmental interest to be enforced and the nature of citizen rights deserving protection.... It may be that Congress, for example, would judge that the application and affidavit showing probable cause need not follow the exact requirements of § 2518 but should allege other circumstances more appropriate to domestic security cases; that the request for prior court authorization could, in sensitive cases, be made to any member of a specially designated court...; and that the time and reporting requirements need not be so strict as those in § 2518. The above paragraph does not, of course, attempt to guide the congressional judgment but rather to delineate the present scope of our own opinion. We do not attempt to detail the precise standards for domestic security warrants any more than our decision in Katz sought to set the refined requirements for the specified criminal surveillances which now constitute Title III. We do hold, however, that prior judicial approval is required for the type of domestic surveillance involved in this case and that such

approval may be made in accordance with such reasonable standards as the Congress may prescribe. 14

Domestic security surveillance has different legal standards

Tunheim 8 JUDGES: John R. Tunheim, United States District Judge. OPINION BY: John R. Tunheim UNITED STATES OF AMERICA, Plaintiff, v. MOHAMED ABDULLAH WARSAME, Defendant. Criminal No. 04-29 (JRT) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA 547 F. Supp. 2d 982; 2008 U.S. Dist. LEXIS 31698 April 17, 2008, Decided lexis

In United States v. United States District Court (Keith), 407 U.S. 297, 299, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1972), the Supreme Court addressed the "delicate question of the President's power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without [**26] prior judicial approval." The Court held that such judicial approval is necessary to satisfy the Fourth Amendment in conducting domestic security surveillance, but it specifically declined to address the scope of the President's surveillance power with respect to foreign intelligence. Id. at 323-24. However, Keith took care to explain that HN33Go to this Headnote in the case.the specific statutory requirements for electronic surveillance of "ordinary crime" under Title III 11 -- including the requirement [*993] of probable cause to believe an individual has, is, or is about to commit a crime -- were not constitutionally mandated in the context of domestic security surveillance for national security purposes. Id. at 322. Noting that HN34Go to this Headnote in the case.domestic security surveillance involves different policy and practical considerations from surveillance of "ordinary crime," Keith stated that "the focus of domestic surveillance may be less precise than that directed against more conventional types of crime." Id. Thus, the appropriate Fourth Amendment inquiry is one of reasonableness: "Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information [**27] and the protected rights of our citizens." Id. at 322-23.

Criminal surveillance requires probable cause; FISA does not

Shamsi and Abdo 11 Hina Shamsi, director of the American Civil Liberties Union's National Security Project and Alex Abdo, staff attorney with the National Security Project. Human rights Mag Winter 2011 Vol. 38 No. 1 Privacy and Surveillance Post-9/11 http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/privacy_and_surveillance_post_9-11.html

Domestic law enforcement surveillance requires familiar constitutional standards to be met. Before the government can conduct surveillance, for example under ECPA, it has to show probable cause based on individualized suspicion and obtain a warrant from a court. Foreign-intelligence-gathering standards are more lax. Under the Foreign Intelligence Surveillance Act (FISA), the government need not show suspicion of wrongdoing, and it can conduct electronic and covert searches domestically if the target of these searches is "foreign-intelligence information" from a foreign power or an agent of a foreign power. Unlike under ECPA, FISA surveillance orders are obtained from a secret court, the Foreign Intelligence Surveillance Court (FISC), and need not ever be made public.

INVESTIGATION OF COMMON CRIMES IS DOMESTIC SURVEILLANCE

Domestic surveillance includes criminal and regulatory investigation – drone example proves

Thompson 13 Richard M. Thompson II, CRS Legislative Attorney April 3, 2013 Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses https://www.fas.org/sgp/crs/natsec/R42701.pdf

> The term "domestic drone surveillance" as used in this report is designed to cover a wide range of government uses including, but not limited to, investigating and deterring criminal or regulatory violations; conducting health and safety inspections; performing search and rescue missions; patrolling the national borders; and conducting environmental investigations.

DOJ guidelines on criminal investigation are for domestic surveillance

Fisher 4 Linda E. Fisher, Associate Professor of Law and Director, Center for Social Justice, Seton Hall Law School. Arizona Law Review Winter, 2004 46 Ariz. L. Rev. 621 ARTICLE: Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups lexis

> n238. See Attorney General Guidelines, supra note 13; Lininger, supra note 13. These guidelines apply to domestic surveillance only; that is, surveillance of conduct that involves potential criminal activity, rather than foreign intelligence. The guidelines governing foreign intelligence are classified. Portions of prior foreign intelligence surveillance guidelines from 1995 have been released, but nothing since that time has been made available to the public. The 1995 guidelines give investigators much greater leeway to collect intelligence than do the domestic surveillance guidelines. See Attorney General Guidelines For FBI Foreign Intelligence Collection And Foreign Counterintelligence Investigations (1995), available at http://www.politrix.org/foia/fbi/fbi-guide.htm.

There is no clear distinction between national security and criminal investigation

Truehart 2 Carrie Truehart, J.D., Boston University School of Law, 2002. Boston University Law Review April, 2002 82 B.U.L. Rev. 555 CASE COMMENT: UNITED STATES v. BIN LADEN AND THE FOREIGN INTELLIGENCE EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF "UNITED STATES PERSONS" ABROAD lexis

> The line between "foreign intelligence investigations" and "criminal investigations" is admittedly a blurry one. This is especially true where the target of the investigation is suspected of involvement in espionage or terrorism because these activities are crimes as well as national security concerns. See United States v. Troung Dinh Hung, 629 F.2d 908, 915-16 (stating that "almost all foreign intelligence investigations are in part criminal investigations" because, "although espionage prosecutions are rare, there is always the possibility that the targets of the investigations will be prosecuted for criminal violations"); Bin Laden, 126 F. Supp. 2d at 278 (stating that "[a] foreign intelligence collection effort that targets the acts of terrorists is likely to uncover evidence of crime"). For the purpose of this Case Comment, the term "foreign intelligence investigations" refers to investigations conducted primarily for the purpose of obtaining foreign intelligence. "Criminal

investigations" refers to investigations conducted specifically for the purpose of obtaining information to prosecute crimes.

Domestic surveillance includes law enforcement

L I I 15 Legal Information Institute LII a small research, engineering, and editorial group housed at the Cornell Law School 2015 Electronic Surveillance https://www.law.cornell.edu/wex/electronic_surveillance

Domestic Surveillance Legislation

In 1986 Congress passed extensive regulations regarding electronic surveillance and wiretapping in the Electronic Communications Privacy Act (ECPA). Courts have interpreted the Act as allowing magistrates and federal judges to grant law enforcement officers warrants to enter private homes in order to "bug" the home's means of electronic communication. Despite numerous constitutional challenges, the courts have repeatedly upheld these provisions.

The ECPA also provides remedy for those individuals victimized by unlawful electronic surveillance. If an individual uses a practice in contravention of the ECPA, the victim may bring suit for compensatory damages, punitive damages, and equitable relief, if equitable relief can rectify the harm. The plaintiff may only bring suit against the individual who performed the recording; plaintiffs may not sue any third-party that receives a copy of the recording and subsequently distributes it.

The Communications Assistance for Law Enforcement Act of 2006 mandates the telecommunication companies' cooperation when law enforcement engages in a wiretap. The cooperation involves giving law enforcement access to the systems and facilities necessary to track the communication of one subscriber without infringing on the privacy of another subscriber.

There is no difference between criminal and security surveillance

Shamsi and Abdo 11 Hina Shamsi, director of the American Civil Liberties Union's National Security Project and Alex Abdo, staff attorney with the National Security Project. Human rights Mag Winter 2011 Vol. 38 No. 1 Privacy and Surveillance Post-9/11 http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/privacy_and_surveillance_post_9-11.html

Americans' right to privacy is under unprecedented siege as a result of a perfect storm: a technological revolution; the government's creation of a post-9/11 surveillance society in which the long-standing "wall" between surveillance for law enforcement purposes and for intelligence gathering has been dismantled; and the failure of U.S. laws, oversight mechanisms, and judicial doctrines to keep pace with these developments. As a result, the most sweeping and technologically advanced surveillance programs ever instituted in this country have operated not within the rule of law, subject to judicial review and political accountability, but outside of it, subject only to voluntary limitations and political expedience.

Surveillance includes criminal investigation

Feinberg 93 OPINION BY: FEINBERG, Circuit Judge: In Re: UNITED STATES OF AMERICA, Petitioner; IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE AND ELECTRONIC COMMUNICATIONS, ETC. . .

Docket No. 93-3074 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 10 F.3d 931; 1993 U.S. App. LEXIS 31014
November 23, 1993, Decided lexis

Second, petitioner has no alternative remedies capable of effectively protecting its substantial interests. Electronic surveillance involves major criminal investigations and requires a significant expenditure of government resources. Petitioner thus has a strong interest in ensuring the admissibility of evidence it gathers by electronic surveillance. Suppression on the ground that surveillance was authorized by an invalid Title III order would result in a significant waste of government resources. Furthermore, the government as parens patriae has an interest in avoiding illegal invasions of its citizens' privacy.

DOMESTIC SURVEILLANCE INVOLVES RELATIONSHIP INFIDELITY

Domestic surveillance involves investigating relationship infidelity

EPIS 15 Empire Pacific Investigative Service 2015 Domestic Surveillance | Surveillance Investigations | Surveillance http://www.epis.us/about_domestic_surveillance.html

What is domestic surveillance?

EPIS Domestic surveillance involves investigative measures used to determine if infidelity in a relationship has occurred. This technique involves an investigator in the field who will track and record the movements and activities of a suspected cheater

DOMESTIC

HAVING TO DO WITH ONE'S OWN COUNTRY

Domestic is related to a particular country

Random House 15 Random House Dictionary, © Random House, Inc. 2015.
Dictionary.com Unabridged
http://dictionary.reference.com/browse/domestic?s=t

Domestic [duh-mes-tik] adjective

1. of or relating to the home, the household, household affairs, or the family:
domestic pleasures.
2. devoted to home life or household affairs.
3. no longer wild; tame; domesticated :
domestic animals.
4. of or relating to one's own or a particular country as apart from other countries:
domestic trade.
5. indigenous to or produced or made within one's own country; not foreign; native:
domestic goods.

Domestic is related to your own country

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http://www.merriam-webster.com/dictionary/domestic

domestic adjective do·mes·tic \də-ˈmes-tik\
: of, relating to, or made in your own country
: relating to or involving someone's home or family
: relating to the work (such as cooking and cleaning) that is done in a person's home
Full Definition of DOMESTIC
1a : living near or about human habitations
b : tame, domesticated <the domestic cat>
2: of, relating to, or originating within a country and especially one's own country <domestic politics> <domestic wines>
3: of or relating to the household or the family <domestic chores> <domestic happiness>
4: devoted to home duties and pleasures <leading a quietly domestic life>
5: indigenous

Domestic is related to own country

Cambridge 15 Cambridge Dictionaries Online 2015 (Definition of domestic from the Cambridge Academic Content Dictionary © Cambridge University Press)
http://dictionary.cambridge.org/us/dictionary/american-english/domestic

Definition of "domestic" - American English Dictionary
Domestic adjective us /dəˈmes·tɪk/
domestic adjective (OF HOME)
› relating to the home, house, or family: I've never been fond of domestic chores like cooking and cleaning.
domestic adjective (OF COUNTRY)

› politics & government relating to a person's own country: The president's domestic policy has been more successful than his foreign policy.

Domestic is of a country

Webster's 10 Webster's New World College Dictionary Copyright © 2010 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/domestic

domestic
adjective
having to do with the home or housekeeping; of the house or family: domestic joys
of one's own country or the country referred to
made or produced in the home country; native: domestic wine
domesticated; tame: said of animals
enjoying and attentive to the home and family life

INSIDE A COUNTRY

Domestic is within a country

YourDictionary 15 YourDictionary definition and usage example. Copyright © 2015 by LoveToKnow Corp

http://www.yourdictionary.com/domestic

domestic [dō mes'tik, də-]
adjective
Domestic is defined as something related to the home or family, something occurring within a country, an animal that has been tamed, or a person who is fond of the tasks of running a home.

Family relations are an example of domestic relations.

Terrorism that occurs within your own country is referred to as domestic terrorism.

A dog that is kept as a house pet is an example of a domestic animal.

A woman who likes to cook and clean and bake is an example of someone who is domestic.

Domestic is in a country's territory

American Heritage 14 The American Heritage® Roget's Thesaurus. Copyright © 2013, 2014 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.

http://www.thefreedictionary.com/domestic

domestic adjective
1. Of or relating to the family or household:
familial, family, home, homely, household.
2. Trained or bred to live with and be of use to people:
tame.
3. Of, from, or within a country's own territory: home, internal, national, native.

PERTAIN ING TO INTERNAL MATTERS

Domestic is related to internal affairs

Webster's New World Law 10 Webster's New World Law Dictionary Copyright © 2010 by Wiley Publishing, Inc., Hoboken, New Jersey. Used by arrangement with John Wiley & Sons, Inc.

http://www.yourdictionary.com/domestic

domestic - Legal Definition adj
Pertaining to the internal affairs or products of a country; relating to matters of the family.

Domestic concerns internal affairs

WordNet 12 Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

http://www.thefreedictionary.com/domestic

Adj. 1. domestic - of concern to or concerning the internal affairs of a nation; "domestic issues such as tax rate and highway construction"
national - limited to or in the interests of a particular nation; "national interests"; "isolationism is a strictly national policy"
foreign - of concern to or concerning the affairs of other nations (other than your own); "foreign trade"; "a foreign office"

2. domestic - of or relating to the home; "domestic servant"; "domestic science"

3. domestic - of or involving the home or family; "domestic worries"; "domestic happiness"; "they share the domestic chores"; "everything sounded very peaceful and domestic"; "an author of blood-and-thunder novels yet quite domestic in his taste"
undomestic - not domestic or related to home; "had established herself in her career at the price of being so undomestic she didn't even know how to light the oven"

4. domestic - converted or adapted to domestic use; "domestic animals"; "domesticated plants like maize"
domesticated
tamed, tame - brought from wildness into a domesticated state; "tame animals"; "fields of tame blueberries"

5. domestic - produced in a particular country; "domestic wine"; "domestic oil"
native - characteristic of or existing by virtue of geographic origin; "the native North American sugar maple"; "many native artists studied abroad"

Domestic is related to internal issues

American Heritage 13 The American Heritage® Dictionary of the English Language, 5th edition Copyright © 2013 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.
http://www.yourdictionary.com/domestic

domestic
adjective
Of or relating to the family or household: domestic chores.
Fond of home life and household affairs.
Tame or domesticated. Used of animals.
Of or relating to a country's internal affairs: domestic issues such as tax rates and highway construction.
Produced in or indigenous to a particular country: domestic oil; domestic wine.

SURVEILLANCE

NO AGREEMENT ON MEANING

There is no agreement on what surveillance means

Huey 9 Laura Huey, prof of sociology, University of Western Ontario, 2009 Surveillance: Power, Problems, and Politics, Sean P. Hier and Josh Greenberg, eds p 221

> The past few years have witnessed incredible growth in the field of surveillance studies. Remarkably, despite this growth, there is no consensus on what forms of human activity are encompassed in the term "surveillance." Derived from the French for watching over, surveillance encompasses the basic activity of watching others. Brian Martin (1993, 115) uses surveillance in this sense when he describes it as "keeping a close watch on others." However this basic definition has been variously expanded upon and/or challenged. Gary Marx (1998), among others, suggests that there has been a notable shift in what consititutes surveillance. Marx distinguished between what he terms traditional surveillance, involving close observation of a targeted individual (e.g. the police officer who trails a suspect), and the new surveillance: technologies designed to systematically extract and collect personal data (e.g., the database that collects, sorts, and creates data profiles of targeted individuals and groups). Whereas traditional surveillance is an exceptional activity, proliferating technologies have made the new surveillance a routine, everyday activity that is largely invisible to those people whom it targets. What these two forms of surveillance share, however, is that each seeks to "eliminate privacy in order to determine normative compliance or to influence the individual." (Marx 2003, 370)

There is no agreement on meaning of surveillance

Neyland 6 Daniel Neyland, Senior Research Fellow, Said Business School, University of Oxford, UK 2006
Privacy, Surveillance and Public Trust pp 6-7

> The term surveillance is used in relation to a variety of contexts, by a range of social science research and is oriented towards diverse claims regarding the actions of particular technologies, places and people. While privacy can act as a useful organizing principle in analyzing claims regarding who should have what (in terms of rights, protections and remedies) and how these claims might be decided, surveillance can act as a useful organizing principle for analyzing claims about who does what (in terms of day to day activities inside and outside technologies involved in collection, storage and categorisation of information on the population).
> (new paragraph)
> It is not the case however, that there is agreement on which activities should form the focus for analysing surveillance. Rule (1973) considers surveillance as an embedded aspect of relations between the state and the population. 'Surveillance entails a means of knowing when rules are being obeyed, when they are broken, and most importantly, who is responsible for which' (1973:22). While Rule focuses on social order and possible punishment, McCahill (2002) focuses on the ambivalence of surveillance technologies. He argues that 'The introduction of new surveillance technologies always has a social impact, and this impact can be both positive and negative' (2002: xi). However Lyon (2001) shifts debate towards the practices of information collection and analysis involved in surveillance,

suggesting a definition of surveillance as: 'any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data have been garnered' (2001: 2). This view is contrasted by Bennett (2005) who suggests that Lyon draws his definitions too broadly and that greater attention needs to be paid to the details of exactly who has their personal data scrutinized, and to what effect. For Bennett most data collected is entirely routine and free from further scrutiny, both for the collectors and subjects of collection. Bennett suggests, however, that this is a highly selective, contingent process and forms the point at which questions should be asked of whose information is selected for greater scrutiny, why and for what end. This selectivity involves issues of identity (who someone is) and claims about likely future action (what threats they might pose.

ALL AGREE SURVEILLANCE IS WATCHING TO CONTROL

All agree surveillance is watching over to exert power or control

Huey 9 Laura Huey, prof of sociology, University of Western Ontario, 2009 Surveillance: Power, Problems, and Politics, Sean P. Hier and Josh Greenberg, eds p 221-2

> Among the various definitions and understandings of surveillance, there nevertheless remains common terrain. In the simplest sense – the act of watching over – surveillance encompasses activities that may be socially desirable. We might refer to the image of the nurse who keeps close watch over the ailing patient (Martin 1993) or even the police detective who watches the suspect in order to gather evidence or to prevent the commission of a crime (Marx 1988). In its more complex forms, the term carries nasty connotations (Martin 1993) – hence the frequent use of the mataphors of Orwell's Big Brother or Bentham's panopticon. Whether viewed as beneficial to society or detrimental to individual privacy, surveillance is about power and its manifestation in the world. The nurse who systematically collects the patient's vital signs uses this information to make decisions concerning the patient's well-being – a benevolent exercise of power. In contrast, the systematic collection of data on particular ethnic groups to target their members for increased observation by law enforcement can only be understood as power negatively manifested. I want to be explicit on this point: however a person is situated in relation to the exercise of power, understanding surveillance as the expression of power is necessary for understanding the politics of surveillance and, in particular, the beliefs and values of those who oppose its use and spread.

PURPOSE IS KEY

The purpose of observation determines whether it is surveillance

Huey 9 Laura Huey, prof of sociology, University of Western Ontario, 2009 Surveillance: Power, Problems, and Politics, Sean P. Hier and Josh Greenberg, eds p 221

For Colin Bennett (2005), such an understanding of surveillance is insufficient. Bennett argues that the use of technology to systematically capture and analyze data must be understood in relation to institutional, cultural, and political contexts and goals: an action alone does not constitute surveillance; it does so only in relation to its stated uses and goals. To illustrate this point, Bennett distinguished between the mundane collection and use of his personal data when taking a flight to Toronto and the experience of someone who has been targeted for close observation and special treatment by virtue of his or her name or meal preferences. According to Bennett, then, understanding surveillance as the simple act of watching over – the mother over the child, for example, "trivializes" its meaning, its uses, and the experience of its targets.

SURVEILLANCE IS LAW ENFORCEMENT INFO GATHERING

Surveillance is law enforcement's gathering of information on criminals and security threats

Hier 9 Sean P. Hier, prof of Sociology, University of Vivtoria, and Josh Greenberg, prof of communication studies, Carleton University, 2009 Surveillance: Power, Problems, and Politics, Sean P. Hier and Josh Greenberg, eds p 15

> Surveillance is commonly understood as an activity that law enforcement agencies engage in to gather information about criminals and other wrong-doers. When many people think of surveillance, images of espionage and secret policing activities come to mind. Following the 11 September 2001 attacks on Washington and New York, and the 7 July 2005 bus and train bombings in London, surveillance has also increasingly been understood in terms of border security provisions and anti-terrorism measures. Border security and formal law enforcement operations – overt and covert – are important forms of contemporary surveillance. But when surveillance is represented primarily if not exclusively as a security issue, the term fosters images of a relatively small and powerful group of people who have the means and the desire to monitor the masses (see also Haggerty's forward to this volume).

SURVEILLANCE IS SYSTEMATIC INFO COLLECTION

Surveillance is systematic collection of information

Kalhan 14 Anil Kalhan, Associate Professor of Law, Drexel University. Maryland Law Review 2014 74 Md. L. Rev. 1 Article: IMMIGRATION SURVEILLANCE lexis

A. The Functions and Practices of Immigration Surveillance

As conceptualized by John Gilliom and Torin Monahan, surveillance involves "the systematic monitoring, gathering, and analysis of information in order to make decisions, minimize risk, sort populations, and exercise power." n112 In this Section, I identify and analyze a series of specific surveillance practices and technologies that have become increasingly important components of immigration enforcement strategies. The processes and technologies that comprise the information infrastructure of immigration enforcement enable new approaches to four distinct sets of surveillance activities: identification, screening and authorization, mobility tracking and control, and information sharing.

Surveillance is systematic monitoring

Kalhan 14 Anil Kalhan, Associate Professor of Law, Drexel University. Maryland Law Review 2014 74 Md. L. Rev. 1 Article: IMMIGRATION SURVEILLANCE lexis

n4. John Gilliom & Torin Monahan, SuperVision: An Introduction to the Surveillance Society 2 (2013) (defining surveillance as involving "systematic monitoring, gathering, and analysis of information in order to make decisions, minimize risk, sort populations, and exercise power"); David Lyon, Surveillance Studies: An Overview 14 (2007); Jack M. Balkin, The Constitution in the National Surveillance State, 93 Minn. L. Rev. 1 (2008); Gary T. Marx, What's New About the "New Surveillance"? Classifying for Change and Continuity, 1 Surveillance & Soc'y 9, 18 (2002).

DOD 5 Dictionary of Military and Associated Terms. US Department of Defense 2005.

http://www.thefreedictionary.com/surveillance

Surveillance

The systematic observation of aerospace, surface, or subsurface areas, places, persons, or things, by visual, aural, electronic, photographic, or other means. See also air surveillance; satellite and missile surveillance; sea surveillance.

SURVEILLANCE IS GATHERING INFO TO CONTROL (LYON)

Surveillance is systemtic, routine observation of individuals for the purpose of influence or control

Richards 13 Neil M. Richards, Professor of Law, Washington University School of Law. Harvard Law Review May, 2013 126 Harv. L. Rev. 1934 SYMPOSIUM: PRIVACY AND TECHNOLOGY: THE DANGERS OF SURVEILLANCE lexis

> What, then, is surveillance? Scholars working throughout the English-speaking academy have produced a thick descriptive literature examining the nature, causes, and implications of the age of surveillance. n6 Working under the umbrella term of "surveillance studies," these scholars represent both the social sciences and humanities, with sociologists making many of the most significant contributions. n7
>
> Reviewing the vast surveillance studies literature, Professor David Lyon concludes that surveillance is primarily about power, but it is also about personhood. n8 Lyon offers a definition of surveillance as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction." n9 Four aspects of this definition are noteworthy, as they expand our understanding of what surveillance is and what its purposes are. First, it is focused on learning information about individuals. Second, surveillance is systematic; it is intentional rather than random or arbitrary. Third, surveillance is routine - a part of the ordinary administrative apparatus that characterizes modern societies. n10 Fourth, surveillance can have a wide variety of purposes - rarely totalitarian domination, but more typically subtler forms of influence or control. n11

Surveillance is gathering data to influence

Lyon 1 David Lyon, prof of sociology, Queen's University in Kingston, Ontario 2001 Surveillance Society p.2

> What is surveillance? In this context, it is any collection and processing of personal data, whether identifiable or not, for the purpose of influencing or managing those whose data have been garnered. Notice immediately that I used the words 'personal data'. The surveillance discussed here does not usually involve embodied persons watching each other. Rather, it seeks out factual fragments abstracted from individuals. Today, the most important means of surveillance reside in computer power, which allows collected data to be stored, matched, retrieved, processed, marketed and circulated. Even if the data go beyond mere numbers or names to DNA (deoxyribonucleic acid) codes or photographic images, the technologies that enable surveillance to occur involve computer power. It is the massive growth in computer application areas and technical enhancement that makes communication and information technologies central to surveillance.

(LYON'S) DATA COLLECTION DEFINITION IS TOO BROAD

(Lyon's) data collection definition is too broad

Neyland 6 Daniel Neyland, Senior Research Fellow, Said Business School, University of Oxford, UK 2006

Privacy, Surveillance and Public Trust pp 6-7

It is not the case however, that there is agreement on which activities should form the focus for analysing surveillance. Rule (1973) considers surveillance as an embedded aspect of relations between the state and the population. 'Surveillance entails a means of knowing when rules are being obeyed, when they are broken, and most importantly, who is responsible for which' (1973:22). While Rule focuses on social order and possible punishment, McCahill (2002) focuses on the ambivalence of surveillance technologies. He argues that 'The introduction of new surveillance technologies always has a social impact, and this impact can be both positive and negative' (2002: xi). However Lyon (2001) shifts debate towards the practices of information collection and analysis involved in surveillance, suggesting a definition of surveillance as: 'any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data have been garnered' (2001: 2). This view is contrasted by Bennett (2005) who suggests that Lyon draws his definitions too broadly and that greater attention needs to be paid to the details of exactly who has their personal data scrutinized, and to what effect. For Bennett most data collected is entirely routine and free from further scrutiny, both for the collectors and subjects of collection. Bennett suggests, however, that this is a highly selective, contingent process and forms the point at which questions should be asked of whose information is selected for greater scrutiny, why and for what end. This selectivity involves issues of identity (who someone is) and claims about likely future action (what threats they might pose.

SURVEILLANCE IS THE ACT OF WATCHING

Surveillance is the act of observing persons

Nolo 15 Nolo's Plain-English Law Dictionary 2015
http://www.nolo.com/dictionary/surveillance-term.html

Surveillance
The act of observing persons or groups either with notice or their knowledge (overt surveillance) or without their knowledge (covert surveillance). Intrusive surveillance by private citizens may give rise to claims of invasion of privacy. Police officers, as long as they are in a place they have a right to be, can use virtually any type of surveillance device to observe property. Police cannot use specialized heat-scanning surveillance devices to obtain evidence of criminal activity inside a home. Law enforcement officials acquired additional surveillance capability following enactment of The Patriot Act.

Surveillance is the act of watching people or place

Cambridge 15 Cambridge Dictionaries Online 2015 (Definition of surveillance from the Cambridge Academic Content Dictionary © Cambridge University Press)
http://dictionary.cambridge.org/us/dictionary/american-english/surveillance

Definition of "surveillance" - American English Dictionary
Surveillance noun [U] us /sərˈveɪ·ləns/
› the act of watching a person or a place, esp. a person believed to be involved with criminal activity or a place where criminals gather: The parking lot is kept under video surveillance.

Surveillance is keeping watch over

Random House 10 Random House Kernerman Webster's College Dictionary, © 2010 K Dictionaries Ltd. Copyright 2005, 1997, 1991 by Random House, Inc. All rights reserved.
http://www.thefreedictionary.com/surveillance

sur•veil•lance (sərˈveɪ ləns, -ˈveɪl yəns) n.
1. a watch kept over someone or something, esp. over a suspect, prisoner, etc.: under police surveillance.
2. supervision or superintendence.

Surveillance is observation

Collins 2 Collins Thesaurus of the English Language – Complete and Unabridged 2nd Edition. 2002 © HarperCollins Publishers 1995, 2002
http://www.thefreedictionary.com/surveillance

surveillance
noun observation, watch, scrutiny, supervision, control, care, direction, inspection, vigilance, superintendence He was arrested after being kept under constant surveillance.
Quotations
"Big Brother is watching you" [George Orwell 1984]

SURVEILLANCE IS CLOSE OBSERVATION

Surveillance is close observation

Webster's New World Law 10 Webster's New World Law Dictionary Copyright © 2010 by Wiley Publishing, Inc., Hoboken, New Jersey. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/surveillance

surveillance - Legal Definition n
A legal investigative process entailing a close observing or listening to a person in effort to gather evidentiary information about the commission of a crime, or lesser improper behavior (as with surveillance of wayward spouse in domestic relations proceedings). Wiretapping, eavesdropping, shadowing, tailing, and electronic observation are all examples of this law-enforcement technique.

Surveillance is closely observing

American Heritage 11 American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2011 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.

http://www.thefreedictionary.com/surveillance

sur·veil·lance (sər-vā'ləns) n.
1. Close observation of a person or group, especially one under suspicion.
2. The act of observing or the condition of being observed.

Surveillance is close supervision

Collins 3 Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003 http://www.thefreedictionary.com/surveillance

surveillance (sɜːˈveɪləns) n
1. (Law) close observation or supervision maintained over a person, group, etc, esp one in custody or under suspicion
[C19: from French, from surveiller to watch over, from sur-1 + veiller to keep watch (from Latin vigilāre; see vigil)]

Surveillance is close observation

WordNet 12 Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

http://www.thefreedictionary.com/surveillance

Noun 1. surveillance - close observation of a person or group (usually by the police)surveillance - close observation of a person or group (usually by the police)
police investigation, police work - the investigation of criminal activities
electronic surveillance - surveillance by electronic means (e.g. television)

vigil, watch - a purposeful surveillance to guard or observe
stakeout - surveillance of some place or some person by the police (as in anticipation of a crime)
surveillance of disease - the ongoing systematic collection and analysis of data about an infectious disease that can lead to action being taken to control or prevent the disease

Surveillance is close observation

YourDictionary 15 YourDictionary definition and usage example. Copyright © 2015 by LoveToKnow Corp

http://www.yourdictionary.com/surveillance

Surveillance [sər vā'ləns; occas., -vāl'yəns]
noun
Surveillance is the close observation of someone, often in order to catch them in wrongdoing.
An example of surveillance is a private detective hired to follow a cheating spouse before divorce proceedings.

Surveillance is close observation

American Heritage 13 The American Heritage® Dictionary of the English Language, 5th edition Copyright © 2013 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved.
http://www.yourdictionary.com/surveillance

surveillance
noun
Close observation of a person or group, especially one under suspicion.
The act of observing or the condition of being observed.

SURVEILLANCE IS CONTINUOUS WATCH

Surveillance is continuous watch

Random House 15 Random House Dictionary, © Random House, Inc. 2015. Dictionary.com Unabridged

http://dictionary.reference.com/browse/surveillance?s=t

Surveillance noun
1. a watch kept over a person, group, etc., especially over a suspect, prisoner, or the like: The suspects were under police surveillance.
2. continuous observation of a place, person, group, or ongoing activity in order to gather information:
video cameras used for covert surveillance. See also electronic surveillance.
3. attentive observation, as to oversee and direct someone or something:
increased surveillance of patients with chronic liver disease.

Surveillance is constant watch

Webster's 10 Webster's New World College Dictionary Copyright © 2010 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/surveillance

Surveillance noun
close watch kept over someone, esp. a suspect
constant observation of a place or process
supervision or inspection

surveillance is continued observation

English Wiktionary 15 English Wiktionary. Available under CC-BY-SA license. http://www.yourdictionary.com/surveillance

Surveillance Noun (plural surveillances)
Close observation of an individual or group; person or persons under suspicion.
Continuous monitoring of disease occurrence for example.
(military, espionage) Systematic observation of places and people by visual, aural, electronic, photographic or other means.
(law) In criminal law, an investigation process by which police gather evidence about crimes, or suspected crime, through continued observation of persons or places.

SURVEILLANCE IS CAREFUL OBSERVATION

Surveillance is careful observation

American Heritage 14
http://www.thefreedictionary.com/surveillance

Surveillance noun
The act of carefully watching: lookout, vigil, vigilance, watch. Idiom: watch and ward.

Surveillance is carefully watching

Merriam Webster 15 http://www.merriam-webster.com/dictionary/surveillance

surveillance
noun sur·veil·lance \sər-ˈvā-lən(t)s also -ˈvāl-yən(t)s or -ˈvā-ən(t)s\
: the act of carefully watching someone or something especially in order to prevent or detect a crime
Full Definition of SURVEILLANCE
: close watch kept over someone or something (as by a detective); also : supervision

QUESTIONING SUSPECTS IS NOT SURVEILLANCE

Surveillance is all means of perception except direct questioning and third party testimony

Uviller 87 H. Richard Uviller, Professor of Law, Columbia University. Columbia Law Review OCTOBER, 1987 87 Colum. L. Rev. 1137 ARTICLE: EVIDENCE FROM THE MIND OF THE CRIMINAL SUSPECT: A RECONSIDERATION OF THE CURRENT RULES OF ACCESS AND RESTRAINT. lexis

Under the term "surveillance," I intend to group all means of perception other than open interchange between an undisguised law enforcement officer and a suspect or witness. These indirect techniques include reception by all forms of invisible electronic or other sense-amplifying or recording gear, except those employed as memory-enhancers by visible official interrogators: n252 they embrace covert infiltration by police officer or informer; they cover the simple surreptitious tail or stakeout. All these methods of surveillance involve an element of stealth, concealment, or deception: the sensor is hidden or remote, the officer is disguised, the informer's loyalty is feigned. In one way or another, the government waits behind a more or less elaborate blind for the manifestation of culpable consciousness. Not included, however, are those cases in which the information comes into the hands of the authorities as a result of a civilian participant's shift of allegiance, or some other fortuitous, post-facto decision. Observations made by the spontaneous turncoat are the normal risk of confidence and beyond the concern of the Constitution. n253

The location of a surveillance may be as open as a public street or as private as a residential structure. Alternatively, surveillance may occur at a place where expectations of only partial privacy would be reasonable, such as a prison. Or the surveillance may be made in circumstances where a substantial portion of privacy has already been voluntarily relinquished, as with unprivileged oral communications delivered to one or more other people, or uttered in premises used by the general public, such as a restaurant. The techniques of surveillance are often purely passive, employed in one of two ways: the data may be perceived by or in the presence of a human agent, or it may be invisibly monitored. Surveillance techniques are usually noncoercive, but they may also involve solicitation, provocation, unconscionable fraud, or even brutal or threatening conduct.

The methods of surveillance can be conveniently divided, according to their impact upon fourth amendment interests, into three categories. The first and third categories are conventional and readily [*1197] described, the middle one is freshly carved and requires somewhat more extensive explanation and analysis. The first category encompasses the deliberate, surreptitious government intrusion into secure space by means of an invisible electronic device that operates without a human counterpart present. While employed for the purpose of gathering incriminating utterances or actions, the device is capable of perceiving innocent behavior as well. This level is immediately recognizable as conventional electronic eavesdropping, including by easy analogy, electronic visual penetration as well. n254 This is, of course, a fourth amendment event requiring full compliance with constitutional warrant strictures. n255 The third category includes casual, spontaneous, and limited field observation. Such ordinary police work must be left to the field discretion of the officer upon the theory that no cognizable interest in privacy insulates the citizen from the very performance in which we all assume our police are normally engaged. Finally, the middle category comprises perceptions of mind-revealing behavior under circumstances where a reduced expectation of security is reasonable.

Questioning suspects is not surveillance

Garrett 15 Brandon L. Garrett, Professor of Law, University of Virginia School of Law. University of Richmond Law Review March, 2015 49 U. Rich. L. Rev. 895 LETHAL INJECTION, POLITICS, AND THE FUTURE OF THE DEATH PENALTY: THE FUTURE OF THE DEATH PENALTY: INTERROGATION POLICIES lexis

n99. Id. Two agencies responded but stated that they were still in the process of locating and sending their policies. The agencies that did not comply with the FOIA request typically cited to Va. Code Ann. § 2.2-3706(2), which relates to criminal records and does not apply to interrogation related policies, and Va. Code Ann. § 2.2-3705.2(6), which applies in part to "operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques." Va. Code Ann. §§2.2-3705(6), 2.2-3706(2) (Repl. Vol. 2014). Policies for interviewing and interrogating suspects do not involve "surveillance techniques."

SURVEILLANCE IS NOT REPORTING PUBLIC EVENTS

Surveillance does not include reporting on public events

Collyer 7 JUDGES: ROSEMARY M. COLLYER, United States District Judge. OPINION BY: ROSEMARY M. COLLYER SERVICEMEMBERS LEGAL DEFENSE NETWORK, Plaintiff, v. DEPARTMENT OF DEFENSE AND DEPARTMENT OF JUSTICE, Defendants. Civil Action No. 06-200 (RMC) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA 471 F. Supp. 2d 78; 2007 U.S. Dist. LEXIS 2119

January 12, 2007, Decided lexis

SLDN argues that DOD improperly limited its search by narrowly interpreting SLDN's FOIA request. Originally, DOD did not search for TALON reports because SLDN requested documents related to "surveillance" and DOD does not believe the TALON program [**19] constitutes surveillance. DOD contends that "surveillance" involves keeping a close watch over a person or organization, while the TALON program dealt with mere reporting of public events that were scheduled to occur or had occurred. Defs.' Mem., Ex. 6. SLDN disputes this characterization of the term "surveillance" and alleges that DOD should not have interpreted its request so narrowly.

SURVEILLANCE IS NOT INDISCRIMINATE DATA COLLECTION

surveillance is distinct from general date collection

Joh 14 Elizabeth E. Joh, Professor of Law, U.C. Davis School of Law Washington Law Review March, 2014 89 Wash. L. Rev. 35 ARTIFICIAL INTELLIGENCE AND THE LAW: ESSAY: POLICING BY NUMBERS: BIG DATA AND THE FOURTH AMENDMENT lexis

> Not only is the quantity of information collected in the big data context far greater, the very nature of surveillance itself is different. If conventional surveillance involves the intentional tracking of one or a few suspects by actual police officers, what happens when a person "emerges" as a surveillance target as a result of a computer analysis? In the traditional surveillance context, the police have not been constrained by the Fourth Amendment so long as their investigations neither interfered with an individual's movements, nor ranged beyond public spaces. n168 As the Supreme Court has observed, there is no constitutional right to be free from police investigation. n169
>
> But this surveillance discretion may mean something different in the big data context. The intentional surveillance of targeted individuals is not equivalent to the perpetual "indiscriminate data collection" n170 of entire populations. While both approaches involve watching by the government, a program like the N.Y.P.D.'s "total domain awareness" system differs from traditional surveillance enough to warrant a different approach. n171 The very quality of public life may be different when government watches everyone - surreptitiously - and stores all of the resulting information. n172

CHARACTERISTICS OF SURVEILLANCE

Surveillance can be done in many ways

Constitution Committee 9 Constitution Committee, House of Lords, Parliament, UK 2009, Session 2008-09 Publications on the internet, Constitution Committee - Second Report, Surveillance: Citizens and the State Chapter 2 http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

18. The term "surveillance" is used in different ways. A literal definition of surveillance as "watching over" indicates monitoring the behaviour of persons, objects, or systems. However surveillance is not only a visual process which involves looking at people and things. Surveillance can be undertaken in a wide range of ways involving a variety of technologies. The instruments of surveillance include closed-circuit television (CCTV), the interception of telecommunications ("wiretapping"), covert activities by human agents, heat-seeking and other sensing devices, body scans, technology for tracking movement, and many others.

Surveillance can be preliminary, limited and full

Wells 4 Christina E. Wells, Enoch N. Crowder Professor of Law, University of Missouri-Columbia School of Law. Ohio Northern University Law Review 2004 30 Ohio N.U.L. Rev. 451 THE TWENTY-SEVENTH ANNUAL LAW REVIEW SYMPOSIUM PRIVACY AND SURVEILLANCE: EMERGING LEGAL ISSUES: Symposium Article: Information Control in Times of Crisis: The Tools of Repression lexis

The Levi guidelines contemplated three levels of investigations: preliminary, limited and full. Preliminary investigations could be instigated only upon the basis of "allegations or other information" that the target might be engaged in unlawful activities involving the use of force or violence. [n173] Such investigations were confined to ascertaining "whether there [was] a factual basis for opening a full investigation" and were limited to 90 days unless longer periods were approved by FBI headquarters. [n174] The guidelines further limited surveillance techniques in preliminary investigations to review of existing FBI files, existing law enforcement records, public records, and other established sources of information. [n175] Physical surveillance and interviews were allowed only to identify the subject of an investigation and more intrusive forms of surveillance, such as mail covers, mail openings, electronic surveillance, and recruitment of new informants were expressly prohibited. [n176]

Surveillance includes communication, physical, and transactional

Slobogin 97 Christopher Slobogin, Professor of Law, Alumni Research Scholar and Associate Dean, University of Florida College of Law; Reporter, American Bar Association Task Force on Technology and Law Enforcement.
Harvard Journal of Law & Technology Summer, 1997 10 Harv. J. Law & Tec 383 SYMPOSIUM: CRIME AND TECHNOLOGY: ARTICLE: TECHNOLOGICALLY-ASSISTED PHYSICAL SURVEILLANCE: THE AMERICAN BAR ASSOCIATION'S TENTATIVE DRAFT STANDARDS lexis

In 1995, the American Bar Association began an effort to fill this void. In May of that year, the ABA's Criminal Justice Section established a Task Force on Technology and Law Enforcement. n5 Composed of judges, prosecutors, defense attorneys, privacy experts, national security experts, law professors, and representatives of federal and state law enforcement agencies, n6 the Task Force was initially directed to [*387] review the ABA's Electronic Surveillance Standards. n7 These standards, which cover wiretapping and bugging, have not been substantially revised since 1978. n8 However, the ABA also recognized the

need to expand the scope of these standards to reflect the development of other "advanced investigative tools" -- tools that might require a rebalancing of "the need for aggressive law enforcement with privacy and freedom . . . considerations." n9

To carry out this objective, the Task Force divided law enforcement surveillance practices into three conceptual categories: communications surveillance, physical surveillance, and transactional surveillance. n10 The [*388] term communications surveillance encompasses the real-time n11 interception of oral, written, and electronic communications using electronic or other means. n12 Physical surveillance involves the real-time observation or detection of movements, activities, and conditions. Finally, transactional surveillance refers to efforts to access pre-existing records such as phone logs, electronic mail logs, credit card histories, other financial transaction data, and air, train, and bus travel bookings. n13

Surveillance can be physical or transaction

Slobogin 10 Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School.

Minnesota Law Review May, 2010 94 Minn. L. Rev. 1588 SYMPOSIUM CYBERSPACE & THE LAW: PRIVACY, PROPERTY, AND CRIME IN THE VIRTUAL FRONTIER: Proportionality, Privacy, and Public Opinion: A Reply to Kerr and Swire lexis

The problem with the Court's post-Terry cases is not their adoption of a balancing framework but their willingness to make blithe assumptions about the "invasiveness" of the government actions and to treat legislative and executive allegations of law enforcement "need" as givens. Instead, I argue, the Court should engage in strict scrutiny analysis of government efforts to obtain evidence of wrongdoing. n19 Privacy at Risk elaborates on this argument by focusing on two different types of government surveillance, "physical surveillance" and "transaction surveillance." Physical surveillance refers to real-time observation of physical behavior with the naked eye or with technology such as binoculars, night scopes, tracking devices, and surveillance cameras. n20 Transaction surveillance involves obtaining information about transactions from third-party record-holders, such as banks, credit card agencies and Internet service providers (ISPs). n21 With the help of technology, both types of surveillance have increased exponentially in the past decade. n22

Surveillance tends to be indiscriminate, continuous, and secret – as opposed to a search

Dempsey 97 James X. Dempsey, Senior Staff Counsel, Center for Democracy and Technology, Washington, D.C. Albany Law Journal of Science & Technology 1997 8 Alb. L.J. Sci. & Tech. 65

ARTICLE: COMMUNICATIONS PRIVACY IN THE DIGITAL AGE: REVITALIZING THE FEDERAL WIRETAP LAWS TO ENHANCE PRIVACY lexis

In important ways, electronic surveillance has always posed greater threats to privacy than the physical searches and seizures [*70] that the Fourth Amendment was originally intended to cover. n13 To begin with, "electronic surveillance is almost inherently indiscriminate." n14 Interception of a telephone line provides to law enforcement all of the target's communications, whether they are relevant to the investigation or not, raising concerns about compliance with the particularity requirement in the Fourth Amendment and posing the risk of general searches. n15 In addition, electronic surveillance involves an on-going intrusion in a protected sphere, unlike the traditional search warrant, which authorizes only one intrusion, not a series of searches or a continuous surveillance. n16 Officers must

execute a traditional search warrant with dispatch, not over a prolonged period of time. If they do not find what they were looking for in a home or office, they must leave promptly and obtain a separate order if they wish to return to search again. n17 Electronic surveillance, in contrast, continues around-the-clock for days or months. Finally, the usefulness of electronic surveillance depends on lack of notice to the suspect. n18 In the execution of the traditional search warrant, an announcement of authority and purpose ("knock and notice") is considered essential so that the person whose privacy is being invaded can observe any violation in the scope or conduct of the search and immediately seek a judicial order to halt or remedy any violations. n19 In contrast, wiretapping is conducted surreptitiously.

Surveillance can be individualized or programatic

Sales 14 NATHAN ALEXANDER SALES, Associate Professor of Law, Syracuse University College of Law.
I/S: A Journal of Law and Policy for the Information Society Summer, 2014 10 ISJLP 523 NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy lexis

Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar--i.e., individualized or particularized surveillance. Individualized surveillance takes place when authorities have some reason to think that a specific, known person is breaking the law. Investigators will then obtain a court order authorizing them to collect information about the target, with the goal of assembling evidence that can be used to establish guilt in subsequent criminal proceedings. Individualized surveillance is common in the world of law enforcement, as under Title III of the Omnibus Crime Control and Safe Streets Act of 1968. n23 It is also used in national security investigations. FISA allows authorities to obtain a court order to engage in wiretapping if they demonstrate, among other things, probable cause to believe that the target is "a foreign power or an agent of a foreign power." n24

By contrast, programmatic surveillance has very different objectives and is conducted in a very different manner. It usually involves the government collecting bulk data and then examining it to identify previously unknown terrorists, spies, and other national security threats. A good example of the practice is link analysis, in [*528] which authorities compile large amounts of information, use it to map the social networks of known terrorists--has anyone else used the same credit card as Mohamed Atta?--and thus identify associates with whom they may be conspiring. n25 (It is also possible, at least in theory, to subject these large databases to pattern analysis, in which automated systems search for patterns of behavior that are thought to be indicative of terrorist activity, but it's not clear that the NSA is doing so here.) Suspects who have been so identified can then be subjected to further forms of monitoring to determine their intentions and capabilities, such as wiretaps under FISA or other authorities. In a sense, programmatic surveillance is the mirror image of individualized surveillance. With individualized monitoring, authorities begin by identifying a suspect and go on to collect information; with programmatic monitoring, authorities begin by collecting information and go on to identify a suspect.

Surveillance can be mass or targeted

Constitution Committee 9 Constitution Committee, House of Lords, Parliament, UK 2009, Session 2008-09 Publications on the internet, Constitution Committee - Second Report, Surveillance: Citizens and the State Chapter 2
http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

TWO BROAD TYPES OF SURVEILLANCE

24. Two broad types of surveillance can be distinguished: mass surveillance and targeted surveillance. Mass surveillance is also known as "passive" or "undirected" surveillance. (JUSTICE, p 109, note 20) It is not targeted on any particular individual but gathers images and information for possible future use. CCTV and databases are examples of mass surveillance.

25. Targeted surveillance is surveillance directed at particular individuals and can involve the use of specific powers by authorised public agencies. Targeted surveillance can be carried out overtly or covertly, and can involve human agents. Under the Regulation of Investigatory Powers Act 2000 (RIPA), targeted covert surveillance is "directed" if it is carried out for a specific investigation or operation. By comparison, if it is carried out on designated premises or on a vehicle, it is "intrusive" surveillance. Targeting methods include the interception of communications, the use of communications "traffic" data, visual surveillance devices, and devices that sense movement, objects or persons.

Surveillance can be targeted or mass

Glancy 12 Dorothy J. Glancy, Professor of Law, Santa Clara University Law School.
Santa Clara Law Review 2012 52 Santa Clara L. Rev. 1171 lexis

Covert surveillance by autonomous vehicles secretly collecting and reporting personal information seems more likely. Such surveillance is often conducted remotely so that it remains hidden from those being monitored. Given the sophisticated technologies applied in autonomous vehicles, technically unsophisticated users may not understand an autonomous vehicle's potential surveillance capabilities to collect, store, or share personal information about its user. These covert surveillance capabilities include both targeted surveillance of a particular person and mass surveillance of groups or populations.

1. Targeted Surveillance

Targeted surveillance keeps track of a particular identified human person, who would otherwise expect to be let alone, and certainly not to be followed. Such surveillance nearly always involves surreptitiously collecting detailed personal information about the targeted individual and keeping track of the target's every move. Usually, this type of information collection is not conducted openly. For example, assume that an autonomous vehicle generates personal information about a user's location in real time without the user's knowledge or consent. If communicated beyond the vehicle, this real-time information would make it possible to locate the targeted user all of the time, as well as to maintain a comprehensive record of all the places the user has been. When this personal information is transmitted or disclosed to recipients unknown to the target, such surveillance compromises both autonomy and personal information privacy interests. This is the type of vehicle tracking that, because no warrant authorized installation of the tracking device, was held unconstitutional by the United States Supreme Court in United States v. Jones. n97 [*1210] Unless personal information from autonomous vehicle is encrypted and rendered anonymous, interconnected autonomous vehicles communicating location and other data back and forth over a wireless network could be very useful tools for invisible targeted surveillance. Absent data encryption and anonymity, access to an autonomous vehicle network would enable immediate remote access to the real time location of an autonomous vehicle and its user. Such access would also enable collection of longitudinal records of past locations. As a result, access to the interconnected autonomous vehicle network, would enable law enforcement, national security, and other types of public and private agencies to conduct remote surveillance of the vehicle's user. When a third party, such as a network

operator, is a repository of personal information collected through such surveillance, privacy protection would be even further compromised. n98 This personal information held by third parties would be available to government and private sector investigators through subpoenas or administrative orders, without the target of the surveillance ever knowing that the information exists. Indeed, law enforcement access to certain stored personal information from such a network may require neither probable cause nor a warrant. n99

A selfcontained autonomous vehicle could also be tracked and its user targeted for surveillance in real time. However, the vehicle itself would not be transmitting the surveillance information. Unless connected to a network or attached to a tracking device, a selfcontained autonomous vehicle would not itself enable remote real-time tracking. However, to the extent that the vehicle keeps historical information, such as [*1211] past itineraries, about the surveillance target, that information could be extracted from the selfcontained autonomous vehicle by those with access to the computer systems inside the vehicle. Unlawful access by breaking into the vehicle would possibly be deterred by burglary and other laws. Law enforcement extraction of surveillance information from a selfcontained autonomous vehicle would likely require at least probable cause as well as a warrant. n100

Use of autonomous vehicles comprehensively to keep track of the whereabouts of a targeted individual in all places and at all times can exert substantial control over that individual. Maintaining centralized information about an individual compromises individual self-determination and autonomy and can be harmful to the individual's psychological health. Comprehensive centralized surveillance systems concentrated on an individual can also influence the individual's future choices by keeping track of each time that individual visits socially or politically "unacceptable" locations. The New York Court of Appeals described the impact of targeted surveillance: "Disclosed in [tracking] data ... will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on." n101

Targeted surveillance compromises an important aspect of individual autonomy - the ability to resist being categorized, manipulated psychologically, intimidated, or mechanistically predicted by society or the government. When an individual is subject to being constantly watched, that person does not feel free to question or to oppose those in charge of the surveillance system.

2. Mass Surveillance

Mass surveillance involves indiscriminate and comprehensive collection of personal information from [*1212] everyone within an area or sector. This type of large-scale surveillance of a population can also function as an instrument of control over the behavior of every individual within that population. Jeremy Bentham suggested this use of mass surveillance in his design for an efficient prison which he called the panopticon - all-seeing device. n102

Applied to autonomous vehicles, mass surveillance could seek to collect personal information about all those who use autonomous vehicles. Such mass surveillance would collect and define behavior patterns of autonomous vehicle users. These profiles could later be useful for such purposes as (i) creating algorithmic profiles of typical autonomous vehicle users, (ii) predicting each autonomous vehicle user's individual behavior, or (iii) finding one autonomous vehicle that may or may not be behaving according to prescribed patterns.

Mass surveillance is sometimes confused with intense, comprehensive surveillance of a targeted person. For example, surveillance of the suspected drug dealer, Antoine Jones, in United States v. Jones constructed a comprehensive pattern, or mosaic, of highly detailed information about Jones's activities and used that mosaic to locate his drug stash house. n103 Real-time information from the GPS surveillance device attached to his vehicle allowed law enforcement to follow Jones and to see him traveling to the stash house where he was arrested. Just about every investigative tool in the law enforcement surveillance arsenal was used against Jones: wiretaps, physical following, fixed-camera surveillance, as well as attachment of a GPS tracking device to his vehicle, so that the device automatically and continuously located Jones and recorded his every movement. However, the GPS tracking was crucial; and it was the warrantless installation of the GPS device that caused the United States Supreme Court to overturn Jones's criminal conviction. These efforts by law enforcement to follow Jones everywhere and to collect detailed information about what he was doing and with whom he was doing it all of the time was intensive, comprehensive targeted surveillance using massive resources. But such tracking was not mass surveillance, [*1213] since the government has not yet tried to watch everyone in the District of Columbia as intensively as law enforcement agencies targeted Jones. Nevertheless, the potential for scaling up the type of massive surveillance used to convict Jones into region-wide mass surveillance of all persons, including those not suspected of criminal activity, troubled some of the Justices who decided Jones.

Mass surveillance operates at a different level from the comprehensive surveillance that targeted Jones. Instead, mass surveillance indiscriminately collects personal information about large numbers of people on a population-wide basis. n104 Usually mass surveillance is covert so as not to affect the patterns of human behavior being recorded. But mass surveillance can also be overt, as Jeremy Bentham suggested for the Panopticon Prison. n105 Automated photo-radar is sometimes used in this open way to deter speeding by announcing that all vehicles on a particular road will have their speeds and license plates recorded, and driver photographs taken, so that citations can be sent automatically to those who were speeding. Some towns engage in overt mass surveillance when they post signs that a photograph of every vehicle and its license plate is taken upon entering or leaving the municipality. n106

Mass surveillance that collects personal information from everyone on the road is not necessary for most transportation management and planning purposes. Anonymous data identifying neither vehicles nor drivers is sufficient for calculating traffic flows or road usage for transportation management and land use planning purposes. For example, [*1214] cameras recording roadway traffic flows often use low-resolution optics incapable of capturing specific vehicles or license plates. Loop detectors or other sensors that do not identify particular vehicles are used to collect information about how many vehicles use particular road segments at particular times and how fast vehicles in general are moving on those segments. In contrast, more precise roadway surveillance that collects specific identifying information about each vehicle or person on a roadway facilitates use of that information for purposes other than counting cars or determining traffic speeds. For example, roadway surveillance that identifies vehicles or drivers may be used to enforce traffic laws, as well as to find or to follow a particular person for further investigation. Roadway surveillance information that collects personal data about everyone is often used to compile profiles of people who use particular routes. Mass-collected personal data profiles of individuals' travel patterns can be used not only by law enforcement, but by marketers and advertisers who use the data to predict and manipulate future consumer

behavior, for example through direct behavioral advertising. Such detailed personal information about an autonomous vehicle user's locations and on-road behavior can be highly valuable both to the government and to private sector enterprises of many different types, such as news media, private investigators, insurance companies, vehicle product manufacturers, and political campaigns.

The interconnected version of autonomous vehicles could enable mass surveillance in the form of comprehensive, detailed tracking of all autonomous vehicles and their users at all times and places. The networked nature of this type of autonomous vehicle involves a communications network that transmits and receives information related to each particular vehicle. Being able to identify specific devices may be necessary for network security. But, unless measures are taken to assure anonymity as well as data security, the resulting comprehensive personal information collection could be used to profile, predict, and perhaps manipulate the behavior of the vehicles and their users. Law enforcement, private investigators, advertisers, and marketers will all be eager to seek access to an interconnected autonomous vehicle network, as well as to the personal data transmitted through[*1215] such a network, unless the network is carefully planned to preserve and protect privacy.

It is interesting to note that selfcontained autonomous vehicles could be used for a different type of mass surveillance. These vehicles rely on arrays of externally facing sensors that will continuously collect detailed information about the roadway environment surrounding the vehicle. Information from these sensors is processed by the vehicle's analytic systems that enable the vehicle to distinguish toddlers from fireplugs. As a result, the selfcontained vehicle will collect detailed data about everywhere the vehicle travels, as well as everything and everyone encountered. In some ways, a selfcontained autonomous vehicle operates as a "mobile panopticon" that moves along roads and highways and literally takes in all details about what is going on in the areas through which the vehicle travels. Based on such mass surveillance concerns, Federal Communications Commission imposed sanctions on Google, for collection of wireless information by "Street View." n107

Mass surveillance collection and use of personal information about large numbers of people also compromises autonomy privacy interests. Surveillance systems - whether they are law enforcement programs, traffic management systems, or private marketing systems - all directly affect the autonomy of travelers by overriding individual control over who or what watches and keeps track of their movements from place to place. When the government controls such universal surveillance, political concerns about centralizing too much power in a potentially overbearing state reinforce privacy concerns. Authoritarian systems can misuse such mass surveillance systems to round up suspects or to treat individuals or whole categories of people as undesirable or deserving sanctions based on where they are or where they have been. Personal mobility is an aspect of people's lives that totalitarian political systems particularly seek to control.

Travelers forced to look over their shoulders for surveillance systems are affected both by knowing and by not

[*1216] knowing whether or when others are watching their actions or capturing personal information about them. Particularly when a person chooses to do something unconventional or considers going to a potentially notorious destination, such uncertainty can be stifling.

Surveillance can be mass or targeted

Constitution Committee 9 Constitution Committee, House of Lords, Parliament, UK 2009, Session 2008-09 Publications on the internet, Constitution Committee - Second Report,

Surveillance: Citizens and the State Chapter 2
http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

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Surveillance is sustained and targeted

Macnish 11 Kevin Macnish, University of Leeds, United Kingdom 2011 Surveillance Ethics | Internet Encyclopedia of Philosophy, a peer-reviewed academic resource
www.iep.utm.edu/surv-eth/

Surveillance involves paying close and sustained attention to another person. It is distinct from casual yet focused people-watching, such as might occur at a pavement cafe, to the extent that it is sustained over time. Furthermore the design is not to pay attention to just anyone, but to pay attention to some entity (a person or group) in particular and for a particular reason. Nor does surveillance have to involve watching. It may also involve listening, as when a telephone conversation is bugged, or even smelling, as in the case of dogs trained to discover drugs, or hardware which is able to discover explosives at a distance.

Surveillance can be prospective or retrospective

Kerr 3 Orin S. Kerr, Associate Professor, George Washington University Law School. Northwestern University Law Review Winter, 2003 97 Nw. U.L. Rev. 607 ARTICLE: INTERNET SURVEILLANCE LAW AFTER THE USA PATRIOT ACT: THE BIG BROTHER THAT ISN'T lexis

The law often distinguishes between prospective and retrospective surveillance because they raise somewhat different privacy concerns. As Justice Douglas noted in his concurrence in Berger v. New York, n38 prospective surveillance can at worst constitute "a dragnet, sweeping in all conversation within its scope." n39 The surveilling party taps into the network at a given location and picks up traffic passing through, but cannot know in advance exactly what the traffic will be. Some of the traffic may prove relevant, but usually much of the traffic will not be. n40 Further, it can be technically difficult (if not impossible) to filter the communications down to the relevant evidence before the government observes it. Accordingly, prospective surveillance tends to raise difficult questions of how the communications should be filtered down to the evidence the government seeks. n41 In contrast, the scope of retrospective surveillance is generally more limited. The [*617] primary difference is that in most cases a substantial portion of the evidence will no longer

exist. n42 Because retrospective surveillance involves accessing records that have been retained in a network, the scope of surveillance ordinarily will be limited to whatever information or records may have been retained in the ordinary course of business. n43 Some records may be kept, but others may not.

EXAMPLES OF SURVEILLANCE

Surveillance can include review of personal data

Constitution Committee 9 Constitution Committee, House of Lords, Parliament, UK 2009, Session 2008-09 Publications on the internet, Constitution Committee - Second Report, Surveillance: Citizens and the State Chapter 2 http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

USES OF PERSONAL DATA

26. The term "surveillance" is sometimes applied to the collection and processing of personal data. The combined term "dataveillance" covers "the systematic use of personal data systems in the investigation or monitoring of the actions or communications of one or more persons".[34] JUSTICE suggested that a common feature of surveillance was "the use of personal data for the purpose of monitoring, policing or regulating individual conduct." (p 109, note 20) Dr David Murakami Wood, Lecturer at the School of Architecture, Planning and Landscape, University of Newcastle upon Tyne, and representative of the Surveillance Studies Network, said that the use of definitional extremes—which regard all (or at least all unwanted or unjustified) information gathering as surveillance—was unhelpful. He argued that "information gathering with the intent to influence and control aspects of behaviour or activities of individuals or groups would be our working definition." (Q 37)

27. The term "data use" includes those forms of personal data collection and processing relevant to surveillance as defined in the Data Protection Act 1998 (DPA) and the 1995 European Data Protection Directive 95/46/EC (the Directive) that the DPA transposes into UK law. These documents state that the "'processing of personal data' … shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction".[35]

Surveillance includes telephone metadata and specific communications

Sales 14 NATHAN ALEXANDER SALES, Associate Professor of Law, Syracuse University College of Law.

I/S: A Journal of Law and Policy for the Information Society Summer, 2014 10 ISJLP 523 NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy lexis

Based on press accounts, the NSA appears to be using the Foreign Intelligence Surveillance Act (FISA) to engage in programmatic, or bulk, surveillance--the collection of large amounts of data in an attempt to identify yet-unknown terrorists, spies, and other national security threats. n6

[*525] The first initiative--the so-called telephony metadata or section 215 program--involves the use of court orders under FISA's business records authority (which was enacted by section 215 of the USA PATRIOT Act) n7 to collect transactional information about every telephone call placed over the networks of domestic telecommunications carriers--i.e., numbers dialed and call duration, but not content or location data. n8 At the risk of understatement, that is a monumental volume of data. n9 Once collected, these records are warehoused in special government databases and made available to intelligence analysts

under fairly narrow circumstances. The FISA court's orders allow analysts to query the databases only if there is "reasonable suspicion, based on specific articulable facts, that a particular telephone number is associated with specified foreign terrorist organizations." n10 Originally, the NSA was responsible for determining whether the requisite suspicion was present in a given case, but President Obama has since directed the NSA to seek FISA court approval before querying the database, and the court has agreed to review such requests. n11 In 2012, analysts checked about 300 numbers against the database. n12 As this article goes to press, Congress is on the verge of enacting legislation that would substantially alter the program. Among other changes, the bill would bar the NSA from itself [*526] collecting bulk telephony metadata. Instead, phone companies would hold the data, and NSA analysts could only acquire call records that are associated with a "specific selection term" (such as a particular phone number) and only with the prior approval of the FISA court. n13

The FISA court repeatedly has upheld the section 215 program on both constitutional grounds (concluding that the acquisition of bulk telephony metadata was not a "search" within the meaning of the Fourth Amendment, largely on the strength of the third-party doctrine recognized in Smith v. Maryland n14 and other cases) and statutory ones (concluding that troves of data sought were tangible things that are relevant to an authorized investigation, as required by section 215). n15 By 2013, 15 different FISA court judges had approved the program in 35 separate rulings since its inception. n16 Other judges are more divided; in a pair of dueling rulings issued late last year, a federal judge in Washington, DC invalidated the program while another in Manhattan affirmed its legality. n17

The second program--known as PRISM or section 702--uses court orders issued under section 702 of FISA n18 to collect the content of certain international communications. In particular, the NSA targets specific non-Americans who are reasonably believed to be located outside the country, and also engages in bulk collection of some foreign-to-foreign communications that happen to be passing through telecommunications infrastructure in the United States. n19 The FISA [*527] court does not approve individual surveillance applications each time the NSA wishes to intercept these communications; instead, it issues once-a-year blanket authorizations. n20 As detailed below, in 2011 the FISA court struck down the program on constitutional and statutory grounds after the government disclosed that it was inadvertently intercepting a significant number of communications involving Americans; n21 the court later upheld the program when the NSA devised a technical solution that prevented such over-collection. n22

Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar--i.e., individualized or particularized surveillance.

Surveillance includes wiretaps, tracking devices, and undercover agents

Walen 11 Alec Walen, Associate Professor of Law, Rutgers School of Law, Camden; Associate Professor of Philosophy, Rutgers University, New Brunswick. Journal of Criminal Law & Criminology Summer, 2011 101 J. Crim. L. & Criminology 803 SYMPOSIUM: PREVENTIVE DETENTION: CRIMINALIZING STATEMENTS OF TERRORIST INTENT: HOW TO UNDERSTAND THE LAW GOVERNING TERRORIST THREATS, AND WHY IT SHOULD BE USED INSTEAD OF LONG-TERM PREVENTIVE DETENTION lexis

Consider first what we can expect to do with surveillance. If there is probable cause to believe that a person is involved in criminal activity (including, of course, terrorist activity), a

warrant could be obtained to wiretap his phone or computer communication. n78 Or, if there is probable cause to believe that he is an agent of an FTO, a FISA warrant can be obtained to do the same thing. n79 But someone plotting to commit a terrorist act, particularly once he has already been detained and questioned, must suspect that the government will be watching him in that way, and will avoid saying anything revealing on the phone or in mail (whether electronic or paper). He will communicate in person.

Another way to use surveillance would be to track his movements, either by putting a tracking device on his car n80 or even on his person. n81 But where one goes is not itself incriminating. If he went to the home of other STs, that might be helpful in building a conspiracy case. But it would only be a first step. Without more, there would be insufficient evidence to convict. n82

The most useful form of surveillance would involve undercover agents who offer their services to help him carry out a terrorist plot. n83 If someone is not well networked into a terrorist organization that has done careful vetting, it would be hard for him to know that a person is an undercover agent who cannot be trusted. But if someone either has the capacity to operate essentially as a lone wolf, or has the right connections to help him vet his contacts, he will not easily be taken in by undercover agents.

Surveillance includes wiretapping

Atkinson 13 L. Rush Atkinson, U.S. Department of Justice, National Security Division. Vanderbilt Law Review October, 2013 66 Vand. L. Rev. 1343 ARTICLE: The Fourth Amendment's National Security Exception: Its History and Limits lexis

Wiretapping, also known as telephone surveillance, involves the interception of a message during its transmission by wire or radio wave from one party to another. n168 Like bugging and physical searches, wiretapping became frequently employed in national security investigations; as noted above, Franklin Roosevelt authorized wiretapping in security matters as early as 1940. n169 But, while wiretapping was prolific in security investigations, federal officials did not rely on the Fourth Amendment's national security exception because, unlike bugging, wiretapping rarely involves physical trespass. Consequently, in Olmstead v. United States, the Supreme Court held such surveillance to be outside the Fourth Amendment's ambit and therefore constitutionally permissible. n170

wire taps are surveillance

L I I 15 Legal Information Institute LII a small research, engineering, and editorial group housed at the Cornell Law School 2015 Electronic Surveillance https://www.law.cornell.edu/wex/electronic_surveillance

Using electronic devices to keep surveillance over a person can implicate the investigated individual's Fourth Amendment rights. One form of electronic surveillance developed by law enforcement results in attaching a "bug" to a person's telephone line or to a phone booth and recording the person's conversation. Courts have held that this practice constitutes a search under the Fourth Amendment because the Fourth Amendment protects an individual's privacy rights for situations in which the person has a legitimate expectation of privacy. Courts have held that when having a telephone conversation, one would not expect an unknown third-party government agent to listen in on the conversation. A person has a legitimate expectation of privacy if the person honestly and genuinely believes the location under search to be private and if the reasonable person under the same or similar circumstances would believe the location to be private as well. Therefore, law enforcement has more leeway when intercepting communications in a public place than when the interception occurs in a secluded environment. The courts have given law enforcement the

freedom to record conversation during jail visits, provided that the monitoring reasonably relates to prison security.

Surveillance includes tracking location

Ferguson 14 Andrew Guthrie Ferguson, Associate Professor of Law, University of the District of Columbia David A. Clarke School of Law. April, 2014 William & Mary Law Review 55 Wm. & Mary L. Rev. 1283
ARTICLE: PERSONAL CURTILAGE: FOURTH AMENDMENT SECURITY IN PUBLIC lexis

Where we go reveals what we do, and perhaps a measure of who we are or want to be. Location, when combined with information about individuals, organizations, and services in an area, can produce a wealth of information about a person. Geolocational surveillance involves a host of tracking technologies including [*1353] highly sophisticated GPS tracking devices, low-tech beepers, and other devices that reveal the location of the person in real time. n367

Drones are used for domestic surveillance

Nesbit 13 Jeff Nesbit, staffwriter March 25, 2013 US News Drone Wars in America Growth expected in years to come in industry that causes privacy concerns.
http://www.usnews.com/news/blogs/at-the-edge/2013/03/25/drone-wars-in-america

The reason the use of drones in cities is poised to become widespread is because Congress has required the Federal Aviation Administration to loosen their regulations on the use of unmanned aerial vehicles (UAVs) and drones for domestic surveillance purposes, and allow more drones in domestic airspace by 2015.

Surveillance includes use of drones

Watson 12 Steve Watson, Prisonplanet.com February 28, 2012 Rights Groups Petition FAA On Use Of Drones In US Skies http://www.prisonplanet.com/rights-groups-petition-faa-on-use-of-drones-in-us-skies.html

Over 30 rights groups, including The American Civil Liberties Union, The Electronic Privacy Information Center and The Bill of Rights Defense Committee are demanding that the FAA hold a rulemaking session to consider the privacy and safety threats posed by the increased use of drones.

The petition (PDF) notes that because "drones greatly increase the capacity for domestic surveillance", including the use of sophisticated high-definition digital and infrared cameras, heat sensors and motion detectors, they must be subject to increased rather than relaxed scrutiny and regulation.

Surveillance is used in border control

Kalhan 14 Anil Kalhan, Associate Professor of Law, Drexel University. Maryland Law Review 2014 74 Md. L. Rev. 1 Article: IMMIGRATION SURVEILLANCE lexis

1. Border Control

Despite implementation challenges, Congress and DHS have placed new surveillance technologies at the heart of border control strategies. n162 Physical barriers along the U.S.-Mexico border have been supplemented with advanced lighting, motion sensors, remote cameras, and mobile surveillance systems, and DHS has deployed a fleet of unmanned aerial [*42] vehicles to monitor coastal areas and land borders. n163 To date, these drones primarily have been used to locate illegal border crossers and individuals suspected of drug trafficking in remote areas using ultra high-resolution cameras, thermal detection sensors,

and other surveillance technologies. n164 However, drones also have been used to patrol and monitor activities within Mexico itself. n165 In addition, government documents indicate that DHS's drones are capable of intercepting wireless communications and may eventually incorporate facial recognition technology linked to the agency's identification databases. n166 According to one official, CBP's drones can "scan large swaths of land from 20,000 feet up in the air while still being able to zoom in so close that footprints can be seen on the ground." n167 The DHS has plans both to expand its fleet of drones and to increase their surveillance capabilities, and immigration reform proposals in Congress would significantly build upon these recent expansions. n168

Border patrol is domestic surveillance

Mulrine 13 Anna Mulrine, Staff writer March 13, 2013 Christian Science Monitor Drones over America: public safety benefit or 'creepy' privacy threat? http://www.csmonitor.com/USA/Society/2013/0313/Drones-over-America-public-safety-benefit-or-creepy-privacy-threat

The US Border Patrol has the country's largest fleet of UAVs for domestic surveillance, including nine Predator drones that patrol regions like the Rio Grande, searching for illegal immigrants and drug smugglers. Unlike the missile-firing Predators used by the Central Intelligence Agency to hunt Al Qaeda operatives and their allies, the domestic version of the aircraft – say, those used by the border patrol – is more typically equipped with night-vision technology and long-range cameras that can read license plates. Groups like the American Civil Liberties Union (ACLU) also complain that these drones have see-through imaging technology similar to those used in airports, as well as facial recognition software tied to federal databases.

Surveillance is ONE of the measures to prevent diversion of nucleat fuel

Perez 94 Antonio F. Perez, Assistant Professor of Law, Columbus School of Law, The Catholic University of America. Virginia Journal of International Law Summer, 1994 34 Va. J. Int'l L. 749

ARTICLE: Survival of Rights Under The Nuclear Non-Proliferation Treaty: Withdrawal and the Continuing Right of International Atomic Energy Agency Safeguards lexis

n24. Paragraph 29 of INFCIRC/153 provides that "material accountancy shall be used as a safeguards measure of fundamental importance, with containment and surveillance as important complementary features." INFCIRC/153, supra note 23. Safeguards, roughly put then, are a bean-counting exercise involving the provision of information by the safeguarded state and on-site inspection by the IAEA to verify the location of nuclear material. The "accountancy" component of safeguards refers to the obligation of the safeguarded state to keep accurate and complete records of nuclear material subject to safeguards. Paragraphs 59-69 of INFCIRC/153 provide for detailed reports by the safeguarded state to the IAEA; notably including, pursuant to paragraph 62, an initial report, or "declaration," which establishes a baseline for material accounting. Based on these reports "and the results of its verification activities," the IAEA maintains an inventory of safeguarded nuclear material. Id. para. 41. Verification activities specified in the agreement include routine, ad hoc, and special inspections. Id. paras. 71-73. "Routine" inspections are limited to access to "strategic points" negotiated in the subsidiary arrangements between the safeguarded state and the IAEA for implementation of the agreement. Id. para. 76(c). Ad hoc inspections, which are primarily conducted to verify the initial report, id. paras. 71(a) and (b), authorize access in such cases, "and until such time as the strategic points have been specified in the Subsidiary

Arrangements, ... to any location where the initial report or any inspections carried out in connection with it indicate that nuclear material is present," id. para. 76(a). When, pursuant to paragraph 73(b), the IAEA "considers that the information made available" to it "is not adequate for the Agency to fulfill its responsibilities under" the agreement, it may "obtain access, in agreement with ... [the safeguarded state], to information or locations in addition to those specified" for routine or ad hoc inspections. Id. para. 77(b). The scope of inspections includes, among other things, "containment," which allows for the application of locks and seals on nuclear storage areas to prevent movement of nuclear material, and "surveillance," which involves human and remote observation of specified activities at nuclear facilities. Id. para. 74(d); Edwards, International Legal Aspects of Safeguards, supra note 23, at 6.

Surveillance can occur in schools

Adams 2K A. Troy Adams. associate professor of sociology at Eastern Michigan University, The Annals of The American Academy of Political and Social Science January, 2000 567 Annals 140

ARTICLE: The Status of School Discipline and Violence lexis

The late 1980s and early 1990s saw the elasticity of discipline. Discipline moved away from more humane methods toward zero tolerance, a get-tough approach reminiscent of sixteenth-century draconian practices. The zero-tolerance approach has taken off in response to the more violent nature of school disruption. Zero tolerance has two major dimensions: detection and punishment. The detection aspect involves surveillance, which includes everything from adult hall monitors, police, and professional security guards to "cameras, metal detectors, locker searches, and other measures more commonly seen in prisons" (Greenberg 1999, 3). Some, such as Hylton (1996), view detection not as prisonlike but as a "proactive" approach involving great attention to security. His manual is a step-by-step guide to mobilizing school security. It presents a wealth of information pertaining to loss prevention planning, development of security forces, external vehicular patrol, protective barriers and lighting, and security detection, training, and equipment.

Surveillance includes early detection of disease

Institute of Medicine 7 Institute of Medicine (US) Forum on Microbial Threats. Washington (DC): National Academies Press (US); 2007. Global Infectious Disease Surveillance and Detection: Assessing the Challenges—Finding Solutions, Workshop Summary. http://www.ncbi.nlm.nih.gov/books/NBK52862/

Early detection is essential to the control of emerging, reemerging, and novel infectious diseases, whether naturally occurring or intentionally introduced. Containing the spread of such diseases in a profoundly interconnected world requires active vigilance for signs of an outbreak, rapid recognition of its presence, and diagnosis of its microbial cause, in addition to strategies and resources for an appropriate and efficient response. Although these actions are often viewed in terms of human public health, they also challenge the plant and animal health communities.

Surveillance, defined as “the continual scrutiny of all aspects of occurrence and spread of a disease that are pertinent to effective control” (IOM, 2003; Last, 1995; WHO, 2000), involves the “systematic collection, analysis, interpretation, and dissemination of health data” (WHO, 2000). Disease detection and diagnosis is the act of discovering a novel, emerging, or reemerging disease or disease event and identifying its cause. Diagnosis is “the cornerstone of effective disease control and prevention efforts, including surveillance” (IOM, 2003).

Surveillance of health can be active or passive

Thompson 4 Brian Thompson, J.D., Boston University School of Law, 2005. American Journal of Law & Medicine 2004 30 Am. J. L. and Med. 543 NOTE AND COMMENT: The Obesity Agency: Centralizing the Nation's Fight Against Fat lexis

b. Surveillance

Surveillance involves "the systematic observation of a population to identify the causes, prevalence, incidence, and health effects of injury or disease." n79 Surveillance activities include "disease reporting, anonymous serological surveys, and other epidemiological investigations." n80 Surveillance encompasses both passive surveillance (e.g., the "collection of data reported by health care providers") and active surveillance (e.g., the "collection of data by personnel trained and equipped to investigate disease outbreaks"). n81 The government imposes limitations on a health agency's authority to conduct surveillance only "sporadically -- through funding restrictions -- upon research that becomes controversial." n82 Surveillance information, however, serves a vital role in the implementation of comprehensive and effective solutions. n83

Surveillance includes gathering information on health of a population

Wilson 8 Andrea Wilson, J.D. University of Houston Law Center. Houston Journal of Health Law & Policy

Fall, 2008 9 Hous. J. Health L. & Pol'y 131 Comment and Note: Missing the Mark: The Public Health Exception to the HIPAA Privacy Rule and Its Impact on Surveillance Activity lexis

The evaluation and maintenance of public health has long been recognized as an essential function of government in the United States, even predating the Revolutionary War. n1 Public health [*132] agencies' essential functions focus on the general health of the population to protect against epidemics, environmental risks, the effects of natural disasters, and insufficient accessibility to adequate health services. n2 Surveillance, defined as "the systematic observation of a population to identify the causes, prevalence, incidence, and health effects of injury or disease," is accomplished by the accumulation, compilation, and use of information about the health of individuals. n3 It is one of the primary means by which public health officials are able to foster and support these needed functions, enabling agencies to develop policy that will reduce risk to the public's health. n4 Surveillance involves "disease reporting, anonymous serological surveys, and other epidemiological investigation" to gather information "on both communicable and noncommunicable diseases." n5 Properly utilized, surveillance is a fundamental government activity, indispensable in nature. n6

Surveillance is only ONE part of epidemiology

Eggen 8 Jean Macchiaroli Eggen, Professor of Law, Widener University School of Law; member, Widener Health Law Institute. Connecticut Law Review December, 2008 41 Conn. L. Rev. 561 Article: The Synergy of Toxic Tort Law and Public Health: Lessons From a Century of Cigarettes lexis

n151 Epidemiology may be defined as "[t]he study of the distribution and determinants of health-related states in human and other animal populations. Epidemiological studies involve surveillance, observation, hypothesis-testing, and experiment." Stedman's Medical Dictionary 582 (Marjory Spraycar et al. eds., 26th ed. 1995). The task of epidemiology is to examine the relationship between a disease and a particular factor (such as cigarette smoking) to determine if a causal connection exists. Bert Black & David E. Lilienfeld, Epidemiologic Proof in Toxic Tort Litigation, 52 Fordham L. Rev. 732, 750 (1984). The

epidemiologist examines this relationship in the context of populations, comparing the disease experiences of people exposed to the factor with those not so exposed. Although the epidemiologist utilizes statistical methods, the ultimate goal is to draw a biological inference concerning the relationship of the factor to the disease's etiology and/or to its natural history. . . . It is an integrative, eclectic science utilizing concepts and methods from other disciplines, such as statistics, sociology and demography for the study of disease in populations. Id. at 750-51.

COINTELPRO was far more than just surveillance

Wells 4 Christina E. Wells, Enoch N. Crowder Professor of Law, University of Missouri-Columbia School of Law. Ohio Northern University Law Review 2004 30 Ohio N.U.L. Rev. 451 THE TWENTY-SEVENTH ANNUAL LAW REVIEW SYMPOSIUM PRIVACY AND SURVEILLANCE: EMERGING LEGAL ISSUES: Symposium Article: Information Control in Times of Crisis: The Tools of Repression lexis

The FBI's abuse of domestic intelligence-gathering culminated in its now- infamous COINTELPRO operations, which it conducted from 1956 until 1971. Counterintelligence operations such as these ostensibly include "those actions by an intelligence agency intended to protect its own security and to undermine hostile intelligence operations." n144 The FBI's programs, however, went far beyond intelligence-gathering to counter national security threats, instead extending to "secret actions de[signed] to 'disrupt' and 'neutralize' target groups and individuals . . . on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence." n145

As with earlier FBI surveillance operations, the targets of its COINTELPRO operations expanded over time. Beginning with the CPUSA in 1956, n146 the COINTELPRO programs grew to include the Socialist Workers Party, the civil rights movement, White hate groups, Black nationalist groups, [*474] and "new left" groups, a broadly defined category of organizations including the Southern Christian Leadership Conference, Students for a Democratic Society, and the National Organization for Women. n147 The breadth of the investigations was staggering-over COINTELPRO's life the FBI opened 2,000 separate investigations. n148 It was also indiscriminate. Anything remotely considered to be subversive justified an investigation, even something as trivial as writing a letter to a newspaper supporting protests against censorship. n149

The FBI's COINTELPRO tactics went far beyond surveillance, reliance on informers and illegal searchers, although those familiar techniques were part of its arsenal. COINTELPRO also included actions designed to harass targets, such as:

attempts to disrupt marriages, to stir factionalism within and between dissident groups, to have dissidents fired from jobs and ousted by landlords, to prevent protestors from speaking and protest groups from forming, to have derogatory material planted in the press or among acquaintances of targets, to interfere with peaceful demonstrations and deny facilities for meetings and conferences, to cause funding cut-offs to dissident groups, to prevent the distribution of literature and to get local police to arrest targets for alleged criminal law violations. n150

Surveillance includes response capability as well as observation

Young 77 Don J. Young, District Judge Charles JONES et al., Plaintiffs, v. Sol WITTENBERG et al., Defendants Civ. No. C 70-388 UNITED STATES DISTRICT COURT FOR THE NORTHERN

This staffing projection raised a number of serious concerns in the mind of the Special Master. First of all it must be noted that

Surveillance involves both observation and response capability. It is obvious that surveillance alone is meaningless if there is no opportunity for effective intervention. 26 Effective intervention thus involves both an adequate number of correctional personnel and the ability of those persons to respond quickly to an emergency. Had the Regional Planning [**166] Unit's recommendation of three correctional officers per floor per shift been effectuated, response time in the new facility would have been longer than that experienced in the old jail. On a number of occasions correctional officers stated to the Special Master that they would not attempt to intervene in an inmate fight unaccompanied by other guards. This attitude is consistent with the policy set forth in the institution's then existing draft Policy

ELECTRONIC SURVEILLANCE

Electronic surveillance is observing with the aid of electric devices

West's Encyclopedia of American Law 8 CITE West's Encyclopedia of American Law, edition 2. \

 The Free Dictionary http://legal-dictionary.thefreedictionary.com/Electronic+Surveillance

Electronic Surveillance

Observing or listening to persons, places, or activities—usually in a secretive or unobtrusive manner—with the aid of electronic devices such as cameras, microphones, tape recorders, or wire taps. The objective of electronic surveillance when used in law enforcement is to gather evidence of a crime or to accumulate intelligence about suspected criminal activity. Corporations use electronic surveillance to maintain the security of their buildings and grounds or to gather information about competitors. Electronic surveillance permeates almost every aspect of life in the United States. In the public sector, the president, Congress, judiciary, military, and law enforcement all use some form of this technology. In the private sector, business competitors, convenience stores, shopping centers, apartment buildings, parking facilities, hospitals, banks, employers, and spouses have employed various methods of electronic eavesdropping. Litigation has even arisen from covert surveillance of restrooms. Three types of electronic surveillance are most prevalent: wire tapping, bugging, and videotaping. Wire tapping intercepts telephone calls and telegraph messages by physically penetrating the wire circuitry. Someone must actually "tap" into telephone or telegraph wires to accomplish this type of surveillance. Bugging is accomplished without the aid of telephone wires, usually by placing a small microphone or other listening device in one location to transmit conversations to a nearby receiver and recorder. Video surveillance is performed by conspicuous or hidden cameras that transmit and record visual images that may be watched simultaneously or reviewed later on tape.

Electronic

Executive Order '81 Executive Order 12333--United States intelligence activities National Archives

Source: The provisions of Executive Order 12333 of Dec. 4, 1981, appear at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, unless otherwise noted. http://www.archives.gov/federal-register/codification/executive-order/12333.html#3.4

b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

Electronic surveillance covers electronic transmission of voice and data

L I I 15 Legal Information Institute LII a small research, engineering, and editorial group housed at the Cornell Law School 2015 Electronic Surveillance
https://www.law.cornell.edu/wex/electronic_surveillance

Two general categories of electronic communication surveillance exist. Wire communications refer to the transfer of the human voice from one point to another via use of a wire, cable, or similar device. When law enforcement "taps" a wire, they use some mechanical or electrical device that gives them outside access to the vocal transfer, thus disclosing the contents of the conversation. Electronic communications refer to the transfer of information, data, or sounds from one location to another over a device designed for electronic transmissions. This type of communication includes email or information uploaded from a private computer to the internet.

Warrant Requirement

Electronic surveillance

Bazan 7 Elizabeth B. Bazan, Legislative Attorney, American Law Division CRS Report to Congress
The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and U.S. Foreign Intelligence
Surveillance Court and U.S. Foreign Intelligence Surveillance Court of Review Decisions Updated February 15, 2007 https://www.fas.org/sgp/crs/intel/RL30465.pdf

18 50 U.S.C. § 1801(f)(2) defines “electronic surveillance” to mean:

(1) the acquisition by an electronic, mech anical, or other surveillance device of the contents of any wire or radio co mmunication sent by or intended to be received by a particular, known United Stat es person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person ha s a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mech anical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any person thereto, if such acquisition occurs in the United States , but does not include the acquis ition of those communications of computer trespassers that would be pe rmissible under section 2511(2)(i) of Title 18 ;

(3) the intentional acquisition by an elect ronic, mechanical, or other surveillance device of the contents of any radi o communication, under circumstances in which a person has a reasonable expecta tion of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electr onic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy a nd a warrant would be required for law enforcement purposes.

The italicized portion of Subsection 1801(f)(2) was added by Sec. 1003 of P.L. 107-56.

19

A “physical search” is defined under sec tion 301(5) of FISA, 50 U.S.C. § 1821(5), to mean: any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in

seizure, reproduction, inspection, or alteration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) “electronic surveillance”, as defined in section 1801(f) of this title [50 U.S.C.], or (B) the acquisition by the United States Government of foreign in telligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in [50 U.S.C. § 1801(f)].

Electronic surveillance differs from traditional searches

Simpson 4 OPINION BY: ROBERT SIMPSON Kopko v. Miller 751 M.D. 2003
COMMONWEALTH COURT OF PENNSYLVANIA 842 A.2d 1028; 2004 Pa. Commw. LEXIS 131
February 20, 2004, Decided
lexis

As science developed these detection techniques, law makers, sensing the resulting invasion of individual privacy, have provided some statutory protection for the public. …
Berger v. State of New York, 388 U.S. 41, 45-47, 18 L. Ed. 2d 1040, 87 S. Ct. 1873 (1967) (citations and footnotes omitted).
Unlike the eavesdropper at common law, the modern eavesdropper is aided by sophisticated electronic devices that facilitate eavesdropping in almost any situation. Ralph S. Spritzer, Electronic Surveillance By Leave of the Magistrate: The Case in Opposition, 118 U. Pa. L. Rev. 169 (1969). Describing the distinctions between physical searches and wiretaps, Professor Ralph Spritzer wrote:
The conventional search is limited to a designated thing in being--one of a finite number of things to be found in the place where the search is to be conducted, and ordinarily discoverable in a single brief visit. On the other hand, electronic surveillance is a quest for something which may happen in the future. Its effectiveness normally depends upon a [**18] protracted period of lying-in-wait. For however long that may be, the lives and thoughts of many people--not merely the immediate target but all who chance to wander into the web--are exposed to an unknown and undiscriminating intruder. Such a search has no channel and is certain to be far more pervasive and intrusive than a properly conducted search for a specific, tangible object at a defined location.
Id. at 189. These observations emphasize the differences between traditional investigations into a suspect's area of privacy and wiretap investigations. Similarly, electronic surveillance is almost inherently indiscriminate. Interception of a telephone line provides to law enforcement all of the target's communications, whether they are relevant to the investigation or not, raising concerns about compliance with the particularity requirement in the Fourth Amendment and posing the risk of general searches. In addition, electronic surveillance involves an on-going intrusion in a protected sphere, unlike the traditional search warrant, which authorizes only one intrusion, not a series of searches or a continuous surveillance. Officers must execute a traditional [**19] search warrant with dispatch, not over a prolonged period of time. If they do not find what they were looking for in a home or office, they must leave promptly and obtain a separate order if they wish to return to search again. Electronic surveillance, in contrast, continues around-the-clock for days or months. Finally, the usefulness of electronic surveillance depends on lack of notice to the suspect. In the execution of the traditional search warrant, an announcement of authority and purpose ("knock and notice") is considered [*1036] essential so that the person whose privacy is being invaded can observe any violation in the scope or conduct of the search and

immediately seek a judicial order to halt or remedy any violations. In contrast, wiretapping is conducted surreptitiously.

Metadata analysis is not electronic surveillance

Cassidy 13 John Cassidy, staff writer at The New Yorker since 1995. June 27, 2013
The New Yorker N.S.A. Latest: The Secret History of Domestic Surveillance

http://www.newyorker.com/news/john-cassidy/n-s-a-latest-the-secret-history-of-domestic-surveillance

Still, the N.S.A. chafed at the remaining legal restrictions on accessing data from American citizens communicating online with other American citizens. In a November, 2007, memorandum, which the Guardian has also posted online, a lawyer at the Justice Department, Kenneth Wainstein, told Michael Mukasey, the New York judge who had recently taken over as Attorney General, that the N.S.A. wanted a new set of procedures that would give the Agency considerably broader authorization. The memo said:
The Supplemental Procedures, attached at Tab A, would clarify that the National Security Agency (NSA) may analyze communications metadata associated with United States persons and persons believed to be in the United States…We conclude that the proposed Supplemental Procedures are consistent with the applicable law and we recommend that you approve them.
The memo argued that the new set of procedures, because they covered online metadata rather than actual content, didn't violate the Fourth Amendment's right to privacy, and neither did they need the approval of the FISA courts: "To fall within FISA's definition of 'electronic surveillance,' an action must satisfy one of the four definitions of that term. None of these definitions cover the communications metadata analysis at issue here."

ITS

GO VERNMENT SURVEILLANCE IS DIRECT ACTION BY THE STATE

Government surveillance involves direct government action

Richards 8 Neil M. Richards, Professor of Law, Washington University in St. Louis. December, 2008 Texas Law Review 87 Tex. L. Rev. 387 Article: Intellectual Privacy lexis

What, then, should the solution to this problem be? The theory of intellectual privacy I have articulated here suggests that the interest in confidential communications also needs to be considered, and that this interest is a First Amendment one. Government surveillance - even the mere possibility of interested watching by the state - chills and warps the exercise of this interest. This effect was understood by the drafters of the Fourth Amendment, who grasped the relationship between preventing government searches of papers and protecting religious and political dissent. n271 Because government surveillance involves direct state action, it is also a rare case where constitutional doctrine could do useful work on its own. Because we are some distance removed from the freedom of thought, the confidentiality of communications need not be protected absolutely, particularly given the legitimate government interest in the prevention of international terrorism. But by the same token, this interest is not always sufficient to override the First Amendment interests in intellectual privacy. Constitutional doctrine - either First Amendment law or Fourth Amendment law taking expressive interests into account - could therefore mandate warrants for all surveillance of intellectual activity. This standard should at least be the level of the current Fourth Amendment warrant requirement, and could possibly be higher, given the particular expressive interests that could elevate scrutiny of intellectual activity beyond a search for contraband or other kinds of incriminating evidence.

POSSESSION

Its means belonging to
Oxford English Dictionary, 2013
http://www.oed.com/view/Entry/100354?redirectedFrom=its#eid

its, adj. and pron. Pronunciation: /ɪts/

A. adj. As genitive of the pronoun, now possessive adjective.

Of or belonging to it, or that thing (Latin ejus); also refl., Of or belonging to itself, its own (Latin suus).The reflexive is often more fully its own, for which in earlier times the own, it own, were used: see own adj. and pron.

B. pron. As possessive pronoun.

[Compare his pron.2] The absolute form of prec., used when no n. follows: Its one, its ones. rare.

Its means possession
Encarta, 9 (Encarta World English Dictionary, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861622735)

its [its]
adjective Definition: indicating possession: used to indicate that something belongs or relates to something
- The park changed its policy.

Its is the possessive form of it
American Heritage 9 The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin http://www.thefreedictionary.com/its

its (ts)
adj. The possessive form of it.
Used as a modifier before a noun: The airline canceled its early flight to New York.
[Alteration of it's : it + -'s.]
Usage Note: Its is the possessive form of the pronoun it and is correctly written without an apostrophe. It should not be confused with the contraction it's (for it is or it has), which should always have an apostrophe.

Its is possessive
Words and Phrases '6 vol 22B p 524

C.C.A.5 (Tex.) 1935. Where corporation transferred all its assets, including large profits, to newly organized corporation in exchange for capital stock, and transfer was treated as reorganization under which no gain or loss was to be recognized, profits in hands of newly

organized corporation held taxable as "its earnings or profits," within revenue act providing that term "dividend" means any distribution made by corporation to its shareholders whether in money or other property out of "its earnings or profits" accumulated after February 28, 1913; word "its" being possessive pronoun indicating that earnings and profits belong to corporation. Revenue Act 1926, § 201(a), 26 U.S.C.A. (I.R.C.1939) § 115.—Murchison's Estate v. C.I.R., 76 F.2d 641.—Int Rev 3747.

Possessive pronouns show ownership

Using Engish 13 , http://www.usingenglish.com/glossary/possessive-pronoun.html)

Mine, yours, his, hers, its, ours, theirs are the possessive pronouns used to substitute a noun and to show possession or ownership. EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

Possessive pronouns are terms of exclusion

Frey 28 (Judge – Supreme Court of Missouri, Supreme Court of Missouri, 320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis)

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a [*1074] strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [***37] them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had [**53] she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives solely, she would certainly have used the possessive pronoun "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical

Grammatically, this refers to the U.S. – that's the antecedent

Manderino 73 (Justice – Supreme Court of Pennsylvania, "Sigal, Appellant, v. Manufacturers Light and Heat Co"., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [***10] usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling [*236] semicolon which makes no sense at

the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage make difficult, if not impossible, a clear understanding of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

RELATED TO

Its means associated with

Collins 3 Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

http://www.thefreedictionary.com/its

its [ɪts]
determiner
a. of, belonging to, or associated in some way with it *its left rear wheel*
b. (as pronoun) each town claims its is the best

Its means relating to

Meriam Webster 13 http://www.merriam-webster.com/dictionary/its

Definition of ITS
: of or relating to it or itself especially as possessor, agent, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>
Examples of ITS
the dog in its kennel
The landscape is beautiful in its own unique way.
Each region has its own customs.
The company is hoping to increase its sales.

Its can mean belonging or relating to

Macmillan 13 Macmillan Dictionary 2013
http://www.macmillandictionary.com/us/dictionary/american/its
Its
1 belonging or relating to a thing, idea, place, animal, etc. when it has already been mentioned or when it is obvious which one you are referring to
The chair lay on its side.
We were eager to see Las Vegas and all its many attractions.
The bull had a ring through its nose.

Its can refer to geography

Words and Phrases '6 vol 22B p 524

> Nev. 1963. In constitutional provision authorizing Legislature to exceed debt limitation if necessary, expedient or advisable for protection and preservation of any of its property or natural resources, the term "its" has geographical rather than proprietary connotation. Const, art. 9, § 3.—Marlette Lake Co. v, Sawyer, 383 P.2d 369, 79 Nev. 334.— States 115.

COOPERATION REDUCES POSSESSION

Cooperation requires sharing ownership of the program

Carrillo 13 Susana Carrillo & Napoleão Dequech Neto, Institute for the Integration of Latin America and the Caribbean Boosting Vocational Training and Skills Development January 2013

http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37888185

The Triangular Cooperation agreement among Brazil, Germany, and Peru to support vocational training and skills development shows that Triangular Cooperation succeeds when the institutions involved share ownership and the same strategic interests, and perceive mutual benefits as a result of the partnership. The positive institutional relationship among SENAI, SENATI, and GIZ has provided a strong base for the implementation of the Triangular Cooperation agreement and establishment of the CTA. The three parties worked in close collaboration to establish the Center with the goal of building a trained skill base to serve the needs of industries on issues related to environmental protection and clean production. SENATI will assume full responsibility for the management of the Center at the end of the triangular project, at which point the parties involved will be able to evaluate results and impact. This initiative is clearly grounded in a solid partnership in strategic areas of interest for all partners and with benefits for the industrial sector. For these reasons, the CTA could become a center of excellence in its field and a knowledge hub in the region.

Multilateralism reduces national control

Weiss 5 Joseph Weiss Universidade de Brasilia 2005 Contradictions of International Cooperation in the

Amazon: Why is the nation-state left out? http://www.ispn.org.br/arquivos/bb_.pdf

Sajar and VanDeveer (2005) make clear that while environmental capacity-building attracted multilateral organization attention again in the late 1990s, it was defined, when applied, to transfer ineffective North models to th e South to make success more likely for programs defined by the North. By allowing for NGO participation, national governments are often left with reduced control or power.

International collaboration reduces national control

British 14 British Government Feb 2014 Review of the Balance of Competences between the United Kingdom and the European Union Research and Development

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279331/bis_14_592_balance_of_competences_review_government_reponse_to_the_call_for_evidence.pdf

In these fields of activity, international collaboration is vital to deliver projects of the scale of the
Galileo satellite navigation programme and to deliver world class research. The EU provides many platforms and frameworks for joint working and knowledge exchange. Whether it is the
most effective and efficient means of achieving it and whether the negatives of reduced control

over priorities, constraints of other regulations and sheer bureaucracy outweigh the benefits is
the subject of this report.

CONTRACTORS

Contractors performing government functions are considered government agents

Block 4 AINS Inc. v. United States 2004, United States Court of Appeals for the Federal Circuit 03-5134 AINS, INC. Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee DECIDED: April 23, 2004 Judge Lawrence J. Block <http://www.ll.georgetown.edu/federal/judicial/fed/opinions/03opinions/03-5134.html>//DoeS

The first historically recorded NAFI in the United States was a self-supporting post fund that Army officers administered to aid indigent widows and children of deceased Civil War soldiers. Congress expanded upon this idea to develop a system of "post exchanges" (PXs), which the Army regulates and operates as profit making ventures. After World War II, Congress expanded the idea of self-supporting agencies even further, and NAFIs began to appear throughout the civilian sector. The NAFI doctrine, as it relates to the Court of Federal Claims and to jurisdiction under the Tucker Act, began to develop following Standard Oil Company of California v. Johnson, 316 U.S. 481, 484-85 (1942). In Standard Oil, the Supreme Court ruled that PXs qualified for a federal government exemption from a California motor vehicle fuel tax. Id. According to the Court, "post exchanges as now operated are arms of the Government deemed by it essential for the performance of governmental functions," though the "government assumes none of the financial obligations of the exchange." Id. at 485. In other words, Standard Oil recognized the existence of "government agencies" for which the government had not accepted financial responsibility. Standard Oil did not address the questions of liability and/or of sovereign immunity as applied to such "agencies." Shortly thereafter, however, the Court of Claims opined that its jurisdiction under the Tucker Act was limited to claims against the general fund, or more specifically, to claims against government instrumentalities whose judgments could be paid from appropriated funds. The Court of Claims reasoned that when the government assumed no liability for a federal entity, the government could not be said to have consented to suit against that entity—and that the Tucker Act consequently provided the Claims Court with no jurisdiction to hear complaints against these entities. NAFIs therefore retain their sovereign immunity from suit for breaches of contract that Congress waived with respect to government agencies funded by appropriations from the general fund. See, e.g., Borden v. United States, 116 F. Supp. 873 (Ct. Cl. 1953); Pulaski Cab Co. v. United States, 157 F. Supp. 955 (Ct. Cl. 1958); Kyer v. United States, 369 F.2d 714 (Ct. Cl. 1966). It appears that Standard Oil did not compel this result. The early cases articulating the doctrine that NAFIs retained sovereign immunity met with spirited insistence that the doctrine emerged from an erroneous interpretation of Standard Oil. See, e.g., Borden, 116 F. Supp. at 910-14 (Whitaker, J., dissenting); Pulaski Cab Co., 157 F. Supp. at 958 (Whitaker, J., concurring). In the Court of Claims' first significant NAFI doctrine case, Borden was an accountant employed by an Army PX under contract with the PX. Borden, 116 F. Supp. at 873. Someone stole payroll funds from Borden's office, and some of these funds were never recovered. The PX withheld an amount equal to its loss from Borden's salary, alleging that his negligence had caused the loss. Borden sued the United States to recover his withheld salary. The court recognized that this case presented an anomaly because Borden seemed to have no avenue along which to seek redress of his claims. Id. at 907. He could not sue the PX, with whom he had a contract, because it was an arm of the government. And "in the light of [Standard Oil]. . . [the court] reluctantly reach[ed] the conclusion that plaintiff c[ould] not sue the United States on a contract of employment which is signed by the Army Exchange Service, European

Theater." Id. at 907-09. In dissent, Judge Whitaker complained that [t]he majority recognize that [Borden] should have a right of action, but they feel compelled to hold that he has not by the decision of the Supreme Court in Standard Oil. . . . I do not feel so compelled. . . . Army regulations say exchange contracts are not government contracts, and, yet, the Supreme Court says that exchanges are "arms of the government." . . . By what authority does the Army say that their contracts are not government contracts? . . . The Army cannot set aside an Act of Congress

Private contractors are agents of the US government

AUSNESS '86 – Professor of Law, University of Kentucky (RICHARD, Fall, "Surrogate Immunity: The Government Contract Defense and Products Liability.", 47 Ohio St. L.J. 985, Lexis Law, dheidt)

The United States Supreme Court affirmed the circuit court's ruling. The Court reasoned that the immunity that protected officers and agents of the federal government acting within the scope of their authority should be extended to private contractors who also acted on the government's behalf. n71 According to the Court: ". . . [I]t is clear that if this authority to carry out the project was validly conferred, that is, if what was done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will." n72 The court also observed that the landowner could have sought compensation from the government for his injury in the court of claims. n73 Apparently, it thought that the plaintiff had attempted to circumvent the accepted statutory procedure by suing the contractor instead of the government. n74

Private contractors are distinct from the federal government

Barbier 7 (Carl, US District Judge, TIEN VAN COA, ET AL VERSUS GREGORY WILSON, ET AL CIVIL ACTION NO: 07-7464 SECTION: J(1) UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA 2007 U.S. Dist. LEXIS 87653)

owever, in their motion to remand, Plaintiffs argue that as an independent contractor, P&J is not an employee of the federal government, and consequently does not enjoy derivative immunity and cannot invoke the FTCA. Plaintiffs cite United States v. New Mexico in support of the notion that private contractors, whether prime or subcontractors, are not government employees nor are they agents of the federal government. 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982). According to the Court, "[t]he congruence of professional interests between the contractors and the Federal Government is not complete" because "the contractors remained distinct entities pursuing private ends, and their actions remained [*4] commercial activities carried on for profit." Id. at 740; see alsoPowell v. U.S. Cartridge Co., 339 U.S. 497, 70 S. Ct. 755, 94 L. Ed. 1017 (1950).

RESOLVED

Resolved means decided by vote

American Heritage 9 The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. http://www.thefreedictionary.com/resolved

re·solve (r-zlv) v. re·solved, re·solv·ing, re·solves v.tr.
3. To decide or express by formal vote.

Resolved means declared by vote

Webster 13 © 2013 Merriam-Webster, Incorporated http://www.merriam-webster.com/dictionary/resolve

1re·solve verb \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ re·solvedre·solv·ing
Definition of RESOLVE
transitive verb
6 a : to declare or decide by a formal resolution and vote
b : to change by resolution or formal vote <the house resolved itself into a committee>

Resolved means to enact by law

Words and Phrases 64 vol 37A

Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

A resolution is opinion, not law

Words and Phrases 3 vol 37A supp pamphlet

Or. 1975 "Resolution" is not law but merely a form in which a legislative body expresses an opinion – Baker v. City of Milwaukee, 533 P 2d 772, 271 Or. 500 - Mun corp 85

Resolved is a definite course of action

Collins 3 Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

http://www.thefreedictionary.com/resolved

resolved [rɪˈzɒlvd] adj
fixed in purpose or intention; determined

.

Resolved means definite decision

Dictionary. Com 13 Dictionary.com Unabridged Based on the Random House Dictionary, © Random House, Inc. 2013.

http://dictionary.reference.com/browse/resolved

re·solve [ri-zolv] Show IPA verb, re·solved, re·solv·ing, noun
verb (used with object)
to come to a definite or earnest decision about; determine (to do something): I have resolved that I shall live to the full.

Resolved means determined

Oxford Dictionaries 13 http://oxforddictionaries.com/definition/english/resolved

Definition of resolved adjective [predic., with infinitive]
firmly determined to do something:

SHOULD

Should in the resolution means the policy is desirable

Freeley and Steinberg 9 Austin J. Freeley, former prof. of communication, John Carroll Univ, and David L. Steinberg, prof of communication, Univ of Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, 2009, 12th edition, pp 68-9 googlebooks

Most propositions on matters of policy contain the word "should" – for example, "Resolved: That such-and-such *should* be done." In a debate on a policy proposition, "should" means that intelligent self-interest, social welfare, or national interest prompts this action, and that it is both desirable and workable. When the affirmative claims a policy "should" be adopted, it must show that the policy is practical – but it is under no obligation to show it *will* be adopted. The affirmative must give enough detail to show it would work. It may be impossible, within the time limitations of the debate, for the affirmative to give al the details, but it must at least show the outline of its policy and indicate how the details could be worked out. For example, in a debate on federal aid to education, the affirmative could not reasonably be expected to indicate how much money each state would receive under its plan, but it would be obliged to indicate the method by which the amount of the grants would be determined. It is pointless for the negative to seek to show that the affirmative's plan could not be adopted by demonstrating that public opinion is against it or that the supporters of the plan lack sufficient voting strength in Congress.

Should indicates desirable

Oxford Dictionaries 13 2013
http://oxforddictionaries.com/us/definition/american_english/should

Definition of should verb (3rd sing. should)
1used to indicate obligation, duty, or correctness, typically when criticizing someone's actions:he should have been careful I think we should trust our people more you shouldn't have gone
indicating a desirable or expected state:by now students should be able to read with a large degree of independence
used to give or ask advice or suggestions:you should go back to bed what should I wear?
(I should) used to give advice:I should hold out if I were you

Should means recommended

Words and Phrases 2 Vol. 39, p. 370, 2002)

Cal.App. 5 Dist. 1976. Term "should," as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as recommendation, and is thus not mandatory but permissive. West's Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191

Should indicates the right thing to do

Oxford 11 Oxford Advanced Learner's Dictionary 2011
http://oald8.oxfordlearnersdictionaries.com/dictionary/should

Usage notesUsage note: should / ought / had better

Should and ought to are both used to say that something is the best thing or the right thing to do, but should is much more common: You should take the baby to the doctor's. ◇ I ought to give up smoking. In questions, should is usually used instead of ought to: Should we call the doctor?

Should indicates action is sensible

Macmillan 13 Macmillan Dictionary 2013
http://www.macmillandictionary.com/us/dictionary/american/should

Should
used for talking about what is right, sensible, or correct
a. used for saying or asking about the right or sensible thing to do or the right way to behave
Parents should spend as much time with their children as possible.
It's an amazing book – you should read it.
You shouldn't drive so fast.
What should I do? Should I look for another job?
There should be a law against spreading lies.
What should be taught in our schools?
They should be ashamed of themselves.
Thesaurus entry for this meaning of should

Should means ought to

Kernerman 13 Kernerman English Multilingual Dictionary © 2006-2013 K Dictionaries Ltd.

http://www.thefreedictionary.com/should

should (ʃud) – negative short form shouldn't (ˈʃudnt) – verb
2. used to state that something ought to happen, be done etc. You should hold your knife in your right hand; You shouldn't have said that.

Should implies duty and obligation.

Words and Phrases, 19**86**

The word "should," as used in instructions, may convey to the jury the sense of duty and obligation. State v. Connor, 87
P. 703, 74 Kan. 898.

"Should" means desirable --- this does not have to be a mandate

Atlas Collaboration 99 ("Use of Shall, Should, May Can," http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is **mandatory**. If a requirement uses 'shall', then that requirement _will_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is **weaker**. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means)

"Should" means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [***8] with it the sense of [*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

"Should" doesn't require certainty

Black's Law 79 (Black's Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word "would," it does not **ordinarily express certainty** as "will" sometimes does.

Should requires immediate action

Summers 94 (Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16
[CONTINUES – TO FOOTNOTE]
13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Should doesn't mean immediate

Dictionary.com – Copyright © **2010** – http://dictionary.reference.com/browse/should

should /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc (e) olde; see shall —Can be confused: could, should, would (see usage note at this entry). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most

constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. (You should get your flu shot before winter comes), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would) have called immediately. I should (American would) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or (Archaic) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or (Archaic) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

SUBSTANTIALLY

EXTENT OF SURVEILLANCE IS HUGE

NSA surveillance is massive

Stray 13 Jonathan Stray, Special to ProPublica, Aug. 5, 2013, 3:20 p.m. FAQ: What You Need to Know About the NSA's Surveillance Programs http://www.propublica.org/article/nsa-data-collection-faq

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because there is no fully reliable automatic way to separate domestic from international communications, this program also captures some amount of U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make.

Stray 13 Jonathan Stray, Special to ProPublica, Aug. 5, 2013, 3:20 p.m. FAQ: What You Need to Know About the NSA's Surveillance Programs http://www.propublica.org/article/nsa-data-collection-faq

What information does the NSA collect and how?

We don't know all of the different types of information the NSA collects, but several secret collection programs have been revealed:

A record of most calls made in the U.S., including the telephone number of the phones making and receiving the call, and how long the call lasted. This information is known as "metadata" and doesn't include a recording of the actual call (but see below). This program was revealed through a leaked secret court order instructing Verizon to turn over all such information on a daily basis. Other phone companies, including AT&T and Sprint, also reportedly give their records to the NSA on a continual basis. All together, this is **several billion** calls per day.

Email, Facebook posts and instant messages for an unknown number of people, via PRISM, which involves the cooperation of at least nine different technology companies. Google, Facebook, Yahoo and others have denied that the NSA has "direct access" to their servers, saying they only release user information in response to a court order. Facebook has revealed that, in the last six months of 2012, they handed over the private data of between 18,000 and 19,000 users to law enforcement of all types -- including local police and federal agencies, such as the FBI, Federal Marshals and the NSA.

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because there is no fully reliable automatic way to separate domestic from international communications, this program also captures some amount of

U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make.

The contents of an unknown number of phone calls There have been several reports that the NSA records the audio contents of some phone calls and a leaked document confirms this. This reportedly happens "on a much smaller scale" than the programs above, after analysts select specific people as "targets." Calls to or from U.S. phone numbers can be recorded, as long as the other end is outside the U.S. or one of the callers is involved in "international terrorism". There does not seem to be any public information about the collection of text messages, which would be much more practical to collect in bulk because of their smaller size.

CONTEXTUAL USAGE OF SUBSTANTIALLY CURTAIL

Curtailing metadata and bulk surveillance would be substantial

McCarter 13 Joan McCarter, Senior Political Writer for Daily Kos Daily Kos Jul 23, 2013

House to vote on bipartisan amendment curtailing the NSA's power http://www.dailykos.com/story/ 2013/07/23/1225971/-House-to-vote-on-bipartisan-amendment-curtailing-the-NSA-s-power#

> A bipartisan amendment to the defense authorization bill to curtail the NSA's surveillance power has been approved for a vote, possible as soon as Wednesday. The amendment, introduced by Rep. Justin Amash (R-MI), co-sponsored by Rep. John Conyers (D-MI), Rep. Jared Polis (D-CO), Rep. Barbara Lee (D-CA), Rep. Raúl Grijalva (D-AZ) and over 30 other bipartisan members, would substantially curtail the NSA's domestic spying.
> The amendment [pdf] basically defunds the NSA's dragnet collection of every bit of metadata on all phone records as well as other bulk records that have not yet been revealed. The amendment still would allow the NSA to collect information under the original intent—and understanding—of the law, that is information actually related to actual investigations.

Ending the Patriot Act would substantially curtail

Timmons 15 Heather Timmons, correspondent June 01, 2015 Quartz The US government can no longer spy on every US citizen at once http://qz.com/416262/the-us-government-can-no-longer-spy-on-every-us-citizen-at-once/

> The US government's ability to collect information on American citizens was substantially curtailed on midnight Sunday, after an extension of the Patriot Act expired before the US Congress passed a replacement bill aimed at reforming it.
> What's expiring: The Patriot Act extension, signed into law in 2011. This includes the controversial Section 215, which, as the ACLU explains it, "allows the [Federal Bureau of Investigation] to force anyone at all—including doctors, libraries, bookstores, universities, and Internet service providers—to turn over records on their clients or customers." Because of this expiration, the National Security Agency and others can also no longer collect this information, including US citizens' phone calls, in bulk. In addition, agencies abilities to conduct roving wiretaps, and spy on so-called "lone wolf" terrorists not connected to any organization are curbed.

Presidential commission proposed substantially curtailing surveillance

Koonce 13 Lance Koonce, attorney on December 20, 2013 Privacy & Security Law Blog The Twelve Days of Surveillance http://www.privsecblog.com/2013/12/articles/cyber-national-security/the-twelve-days-of-surveillance/

> But let's end on a positive note. The recent pivot by major technology companies to begin putting public pressure on the US government to change its surveillance programs, the holding by a federal judge the bulk collection of telephone metadata is likely unconstitutional, and the recommendations by a presidential task force to substantially curtail the NSA surveillance programs, may indicate that the tide is turning. Let's see what the New Year brings.

MEANING DEPENDS ON CONTEXT

Substantially is a relative, depends on context

Words and Phrases 64 (Vol. 40, p. 816)

> The word "substantially" is a relative term and should be interpreted in accordance with the context of claim in which it is used. Moss v. Patterson Ballagh Corp. D.C.Cal., 80 P.Supp. C10, 637.

Meaning of substantial depends on context

Words & Phrases 64 (p.759)

"Substantial" is a relative term, the meaning of which is to be gauged by all the circumstances surrounding the transaction, in reference to which the expression has been used. It imports a considerable amount or value in opposition to that which is inconsequential or small.

Substantially should be judged by its field context

Devinsky 2 (Paul, "Is Claim "Substantially" Definite? Ask Person of Skill in the Art", IP Update, 5(11), November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm)

> In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," erroneously concluded the term "substantially" made a claim fatally indefinite. Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine. The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips. The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite. The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence: "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention." Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention." The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

Substantially must be given meaning

CJS 83 Corpus Juris Secundum, 1983 , 765.

"Substantially. A relative and elastic term which should be interpreted in accordance with the context in which it isused. While it must be employed with care and discrimination, it must, nevertheless, be given effect." 48

DEFINITIONS OF SUBSTANTIAL APPLY

Definitions of substantial apply – substantially is in a substantial manner

Watson 2k James L Watson, Senior Judge, UNITED STATES COURT OF INTERNATIONAL TRADE, May 23, http://www.cit.uscourts.gov/SlipOpinions/Slip_op00/00-57.pdf, CMR)

> In T.D. 92-108, Customs notes: "[n]one of the definitions [submitted to Customs] actually quantify 'substantial.' It is always expressed in other terms which clearly convey the meaning. Certainly, a 40% encirclement is a substantial encirclement of the perimeter of the shoe in that it conforms exactly to the dictionary definitions of 'substantial' by being ample, considerable in quantity, significantly large and largely, but not wholly that which is specified." 26 Cust. Bull. at 366. When the term "substantially" is used as an adverb preceding a verb, the term means "in a substantial manner: so as to be substantial." Webster's Third New International Dictionary of the English Language Unabridged (1968).

WITHOUT EXCEPTION

Substantially means without material qualification

Black's Law Dictionary 90 (Black's Law Dictionary, 1990, 6th Ed., p. 1428–29)

> Substantially. Essentially; without material qualification; in the main; in substance; materially; in a substantial manner. About, actually, competently, and essentially. Gilmore v. Red Top Cab Co. of Washington, 171 Wash. 346, 17 P.2d 886, 887.

Substantially means across the board

Anderson et al 5 Brian Anderson, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, *Wisconsin Council of Administrators of Special Services* (*WCASS*) Committee Members. 2005 WCASS Research / Special Projects Committee* Report on: A Conceptual Framework for Developing a 504 School District Policy http://www.specialed.us/issues-504policy/504.htm#committee

> The issue "Does it substantially limit the major life activity?" was clarified by the US Supreme Court decision on January 8th, 2002 , "Toyota v. Williams". In this labor related case, the Supreme Court noted that to meet the "substantially limit" definition, the disability must occur **across the board** in multiple environments, not only in one environment or one setting. The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student's life, not only in school.

Substantially refers to a full class or a broad range over different classes

O'Connor 2 Justice O'Connor delivered the opinion of the Court. SUPREME COURT OF THE UNITED STATES No. 00—1089 TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., PETITIONER v. ELLA WILLIAMS ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT [January 8, 2002] http://www.law.cornell.edu/supct/html/00-1089.ZO.html

> The Court of Appeals relied on our opinion in Sutton v. United Air Lines, Inc., for the idea that a "class" of manual activities must be implicated for an impairment to substantially limit the major life activity of performing manual tasks. 224 F.3d, at 843. But Sutton said only that "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires … that plaintiffs allege that they are unable to work in a broad class of jobs." 527 U.S., at 491 (emphasis added). Because of the conceptual difficulties inherent in the argument that working could be a major life activity, we have been hesitant to hold as much, and we need not decide this difficult question today. In Sutton, we noted that even assuming that working is a major life activity, a claimant would be required to show an inability to work in a "broad range of jobs," rather than a specific job. Id., at 492. But Sutton did not suggest that a class-based analysis should be applied to any major life activity other than working. Nor do the EEOC regulations. In defining "substantially limits," the EEOC regulations only mention the "class" concept in the context of the major life activity of working. 29 CFR § 1630.2(j)(3) (2001) ("With respect to the major life activity of working[,] [t]he term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities"). Nothing in the text of the Act, our previous

opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working.

NOT ALL, ESSENTIAL, MAIN, REAL, DURABLE

Substantially does not mean all

Justice **Berdon**, 8-24-**99**, Supreme Court of Connecticut, 250 Conn. 334; 736 A.2d 824; 1999 Conn. LEXIS 303

> In addition, the plain meaning of "substantially" does not support the defendant's arguments. Black's Law Dictionary (6th Ed. 1990) defines "substantially" as "essentially; without material qualification; in the main . . . in a substantial manner." Likewise, "substantial" is defined as, "of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. . . . Synonymous with material." (Citations omitted.) Id. Thus, the requirement of a "substantial" association creates a threshold far below the exclusive or complete association argued by the defendant.

Substantially means the essential

Words & Phrases, 64, 818.

"The word 'substantially,' in Code, § 1246, subd. 7, providing that certificates of the examination of married women should be

substantially according to a form prescribed in the statute, is used 'as it often is, in the sense of comprehending the form given; all that is necessary or essential.' Lineberger v.Tidwell, 10 S.E. 75 8, 761, 104 N.C. 506."

Substantially means the essential part

Words & Phrases, 64, 818.

> "'Substantially' means in substance; in the main; essentially; by including the material or essential part. Town of Checotah v.
> Town of Eufaula, 119 P. 1014, 1019, 31 Okl. 85; Vannest v. Murphy, 112 N.W. 236, 238, 135 Iowa, 123. See, also, Electric Candy
> Mach. Co. v. Morris, 156 F. 972, 974; Elsfeld v. Kenworth, 50 Iowa, 389, 390."

Substantial means the main or most important

Cambridge Advanced Learner's Dictionary, **2004**

http://dictionary.cambridge.org/define.asp?key=79480&dict=CALD

> substantial (GENERAL) [Show phonetics] adjective [before noun] FORMAL relating to the main or most important things being considered: The committee were in substantial agreement (= agreed about most of the things discussed).

"Substantial" means in the main

Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 "Substantial" means in substance, in the main, essential, including material or essential parts

Ballantine's Law Dictionary (3rd edition, 19**69** , p. 1232)

Substantially . In the main. Essentially.

"Substantial" means actually existing, real, or belonging to substance
Words and Phrases 2 (Volume 40A) p. 460

Ala. 1909. "Substantial" means "belonging to substance; actually existing; real; *** not seeming or imaginary; not elusive; real; solid; true; veritable

"Substantial" means having substance or considerable
Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

Substantial - having substance; considerable

Substantially means in substance

Words & Phrases, 64, 818.

"'Substantially' means in substance; in the main; essentially; by including the material or essential part. Town of Checotah v.
Town of Eufaula, 119 P. 1014, 1019, 31 Okl. 85; Vannest v. Murphy, 112 N.W. 236, 238, 135 Iowa, 123. See, also, Electric Candy
Mach. Co. v. Morris, 156 F. 972, 974; Elsfeld v. Kenworth, 50 Iowa, 389, 390."

"Substantially" means durable
Ballantine's 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful ("a substantial supply"); actual, concrete, existent, physical, righteous, sensible, tangible ("substantial problem"); affluent, comfortable, easy, opulent, prosperous, solvent.

IMPORTANT, CONSIDERABLE, LARGE

Substantial means important

Christine **Lindberg**, 2007 (Managing Editor), OXFORD COLLEGE DICTIONARY, 2nd

Ed., 07, 1369. (NY: Sparks Publishing) Substantial: Important in material or social terms

Substantial means considerable in importance

THE **AMERICAN HERITAGE** DICTIONAR OF THE ENGLISH LANGUAGE, 4th Editon, 20

06, 1727.

Substantial: Considerable in importance,value, degree, amount, or extent: won by a substantial margin.

Substantial means considerable

Words & Phrases, 7

WORDS AND PHRASES CUMULATIVE SUPPLEMENTARY PAMPHLET,2007, Vol. 40B, 07, 95.

The term "substantially" in the ADA means considerable or to a large degree. Heiko v. Colombo Savings Bank.

Substantial means of considerable value

Michael **Agnes, 2006 (**Editor-In-Chief), WEBSTER'S NEW WORLD COLLEGEDICITONARY, 4TH EDITION, 06, 1428. (Cleveland, OH: Wiley)

Subsantial: of considerable worth or value.

"Substantial" means of real worth or considerable value --- this is the usual and customary meaning of the term

Words and Phrases 2 (Volume 40A, p. 458)

D.S.C. 1966. The word "substantial" within Civil Rights Act providing that a place is a public accommodation if a "substantial" portion of food which is served has moved in commerce must be construed in light of its usual and customary meaning, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

Substantial Means Large

Michael **Agnes, 2006** (Editor-In-Chief), WEBSTER'S NEW WORLD COLLEGEDICITONARY, 4TH

EDITION, 06, 1428. (Cleveland, OH: Wiley)

> Subsantial : considerable; ample; large.

Substantially means to a great or significant extent:

Christine **Lindberg, 2007** (Managing Editor), OXFORD COLLEGE DICTIONARY, 2

ndEd., 07, 1369. (NY: Sparks Publishing)

Substantially: to a greator significant extent.

Substantial means of considerable size

Christine **Lindberg, 2007**(Managing Editor), OXFORD COLLEGE DICTIONARY, 2 ndEd., 07, 1369. (NY: Sparks Publishing)

Substantial: of considerable importance; size; or worth

Substantially means to a great extent

Wordnet, 03 (Princeton University, version 2.0, http://dictionary.reference.com/browse/substantially)

> substantiallyadv 1: to a great extent or degree; "I'm afraid the film was well over budget"; "painting the room white made it seem considerably (or substantially) larger"; "the house has fallen considerably in value"; "the price went up substantially" [syn: well, considerably] 2: in a strong substantial way; "the house was substantially built"

Substantially increase means by a large amount

NRC 3 (Office of Nuclear Material Safety and Safeguards Policy and Procedures, April 2003,) http://www.fontana.org/main/dev_serv/planning/ventana_eir/appendix_e.pdf

> "Substantial increase" means "important or significant in a large amount, extent, or degree," and not resulting in insignificant or small benefit to the public health and safety, common defense and security, or the environment, regardless of costs. However, this standard is not intended to be interpreted in a way that would result in disapproval of worthwhile safety or security improvements with justifiable costs.2

"Substantial" means to a large degree --- this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, "Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v.

West Virginia Department of Health and Human Resources", Harvard Civil Rights-Civil Liberties Law Review, Winter, 37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. 99 It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, 100 and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). 101

Something must pass a certain point to be a substantial increase

Markely 09 (P.J., Judge for the Michigan Court of Appeals, "People of the Sate of Michgan Plaintiff-Appellee V. Robert Alan McReynolds Defendant-Apellant, "June 30, 2009 http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20090630_C282582_51_282582.OPN.PDF)

In MCL 777.37(1)(a), "sadism" is grouped with "torture," "excessive brutality," and "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." The inclusion of the adjective "excessive" in "excessive brutality" is noteworthy. "Excessive" means going beyond the usual, necessary, or proper limit or degree; characterized by excess." Random House Webster's College Dictionary (1997). Thus, "excessive brutality" -3- implies that there may be brutality in the commission of a crime, but the variable is scored for brutality that is "beyond the usual" occurring in the commission of the crime. Similarly, in the phrase, "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense," the inclusion of the words "substantially increase" is noteworthy. The phrasing implicitly recognizes that there is a baseline level of fear and anxiety a victim suffers during an offense, and the scoring of the variable is appropriate for conduct that is designed to substantially increase that level. This phrasing also suggests that the Legislature intended the scoring to be based on conduct beyond that necessary to commit the offense. The context of the term "sadism" with other terms that contemplate conduct beyond that necessary to commit the offense suggests that the conduct that forms the basis of sadism is conduct that is in addition to that necessary to commit the offense. Thus, "sadism" denotes conduct that exceeds that which is inherent in the commission of the offense.

PERCENTAGES

Substantial means at least 20%

Words & Phrases 67 1967, 758

> "Substantial" number of tenants engaged In production of goods for commerce means that at least 20 per cent. of building be occupied by tenants so engaged. Ullo v. Smith, D.C.N.Y., 62 F.Supp. 757, 760.

A substantial increase is at least 30%

FOLEY & LARDNER LLP 20**04** http://www.freepatentsonline.com/20060057593.html

> A substantial increase in the amount of a CFTR target segment identified means that the segment has been duplicated while a substantial decrease in the amount of a CFTR target segment identified means that the target segment has been deleted. The term "substantial decrease" or "substantial increase" means a decrease or increase of at least about 30-50%. Thus, deletion of a single CFTR exon would appear in the assay as a signal representing for example of about 50% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene. Conversely, amplification of a single exon would appear in the assay as a signal representing for example about 150% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene.

Substantially means greater than 50%.

Statement of Considerations,5 "ADVANCE WAIVER OF THE GOVERNMENT'S U.S. AND FOREIGN PATENT RIGHTS AND ADVANCE APPROVAL TO ASSERT COPYRIGHT RIGHTS UNDER SUBCONTACT B554331 ISSUED BY LAWRENCE LIVERMORE NATIONAL LABORATORY TO INTERNATIONAL BUSINESS MACHINES CORPORATION FOR THE BLUEGENE/P DESIGN ARCHITECTURE, PHASE III - PROTOTYPE HARDWARE BUILDOUT AND BLUEGENE/Q - ADVANCED ARCHITECTURAL INVESTIGATIONS; DOE WAIVER NO. W(A) 05-048", 2005, http://www.gc.energy.gov/documents/WA_05_048_INTERNATIONAL_BUSINESS_MACHINES_Waiver_of_the_Gove.pdf

> The Subcontractor agrees to conduct research and development activities under this Subcontract principally in U.S.-based facilities. "Principally" is defined as greater than a ninety (90%) percent level of effort. Subcontractor also agrees that for a period of one (1) year following Subcontract completion, subsequent research and development by the Subcontractor for the purpose of commercializing technologies arising from the intellectual property developed under this Subcontract shall be performed substantially in U.S.-based facilities. "Substantially" is defined as greater than fifty (50%) percent level of effort. The Subcontractor further agrees that any processes and services, or improvements thereof, which shall arise from the intellectual property developed under this Subcontract when implemented outside the U.S., shall not result in a reduction of the Subcontractor's research workforce in the United States. Finally, it is understood between the DOE and the Subcontractor that any subsequent follow-on subcontracts and/or future phases of work

under the Government's ASCI Program will be subject to a separate U.S. Competitiveness determination.

Substantially is at least 90%
Words and Phrases, 05 (v. 40B, p. 329)

N.H. 1949. The word “substantially” as used in provision of Unemployment Compensation Act that experience rating of an employer may be transferred to an employing unit which acquires the organization, trade, or business, or “substantially” all of the assets thereof, is an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but cannot be less than 90 per cent in the ordinary situation. R.L. c 218, § 6, subd. F, as added by Laws 1945, c.138, § 16.

Substantial is 2%
Word and Phrases 1960

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App.

NOT SET AMOUNT

Substantial means "of considerable amount" --- not some predetermined amount

Prost 4 (Judge – United States Court of Appeals for the Federal Circuit, "Committee For Fairly Traded Venezuelan Cement v. United States", 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

> The URAA and the SAA neither amend nor refine the language of § 1677(4)(C). In fact, they merely suggest, without disqualifying other alternatives, a "clearly higher/substantial proportion" approach. Indeed, the SAA specifically mentions that no "precise mathematical formula" or "'benchmark' proportion" is to be used for a dumping concentration analysis. SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30. Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a "case-by-case basis." SAA at 860. Finally, the definition of the word "substantial" undercuts the CFTVC's argument. The word "substantial" generally means "considerable in amount, value or worth." Webster's Third New International Dictionary 2280 (1993). It does not imply a specific number or cut-off. What may be substantial in one situation may not be in another situation. The very breadth of the term "substantial" undercuts the CFTVC's argument that Congress spoke clearly in establishing a standard for the Commission's regional antidumping and countervailing duty analyses. It therefore supports the conclusion that the Commission is owed deference in its interpretation of "substantial proportion." The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

Substantially cannot be determined by percentage tests

Leo '8 (Kevin Leo** J.D. Candidate, Spring 2008, Hastings College of the Law. Hastings Business Law Journal Spring, 2008 4 Hastings Bus. L.J. 297 LEXIS)

> In contrast, the court in Haswell v. United States held that spending over sixteen percent of an organization's time on lobbying was substantial. n83 The court found that applying a strict percentage test to determine whether activities are substantial would be inappropriate, since [*308] such a test "obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization." n84

Defining substantial as "considerable" is ambiguous

Stark 97 (Stephen J., "Key Words And Tricky Phrases: An Analysis Of Patent Drafter's Attempts To Circumvent The Language Of 35 U.S.C.", Journal of Intellectual Property Law, Fall, 5 J. Intell. Prop. L. 365, Lexis)

> 1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. 30 However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. 31 Additionally, there are another two definitions specifically provided for the adverb "substantially." 32 Thus, the "ordinary meaning" is not

clear. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." 33 Supposing that this is the precise definition that the drafter had in mind when drafting the patent, the meaning of "ample or considerable amount" appears amorphous. This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a very ambiguous meaning, makes the scope of protection particularly hard to determine.

Reasonability is insufficient in defining substantial

Brennan 88 (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!27%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the legislative history and other tools of interpretation to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" means more than merely reasonable, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, 817

F.2d 1238 (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to creep the standard towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is no excuse to abandon the test Congress enacted. n2

THE

"The" implies there is only one – as in the USFG.
Cambridge Dictionaries Online, 20**07**.

The - used to refer to things or people when only one exists at any one time:

the specifies
Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

The (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

Indicates a proper noun
Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used to mark a proper noun, natural phenomenon, ship, building, time, point of the compass, branch of endeavor, or field of study as something well-known or unique): the sun; the Alps; the Queen Elizabeth; the past; the West.

'The' means all parts.
Merriam-Webster's Online Collegiate Dictionary, **5**

http://www.m-w.com/cgi-bin/dictionary

the 4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

"The" indicates generic class
Encarta 9 (World English Dictionary, "The", http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating generic class: used to refer to a person or thing considered generically or universally

- Exercise is good for the heart.
- She played the violin.
- The dog is a loyal pet.

'The' depends on context
Words and Phrases '8 "The" v41B

Cal.App. 1 Dist. 1932. Meaning of "the" depends on context and purpose of statute in which it is found.—Craig v. Boyes, 11 P.2d 673, 123 Cal. App. 592.—Statut 199.

The is limiting
Words and Phrases '8 "The" v41B

Colo. 1969. In construing statute, definite article "the" particularizes the subject which it precedes and is word of limitation as opposed to indefinite or generalizing force of "a" or

"an".— Brooks v. Zabka, 450 P.2d 653, 168 Colo. 265.— Statut 199.

Words and Phrases ‘8 “The” v41B

Colo. 1957. Word "the" is a word of limitation. It is a word used before nouns with a specifying or particularizing effect, apposed to the indefinite or generalizing force of *"a"* or "an".—People v. Enlow, 310 P.2d 539, 135 Colo. 249.

‘The’ is restrictive

Words and Phrases ‘8 “The” v41B

Pa. 1988. Fact that legislature, in drafting pension statutes, in one instance used phrase "in service" and hi another used phrase "in the service" connotes distinction in phrases themselves; "the" by its very nature restricts the word "service," to a particular "service," and thus, "in the service" permits benefits to be paid to fireman who suffers injuries while member of a department, while "in service" permits benefits to be paid to a member of a department who suffers injuries whiie performing his duties. 53 P.S. §§ 771, 39321.—Chirico v. Board of Sup'rs for Newtown Tp,, 544 A.2d 1313, 518 Pa. 572.—Mun Corp 200(5).

UNITED STATES FEDERAL GOVERNMENT

USFG is the government established in the constitution

US Legal 13 "Legal Terms, Definitions, and Dictionary"
http://definitions.uslegal.com/u/united-states-federal-government/

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and 'checks and balances' for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

Columbia Encyclopedia '9 http://education.yahoo.com/reference/encyclopedia/entry/US

The government of the United States is that of a federal republic set up by the Constitution of the United States, adopted by the Constitutional Convention of 1787. There is a division of powers between the federal government and the state governments. The federal government consists of three branches: the executive, the legislative, and the judicial. The executive power is vested in the President and, in the event of the President's incapacity, the Vice President. (For a chronological list of all the presidents and vice presidents of the United States, including their terms in office and political parties, see the table entitled Presidents of the United States.) The executive conducts the administrative business of the nation with the aid of a cabinet composed of the Attorney General and the Secretaries of the Departments of State; Treasury; Defense; Interior; Agriculture; Commerce; Labor; Health and Human Services; Education; Housing and Urban Development; Transportation; Energy; and Veterans' Affairs.

The Congress of the United States, the legislative branch, is bicameral and consists of the Senate and the House of Representatives. The judicial branch is formed by the federal courts and headed by the U.S. Supreme Court. The members of the Congress are elected by universal suffrage (see election) as are the members of the electoral college, which formally chooses the President and the Vice President

Oxford 11 Oxford Advanced Learner's Dictionary 2011
http://oald8.oxfordlearnersdictionaries.com/dictionary/federal-government

federal government

(in the US) the system of government as defined in the Constitution which is based on the separation of powers among three branches: the executive, the legislative and the judicial. This system provides a series of checks and balances because each branch is able to limit the power of the others. The executive branch consists of the President and Vice-President, based in the White House in Washington, DC, and government departments and agencies. The President can approve or stop laws proposed by Congress, appoints senior officials, such

as heads of government departments and federal judges, and is also Commander-in-Chief of the military forces. There are 15 government departments, the heads of which make up the Cabinet which meets regularly to discuss current affairs and advise the President. The legislative branch is the Congress which is made up of the two houses, the Senate and the House of Representatives which both meet in the Capitol Building in Washington, DC. The main job of Congress is to make laws, but its other responsibilities include establishing federal courts, setting taxes and, if necessary, declaring war. The President and members of Congress are chosen in separate elections. The Senate has 100 members, two from each state, both of whom represent the whole state and are elected for six years. The House of Representatives has 435 members, who are elected every two years. The number of members from each state depends on the population of the state, with larger states divided into districts, each with one representative. The judicial branch of government has three levels: the Supreme Court, 13 courts of appeal and many federal district courts. The Supreme Court has nine members, called justices who are chosen by the President and headed by the Chief Justice. The Supreme Court has the power to influence the law through a process called judicial review.

USFG is the three branches

USA.gov 13 "USA.gov is the U.S. government's official web portal" http://www.usa.gov/Agencies/federal.shtml

U.S. Federal Government - The three branches of U.S. government—legislative, judicial, and executive—carry out governmental power and functions.

Omnilexica 13 http://www.omnilexica.com/?q=federal+government#definition

1. Federal Government a.k.a. Federal government of the United States: The Government of the United States of America is the federal government of the constitutional republic of fifty states that comprise the United States of America, as well as one capitol district, and several other territories. The federal government is composed of three distinct branches: legislative, executive and judicial, which powers are vested by the U.S. Constitution in the Congress, President, and Supreme Court, respectively; the powers and responsibilities are further defined by acts of Congress, including the creation of executive departments and subordinate courts.

also known as United States government, US Government, United States: Federal Government, US Federal government, United States Federal Government, United States, U.S. government, American Government, the United States's government, managing organization for the United States

USFG also includes agencies

Blacks Law 90 Blacks Law Dictionary, 1990 p. 695 "government"

In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

USFG is the national government

Oran's 2K Oran's Dictionary of the Law 2K Daniel Oran and Mark Toski, eds ebook p. 193

Federal

1.A federal union is two or more states uniting into one strong central government with many powers left to the states.

2. The U.S. federal government is the national, as opposed to state, government. 3. For the various federal agencies that are not listed here or by name, look under their initials at the start of the letter.

Investor Words 13 InvestorWords.com http://www.investorwords.com/1895/Federal.html

federal - Pertaining to the national government of a country.

Hill 1 Kathleen Thompson Hill and Gerald N. Hill, The Facts on File Dictionary of American Politics p 103

Federal – pertaining to a national, central government created by a unified group of states.

Collin '98 P.H. Collin, ed, Dictionary of Government and Politics, 2nd edition, 1998 p 128 "government"'

Federal government = central government of a federal state.

Federal indicates central government, distinct from the states

Thomson 7 Alex Thomson, A Glossary of US Politics and Government 2007 p 72

federal government The term used to refer to the central, national government of the United States, based primarily in Washington DC. The federal government differs from the fifty state governments in that it has a national jurisdiction, and it governs in separate policy areas from those of the states.

Random House 13 Dictionary.com Unabridged Based on the Random House Dictionary, © Random House, Inc. 2013. http://dictionary.reference.com/browse/federal

fed·er·al [fed-er-uhl] Show IPA adjective

1.pertaining to or of the nature of a union of states under a central government distinct from the individual governments of the separate states, as in federal government; federal system .

2.of, pertaining to, or noting such a central government: federal offices.

Oxford 13 Oxford Dictionaries 2013 http://oxforddictionaries.com/definition/english/federal

Definition of federal adjective

1having or relating to a system of government in which several states form a unity but remain independent in internal affairs:a federal Europe

2relating to or denoting the central government as distinguished from the separate units constituting a federation:the health ministry has sole federal responsibility for health care

(Federal) US historical of the Northern states in the Civil War.

WordNet 12 Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc. http://www.thefreedictionary.com/federal

Adj. 1.federal – national federal - national; especially in reference to the government of the United States as distinct from that of its member units; "the Federal Bureau of Investigation"; "federal courts"; "the federal highway program"; "federal property"
national - concerned with or applicable to or belonging to an entire nation or country; "the national government"; "national elections"; "of national concern"; "the national highway system"; "national forests"
2.federal - of or relating to the central government of a federation federal - of or relating to the central government of a federation; "a federal district is one set aside as the seat of the national government"

Central government makes decisions in foreign affairs

Longman 13 Longman Dictionary of Contemporary English 2013 http://www.ldoceonline.com/dictionary/federal

fed·e·ral
1 a federal country or system of government consists of a group of states which control their own affairs, but which are also controlled by a single national government which makes decisions on foreign affairs, defence etc:
2 relating to the central government of a country such as the US, rather than the government of one of its states:
federal law
federal taxes

United States is the country that geographically occupies the 50 states it encompasses.

The **American Heritage** Dictionary, bartleby.com/61/, 2000 **2K**

United States of America... A country of central and northwest North America with coastlines on the Atlantic and Pacific oceans. It includes the noncontiguous states of Alaska and Hawaii and various island territories in the Caribbean Sea and Pacific Ocean. The area now occupied by the contiguous 48 states was originally inhabited by numerous Native American peoples and was colonized beginning in the 16th century by Spain, France, the Netherlands, and England. Great Britain eventually controlled most of the Atlantic coast and, after the French and Indian Wars (1754–1763), the Northwest Territory and Canada.

"United States" means the territory over which the sovereign nation of the "United States" exercises sovereign power

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

United States - the territory over which this sovereign nation called the “United States” exercises sovereign power

United States is one nation

Words and Phrases Second Series, 1914, Updated **1964**, Volume 4, 1905, pg. 1074.

> The “United States” are for many important purposes a single nation, and in all commercial regulations we are one and the same people.

Territories are the United States

Title 5 US Code -EXPCITE- TITLE 5 PART III Subpart F CHAPTER 71 SUBCHAPTER I -HEAD- Sec. 7103. Definitions; application, “The US Code defines the term "United States"” http://freedom-school.com/code-defines-united-states.pdf

> (18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

US is only the states and DC

Legal Information Institute 12 http://www.law.cornell.edu/uscode/text/26/7701

> USC › Title 26 › Subtitle F › Chapter 79 › § 770 26 USC § 7701 – Definitions (9) United States
> The term “United States” when used in a geographical sense includes only the States and the District of Columbia.

“United States” is the USA

Encarta 7 (Dictionary Online, “United States”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861708119)

> U·nit·ed States [yˑ nɪ̀təd stáyts] country in central North America, consisting of 50 states.
> Languages: English.
> Currency: dollar.
> Capital: Washington, D.C..
> Population: 290,342,550 (2001).
> Area: 9,629,047 sq km (3,717,796 sq mi.)
> Official name United States of America

Topicality – Geography – SDI

T – Domestic = Geography

Thus, the plan: The United States federal government should curtail its domestic surveillance of stored electronic communication that is warrantless and unbound by mutual legal assistance treaties signed by the United States.

There are cards from the 1ac to prove points. I think that this can be a substantial part of the 2nc.

If you don't really want to go for T, there is a specific block for kicking it. If they are T, they don't solve anything.

I also think you can read curtail to mean reduce. Requiring a warrant doesn't reduce anything.

1nc – Domestic Excludes

A. Interpretation – Domestic surveillance" must collect information from within the United States.

Sladick 12 – Kelli Sladick, Blogger at the Tenth Amendment Center, "Battlefield USA: The Drones are Coming", Tenth Amendment Center, 12-10, http://blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/

In a US leaked document, "Airforce Instruction 14-104", on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, "any imagery collected by satellite (national or commercial) and airborne platforms that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas." In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises.

B. Violation – the plan stops foreign surveillance.

C. Vote neg for fairness and education

1. Precision – undermining the meaning of domestic surveillance shoehorns into the topic all foreign surveillance – that defeats the point of the topic.

Tracy 15 – Sam Tracy, "NSA WHISTLEBLOWER JOHN TYE EXPLAINS EXECUTIVE ORDER 12333", Digital Fourth, 3-18, http://warrantless.org/2015/03/tye-12333/

It's been widely reported that the NSA, under the constitutionally suspect authority of Section 215 of the PATRIOT Act, collects all Americans' phone metadata. Congress has not yet passed any reforms to this law, but there have been many proposals for changes and the national debate is still raging. Yet Americans' data is also being collected under a different program that's entirely hidden from public oversight, and that was authorized under the Reagan-era Executive Order 12333.

That's the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled "Why I spoke out against the NSA." Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 **governs data collected overseas**, as **opposed to domestic surveillance** which is authorized by statute. However, because Americans' emails and other communications are **stored in servers all over the globe**, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

2. Limits – they explode limits – they could stop any of the 10 techniques for surveillance in any of nearly 200 countries done by over 10 agencies or any permutation and combination of those which makes it impossible to be neg.

2nc Overview

Topical affs can only stop data collection inside the United States because domestic surveillance occurs when data is in the US.

The aff justifies affs that end surveillance of US citizens in any country, they could use the NSA, FBI, CIA, DHS, IRS, they could do any of the techniques like stingray interceptors, prism – the topic becomes virtually limitless. The neg would need specific DAs to every country which would make neg clash impossible – that undermines portable skills like decision-making which is more important than topic specific education because we use it every day.

Precision is the most important internal link to topic education – blowing the lid off the topic by allowing foreign surveillance to be topical erodes the meaning of domestic.

Even if the aff curtails domestic surveillance, it only does it effectually – the US has to have negotiated an MLAT for it do anything, and then the warrant only does something if the MLAT specifies requirements – that allows the aff to take any steps to be topical which is unpredictable and destroys clash and independently a reason to reject the aff.

AND even if the aff is topical, that just means it doesn't solve – all the data will continue to be swept up under the label of "foreign surveillance."
Section 702 governs foreign surveillance BUT domestic communications are swept up by the millions – unless the plan ends foreign surveillance THEY SOLVE ZERO OF THEIR AFF

Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?" http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.27, accessed 6-3-15, TAP]

The administration routinely asserts that Section 702 of FISA targets only foreigners overseas.168 These statements create **a false impression that only foreigners' communications**

are sought or acquired. In fact, **anyone who talks to or about a target is subject to surveillance. The NSA has refused to provide any estimate of how many Americans' communications are acquired under Section 702**, claiming that providing such an estimate would itself violate Americans' privacy.169 However, a declassified 2011 opinion of the FISA Court notes that **250 million internet communications were acquired the previous year under Section 702**.170 **If only ten percent of these communications involved U.S. persons, that would still add up to the collection of 25 million internet communications involving Americans for a single year**.171 **This number would not include wholly domestic communications swept up in the net**, which happens tens of thousands of times a year, according to the same decision.172

Domestic only LEADS Act tanks the signal of the aff – other countries only care about MLATs for their own citizens – the plan would have no effect on MLATs if it were topical. Their 1ac evidence.

McKenna 15 (Rob, Former Washington State Attorney General, to Serve as NAJI President, "NAJI supports bipartisan, bicameral LEADS Act and digital privacy," Feb 27, http://naji.org/naji-supports-bipartisan-bicameral-leads-act-and-digital-privacy/, CMR)

Dear Representatives Marino and DelBene, Thank you for your leadership on the Law Enforcement Access to Data Stored Abroad Act (LEADS Act) and for promoting a thoughtful public dialogue on the complex and important issues surrounding data privacy in the digital age. Legal protections for our electronic communications must be updated to reflect the realities of data storage today and to maintain our **global competitive position**. The National Alliance for Jobs and Innovation (NAJI) supports this important legislation which will ensure that the privacy of our members' electronic communications is protected and respected, while also **improving our trade position** in the world. I am NAJI's President and also the former Attorney General of Washington State and past President of the National Association of Attorneys General. NAJI represents over 400 small- and medium-size manufacturing enterprises and 35 manufacturer and business associations around the United States. For our members, the confidentiality of business data and electronic communications, and their protection from **arbitrary government seizure**, are of the utmost importance. Like other businesses, and perhaps even more than most, U.S. manufacturers have benefited tremendously from the strong growth and continuing innovation of the U.S. information technology (IT) industry. But in order for U.S. companies to achieve their full potential and for our nation to maintain its position at the pinnacle of innovation and competitiveness, our data, business records, and other electronic information must be protected from arbitrary government intrusion. The LEADS Act will strengthen privacy in the digital age and **promote trust** in U.S. IT technologies worldwide, while enabling law enforcement to fulfill its public safety mission. The LEADS Act will not only require law enforcement to obtain search warrants before accessing private data stored by cloud computing services, but will also strengthen international law enforcement cooperation through the Mutual Legal Assistance Treaty (MLAT) process. NAJI believes these provisions are essential and strongly supports their adoption. Again, we appreciate your willingness to address these vital issues and look forward to engaging with you and all Members of Congress in this important dialogue. Sincerely, RobMcKenna

It also means they don't solve competitiveness. Their 1ac evidence.

Pociask 14 (Steve Pociask, president of the American Consumer Institute Center for Citizen Research, a nonprofit educational and research organization, "Spy in the Clouds: How DOJ Actions Could Harm U.S. Competitiveness Abroad," 9/8, The American Consumer Institute

Center for Citizen Research, September 8, 2014, http://www.theamericanconsumer.org/wp-content/uploads/2014/09/Balkanized-Internet.pdf, CMR)

The Cost of Economic Sanction s The U.S. has 10% of the world's online users, but only 4.5% of the population. 7 Yet, the U.S. has nearly one - third of **r**esearch and **d**evelopment investment in science and technology. 8 However, its worldwide presence in technology could be threatened by a backlash of anti-American sentiment, now fueled by the Microsoft lawsuit and the resulting concerns of privacy and espionage. While the Information Technology and Innovation Foundation predicted a $35 billion loss in cloud computing from an international backlash from privacy concerns , Forrester Research estimated the larger high - tech sector could suffer financial losses as high as $**180 billion** or about a quarter of industry revenues. 9 Using the Bureau of Economic Analysis industry multipliers, that loss would be equivalent to losing more than 2 million U.S. jobs. That would increase the unemployment rate by from 6.1% to 7.6%. These losses would be **devastating** for American high - tech businesses and could spill into non - tech commerce as well. Indeed, losses to U.S. corporations are already starting to surface. Following the NSA spying revelation, there were reports that IBM, Microsoft, Cisco and other American Companies may have lost customers and were not invited to bid on multi - year international contracts. The latest threat by t he DOJ to access records on foreign consumers and businesses , particularly if successful in the courts, will certainly fuel further sanctions. The shunning of U.S. high - tech products and services by consumers, businesses and governments will be a major setback for U.S. companies working abroad. Because the U.S. is a **world leader** in technological services and products, the effects of complying with the DOJ request would significantly stunt U.S. sales abroad and encourage foreign countries to buy products and services from their domestic sources, including developing a balkanized Internet that keeps its citizens, businesses and government away from buying U.S. products, cloud services, software and applications. This would affect U.S. competitive abroad for **decades to come** U.S. Government Needs to Fix This Mess The DOJ's quest for personal information on a n Irish citizen living abroad could open up a **cascade of problems** overseas -- conflicts with laws in other countries, customer losses, contract sanctions by foreign business and governments, retaliation , and balkanization of the Internet. A balkanized Internet will not support the rapid growth of high-tech trade and free exchange of ideas that we have enjoyed over the past 20 years. I t will lead to a substantial financial impact on U.S. high - tech firms and lost jobs for workers . It would also produce long - term harm to U.S. competitiveness in the high - tech sector. The quick and easy **solution** is for the full and immediate attention of Congress in its consideration of legislation just introduced by Senators Hatch, Coons and Heller – The **L**aw **E**nforcement **A**ccess to **D**ata **S**tored Abroad Act . 10 This proposed legislation would address the issue by limiting the reach of warrant s to U.S. citizens and companies, as well as keeping conformity with foreign treaties and laws. Congress needs to act before the negative economic consequences of the DOJ's actions cause **irreparable harm** to U.S. interests abroad. The legislative solution makes the U.S. keep its promises and respect its legal treaties with other countries, and that work s to dispel any fears of spying or collection of personal information that our allies might have . We need to take steps now to protect U.S. business interests abroad . To do otherwise could lead to **devastating** financial consequences on U.S. high-tech firms.

2nc – AT: We Meet

Either the aff doesn't solve because the LEADs Act doesn't affect domestic surveillance OR the aff isn't domestic surveillance.

The entire aff is all about data stored outside the US. 1AC ev.

Rogers 15 (Jerry, the president of Capitol Allies and the founder of its Six Degrees Project, an independent, nonpartisan effort that promotes entrepreneurship, economic growth, and free market ideals, "Congress LEADS Privacy Rights into the 21st Century," May 13, http://townhall.com/columnists/jerryrogers/2015/05/13/congress-leads-privacy-rights-into-the-21st-century-n1998505/page/full, CMR)

Bipartisan legislation, introduced in both Houses of Congress, seeks to modernize the wholly inadequate and outdated Electronic Communications Privacy Act (ECPA). The rules regulating **government surveillance** and information gathering are obsolete and in dire need of reform. Americans believe—rightly—their privacy rights are not properly protected from government infringement. Enacted in 1986, the ECPA is the major federal statute that regulates electronic surveillance and data gathering, and it does not sufficiently address the challenges presented by modern day computing. The ECPA was designed to protect the privacy of electronic communications, and in the mid-1980s, many of the issues of today's interconnected world could not have been anticipated. The Law Enforcement Access to Data Stored Abroad (LEADS) Act amends the ECPA by bringing into the Twenty-first Century the rules determining how U.S. authorities can gain access to electronic data. On the international level, LEADS mandates that U.S. agencies cannot use search-warrants to compel the disclosure of an individual's content stored outside the **U**nited **S**tates unless the account holder is an American citizen (or U.S. person). It clarifies how U.S. authorities can access data held overseas by settling questions of jurisdiction and transparency. What's more, the reform legislation will **make stronger** the international process of MLATs (Mutual Legal Assistance Treaties) through which governments obtain evidence in criminal investigations. Simply, LEADS will **thwart government overreach** into personal data stored on U.S.-corporation servers abroad. On the national level, the LEADS Act would make documents and material stored in the cloud subject to the same search-warrant requirements as a user's personal property. LEADS is a **significant step** toward protecting due process and privacy rights by extending Fourth Amendment protections to data stored by commercial services (or cloud storage). The need for reform is clearly validated in Microsoft v. United States. The Department of Justice (DOJ) swayed a federal court to issue a warrant forcing Microsoft to turn over data it had stored in Ireland. With cloud computing, data can readily be stored in foreign countries. Microsoft maintains that for the federal government to obtain data in a foreign country, it must go through the MLAT process between that country and the **U**nited **S**tates. The Microsoft case demonstrates that the current legal regime **cannot keep pace** with changing technology. Real reform to both the ECPA and the MLAT process is needed now. European governments are threatening to ban American-cloud service providers over alarm that their citizens' data is not properly safeguarded by companies within reach of U.S. law enforcement. Such a scenario would **stifle economic growth** and be a **devastating blow** to the American innovation sector. Twentieth Century law should not be governing Twenty-first Century technology. The two-part aim of LEADS is simple and reasonable: 1) LEADS will make certain that data stored in the cloud must receive the same legal protections as data stored in our homes (Fourth Amendment protection from unreasonable searches and seizures). 2) LEADS will **update** and **strengthen** the **M**utual **L**egal **A**ssistance **T**reaty process. The LEADS Act is good for our allies; good for business; good for security; and good for privacy.

The LEADS Act applies to citizens with information stored outside the US. This is their 1ac solvency evidence.

Solove 15 (Daniel J, John Marshall Harlan Research Professor of Law at the George Washington University Law School, "Surveillance Law in Dire Need of Reform: The Promise of the LEADS Act," March 24, https://www.teachprivacy.com/surveillance-law-in-dire-need-of-reform-the-promise-of-the-leads-act/, CMR)

The LEADS Act

A key proposed reform of ECPA is the Law Enforcement Access to Data Stored Abroad (LEADS) Act of 2015, a bipartisan bill sponsored by Senators Hatch, Coons and Heller. The bill was introduced last term and died, but it has been reintroduced again this year.

The LEADS Act would require the government to obtain a warrant under ECPA to obtain electronic information stored by a "U.S. person." The LEADS Act attempts to clarify at least two deficiencies in ECPA:

1. The LEADS Act's warrant requirement for all communications overrides a provision in ECPA's Stored Communications Act that allows the government to obtain a stored email more than 180 days old with a court order less protective than a warrant, a provision that has been found to be **unconstitutional** under the Fourth Amendment (see United States v. Warshak, 631 F.3d 266 (6th Cir. 2010)). The LEADS Act's warrant requirement would get rid of the 180-day distinction.

2. The LEADS Act also directly addresses the problems raised in Microsoft v. United States. Under the LEADS Act, warrants would be required whether the information is held in the U.S. or overseas, but they would not be allowed to override conflicting foreign law. The LEADS Act also attempts to improve upon the MLAT process to ease its burden.

For U.S. persons, if the information is maintained in a foreign country, the service provider could request that the court **modify the warrant** if compliance would make the provider violate the law in the country where the data is stored. For non-U.S. persons, warrants would not apply. The **MLAT** process **would need to be followed**. So

if the government wanted to obtain information stored in Ireland by Microsoft by Jane America, a U.S. citizen, it could obtain the information through a warrant issued to Microsoft, but only if compliance didn't force Microsoft to violate the laws of Ireland. But if it wanted to obtain information stored oversees by Microsoft by Jane Ire, an Irish citizen, it would need to follow the MLAT process. The LEADS Act is a great step towards **reforming ECPA**. The U.S. government should not put itself above the laws of other countries. Nor should the U.S. government force cloud service providers and other companies to violate those laws so that government officials can take a shortcut around the MLAT process. There are issues in reforming ECPA that are quite controversial, but the LEADS Act has bipartisan support and the support of industry and a wide array of diverse special interest groups. The LEADS Act is a strong step in the right direction.

The LEADs Act targets intelligence collected from outside the US. 1ac ev. Horowitz 6/26 (Daniel, former staff Director of the House Small Business Committee and a veteran of the House Republican Leadership, "Protect Our Online Privacy: LEADs Act 2015," 2015, http://www.unitedliberty.org/articles/19273-protect-our-online-privacy)

The issue stems from a criminal investigation by the US government into the actions of an Irish citizen who stored computer information on a cloud-based storage system housed by an Irish company on the Emerald Isle. The company, however, was a subsidiary of Microsoft. "Microsoft is an American company", is the **thin excuse** DOJ is clinging to as it attempts to force Microsoft to seize the information. DoJ slapped Microsoft with a questionable warrant which in an effort to protect the privacy of their users, Microsoft has chosen to defy.

Traditionally and historically, if the United States (or any other country) have needed information residing in another country, it would rely on Mutual Legal Assistance Treaty (MLAT). The US would request a subpoena be issued by the foreign government who would process the request and hand the material over to the United States DoJ. Problem solved. Despite the fact that the United States and Ireland have just such an agreement in place but the Obama Administration has chosen to ignore this long-standing agreement just to take the easier, and legally questionable route. The dispute is making its way through the courts and the courts, thus far, have unreasonably sided with the federal government's jurisdictional power grab. The Supreme Court will now consider whether to take the case. Thankfully, some in Congress are not waiting for the court to act.

Rep. Tom Marino (R-PA) and more than 40 fellow Conservative Members of the U.S. House have introduced the LEADs Act of 2015. The bill skillfully walks the line between the needs of law enforcement, individuals Internet privacy and American competitiveness. The Act empowers U.S. warrants to reach data owned by U.S. citizens whether stored here in the US or on the cloud anywhere around the globe. However, if the data is owned by a foreign citizen, who is not living in the U.S. and the data is stored overseas - even if stored on the network of a US company - then Obama's DoJ would **have to comply** with the law of the country in which the data is stored.

2nc – AT: Nojeim

They say Nojeim –

1. All this evidence is says it is surveillance against US citizens – that DOES NOT MEAN it is domestic surveillance.

2. Domestic surveillance means geographically within the United States. Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?" http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.12, accessed 6-3-15, TAP]

Title III, Katz, Keith, and the foreign intelligence exception cases all addressed **surveillance conducted on U.S. soil**. They did not consider the rules that applied to surveillance conducted overseas. In 1990, in U.S. v. Verdugo-Urquidez, a plurality of the Supreme Court found that **the Fourth Amendment did not apply to a physical search conducted overseas** by American agents **where the target of the search was a foreigner** who lacked sufficient connections to the United States.51 This case has been cited widely for the proposition that **foreigners overseas are not entitled to the protections of the Fourth Amendment**, although a majority of the justices did not state such a broad view.52

3. Foreign intelligence can be gathered from US citizens. Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?" http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.15, accessed 6-3-15, TAP]

A second **key limitation** on the government's ability to obtain a FISA surveillance order **was** the requirement **that** it demonstrate that the purpose of the **surveillance was to obtain "foreign intelligence information**." Senators were concerned that the definition of "foreign intelligence information" in an early draft of the bill was too broad because it went beyond national security to include information on "the conduct of the foreign affairs of the United States." One Senator wrote to the Chair of the Intelligence Committee, pointing out that the views of members of Congress could "easily be classified as information 'essential to the conduct of the foreign affairs of the United States,'"85 suggesting that Congress itself could be surveilled under FISA. To address such misgivings (and over the objections of the Department of Defense and other agencies),86 the final version of **FISA required that, where the government sought information "concerning a United States person," it must show that the information was not just relevant but "necessary" for the conduct of foreign affairs**.87 The accompanying House Report

indicated that the use of this term precluded the executive's ability to seek a FISA order based on what is often known as the "mosaic theory": [I]t is often contended that a counterintelligence officer or intelligence analyst, if not the policymaker himself, must have every possible bit of information about a subject because it might provide an important piece of the larger picture. In that sense, any information relating to the specified purposes might be called 'necessary' but such a reading is clearly not intended.88 **For non-Americans**, however, **FISA still allowed the collection of information that "relates to . . . the national defense or the security of the United States," as well as** information that relates to the conduct of **foreign affairs**.89

2nc – AT: Alvilez

They say Avilez –

BUT this is OUR argument – data must come from within the US – their we meet arguments don't apply because MLATs and the LEADs Act are about data collection of US and foreign citizens OUTSIDE the US. This is a neg interpretation card.

2nc – AT: Overlimits

They say overlimits – Overlimits not true – they can still read affs about the 10 different agencies that do surveillance and all the different techniques – wiretaps, phone information, gps, emails, internet – there are already over 40 affs discovered at camp. The topic is enormous already PLUS the only generic DA is terrorism which is bad – err neg on the limits question.

Their interpretation explodes the topic – it is net worse when the neg has to research hundreds of affs – it undermines all education about the topic because the neg can only ever scratch the surface AND it tips the scales in favor of the aff because the aff can always be ready for the neg's most generic arguments.

2nc – AT: Topic Education

They say topic education –

1. If we win our precision argument, we win the strongest internal link into topic education – cloud computing education can be received WITHOUT turning the DOMESTIC SURVEILLANCE topic into the ALL OF DOMESTIC AND FOREIGN SURVEILLANCE topic which also solves their offense.

2. Limits explosion turns topic education – broad topics undermine case-specific research – any risk of limits explosion outweighs.

2nc – AT: No Lost Ground

They say no lost ground –

1. Ground begs the question of limits – debates are better with smaller topics because it drives in depth research – huge topics allow for affs to force the neg into the most generic positions which makes it too easy for the aff to win.

2. Over-inflates aff ground – MLATs advantage proves – they shouldn't be able to claim compliance with international treaties.

2nc – AT: Domestic Doesn't Limit

They say Domestic doesn't limit –

1. This proves circumvention takes out the aff – if US person's data can be both domestic and foreign surveillance, that takes out the aff.

2. There is a distinction between domestic and foreign surveillance.
Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?"
http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.33, accessed 6-3-15, TAP]

What Exactly is the FISA Court Approving Under Section 702? The question of whether any and all applications of the NSA's procedures would be constitutional is not "capable of resolution through the judicial process" because FISA Court judges simply don't know the specific activities that the procedures may authorize in any given case.200 An excerpt from the 2009 targeting procedures, which were blessed by the court, makes this clear: NSA determines whether a person is a non-United States person reasonably believed to be outside the United States in light of the totality of the circumstances based on the information available with respect to that person, including information concerning the facility or facilities used by that person. NSA analysts examine . . . three categories of information, as appropriate under the circumstances, to make the above determination . . . NSA may use information from any one or a combination of these categories of information in evaluating the totality of the circumstances to determine that the potential target is located outside the United States. The following are examples of the types of lead information that NSA may examine: . . . .201 When reviewing these vague and indeterminate procedures, the most the court can do — and the most any court does when it conducts a facial review — is hold that the procedures could be applied constitutionally in at least one imaginable set of circumstances.

3. That's key to precision and limits.
Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?"
http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.28, accessed 6-3-15, TAP]

This report focuses on **FISA and the FISA Court**, which **regulate and oversee surveillance that takes place within the United States. Collection on foreign targets that takes place abroad generally is conducted under Executive Order 12333,** which allows collection without judicial oversight and imposes even fewer limits than Section 702.176 At first blush, the government's longstanding ability to engage in the warrantless collection of international communications from overseas might appear to undermine the claim that Section 702 greatly expanded the government's ability to acquire such collections. However, the very fact that the executive branch pushed so hard to enact Section 702 suggests that overseas acquisition either was impossible or was deemed too costly in many cases. It is easy to imagine how that might be the case when, for instance, targets live in countries with unfriendly governments. Moreover, the fact that **the government collects information overseas under Executive Order 12333 — including, ostensibly, the "incidental" collection and retention of Americans' communications with overseas targets** on an even greater scale than under Section 702177 — does not establish the legality of the practice. Even if foreigners overseas lack Fourth Amendment protections, it is far from clear that a foreign target's communications with U.S. persons are exempt from constitutional safeguards. Because surveillance under Executive Order 12333 does not involve judicial review, courts have not had occasion to rule on whether the surveillance it authorizes is constitutional when a U.S. person's communications are involved.

2nc – AT: Reasonability

They say reasonability –

It is arbitrary – there is no way to determine how reasonably topical an aff must be – that creates judge intervention. Competing interpretations is inevitable and the only fair way to determine the debate. The question is not how debatable the aff is, but what is the best interpretation of the topic for the entire year. Now is key to set a precedent on an already huge topic.

If Not Going for T

We aren't going for T, we will concede they are topical – that means they don't solve the aff.

1. All the data will continue to be swept up under the label of "foreign surveillance."

Section 702 governs foreign surveillance BUT domestic communications are swept up by the millions – unless the plan ends foreign surveillance THEY SOLVE ZERO OF THEIR AFF

Goitein and Patel, New York University Law School Brennan Center for Justice's Liberty and National Security Program co-directors, 2015

[Elizabeth, Sen. Russell Feingold former counsel, DOJ Civil Division federal programs trial attorney, Yale Law School JD, former 9th Circuit court of appeals clerk, and Faiza, The Hague Organization for the Prohibition of Chemical Weapons senior policy officer, International Criminal Tribunal clerk for the former Yugoslavia, NYU JD, "What went wrong with the FISA Court?" http://www.brennancenter.org/sites/default/files/analysis/What_Went_%20Wrong_With_The_FISA_Court.pdf, p.27, accessed 6-3-15, TAP]

The administration routinely asserts that Section 702 of FISA targets only foreigners overseas.168 These statements create **a false impression that only foreigners' communications are sought or acquired**. In fact, **anyone who talks to or about a target is subject to surveillance. The NSA has refused to provide any estimate of how many Americans' communications are acquired under Section 702**, claiming that providing such an estimate would itself violate Americans' privacy.169 However, a declassified 2011 opinion of the FISA Court notes that **250 million internet communications were acquired the previous year under Section 702**.170 **If only ten percent of these communications involved U.S. persons, that would still add up to the collection of 25 million internet communications involving Americans for a single year**.171 **This number would not include wholly domestic communications swept up in the net**, which happens tens of thousands of times a year, according to the same decision.172

2. Domestic only LEADS Act tanks the signal of the aff – other countries only care about MLATs for their own citizens – the plan would have no effect on MLATs if it were topical. Their 1ac evidence.

McKenna 15 (Rob, Former Washington State Attorney General, to Serve as NAJI President, "NAJI supports bipartisan, bicameral LEADS Act and digital privacy," Feb 27, http://naji.org/naji-supports-bipartisan-bicameral-leads-act-and-digital-privacy/, CMR)

Dear Representatives Marino and DelBene, Thank you for your leadership on the Law Enforcement Access to Data Stored Abroad Act (LEADS Act) and for promoting a thoughtful public dialogue on the complex and important issues surrounding data privacy in the digital age. Legal protections for our electronic communications must be updated to reflect the realities of data storage today and to maintain our **global competitive position**. The National Alliance for Jobs and Innovation (NAJI) supports this important legislation which will ensure that the privacy of our

members' electronic communications is protected and respected, while also **improving our trade position** in the world. I am NAJI's President and also the former Attorney General of Washington State and past President of the National Association of Attorneys General. NAJI represents over 400 small- and medium-size manufacturing enterprises and 35 manufacturer and business associations around the United States. For our members, the confidentiality of business data and electronic communications, and their protection from **arbitrary government seizure**, are of the utmost importance. Like other businesses, and perhaps even more than most, U.S. manufacturers have benefited tremendously from the strong growth and continuing innovation of the U.S. information technology (IT) industry. But in order for U.S. companies to achieve their full potential and for our nation to maintain its position at the pinnacle of innovation and competitiveness, our data, business records, and other electronic information must be protected from arbitrary government intrusion. The LEADS Act will strengthen privacy in the digital age and **promote trust** in U.S. IT technologies worldwide, while enabling law enforcement to fulfill its public safety mission. The LEADS Act will not only require law enforcement to obtain search warrants before accessing private data stored by cloud computing services, but will also strengthen international law enforcement cooperation through the Mutual Legal Assistance Treaty (MLAT) process. NAJI believes these provisions are essential and strongly supports their adoption. Again, we appreciate your willingness to address these vital issues and look forward to engaging with you and all Members of Congress in this important dialogue. Sincerely, RobMcKenna

3. It also means they don't solve competitiveness. Their 1ac evidence.

Pociask 14 (Steve Pociask, president of the American Consumer Institute Center for Citizen Research, a nonprofit educational and research organization, "Spy in the Clouds: How DOJ Actions Could Harm U.S. Competitiveness Abroad," 9/8, The American Consumer Institute Center for Citizen Research, September 8, 2014, http://www.theamericanconsumer.org/wp-content/uploads/2014/09/Balkanized-Internet.pdf, CMR)

The Cost of Economic Sanction s The U.S. has 10% of the world's online users, but only 4.5% of the population. 7 Yet, the U.S. has nearly one - third of **r**esearch and **d**evelopment investment in science and technology. 8 However, its worldwide presence in technology could be threatened by a backlash of anti-American sentiment, now fueled by the Microsoft lawsuit and the resulting concerns of privacy and espionage. While the Information Technology and Innovation Foundation predicted a $35 billion loss in cloud computing from an international backlash from privacy concerns , Forrester Research estimated the larger high - tech sector could suffer financial losses as high as $**180 billion** or about a quarter of industry revenues. 9 Using the Bureau of Economic Analysis industry multipliers, that loss would be equivalent to losing more than 2 million U.S. jobs. That would increase the unemployment rate by from 6.1% to 7.6%. These losses would be **devastating** for American high - tech businesses and could spill into non - tech commerce as well. Indeed, losses to U.S. corporations are already starting to surface. Following the NSA spying revelation, there were reports that IBM, Microsoft, Cisco and other American Companies may have lost customers and were not invited to bid on multi - year international contracts. The latest threat by t he DOJ to access records on foreign consumers and businesses , particularly if successful in the courts, will certainly fuel further sanctions. The shunning of U.S. high - tech products and services by consumers, businesses and governments will be a major setback for U.S. companies working abroad. Because the U.S. is a **world leader** in technological services and products, the effects of complying with the DOJ request would significantly stunt U.S. sales abroad and encourage foreign countries to buy products and services from their domestic sources, including developing a balkanized Internet that keeps its citizens, businesses and government away from buying U.S. products, cloud services, software and applications. This would affect U.S. competitive abroad for **decades to come** U.S. Government Needs to Fix This Mess The DOJ's quest for personal information on a n Irish citizen living abroad could open up a **cascade of problems** overseas -- conflicts with laws in other countries, customer losses, contract sanctions by foreign business and governments, retaliation , and balkanization of the Internet. A balkanized Internet will not support the rapid growth of high-

tech trade and free exchange of ideas that we have enjoyed over the past 20 years. I t will lead to a substantial financial impact on U.S. high - tech firms and lost jobs for workers . It would also produce long - term harm to U.S. competitiveness in the high - tech sector. The quick and easy **solution** is for the full and immediate attention of Congress in its consideration of legislation just introduced by Senators Hatch, Coons and Heller – The **L**aw **E**nforcement **A**ccess to **D**ata **S**tored Abroad Act . 10 This proposed legislation would address the issue by limiting the reach of warrant s to U.S. citizens and companies, as well as keeping conformity with foreign treaties and laws. Congress needs to act before the negative economic consequences of the DOJ's actions cause **irreparable harm** to U.S. interests abroad. The legislative solution makes the U.S. keep its promises and respect its legal treaties with other countries, and that work s to dispel any fears of spying or collection of personal information that our allies might have . We need to take steps now to protect U.S. business interests abroad . To do otherwise could lead to **devastating** financial consequences on U.S. high-tech firms.

Topicality- Georgetown

The Resolution

Resolved: The United States federal government should substantially curtail its domestic surveillance.

Topic thoughts---

1. The resolution is short and contains only a couple key terms, but this is a highly complicated T topic with an exceptionally deep, complicated, and interactive debate about terminology. It is possible that few will try to push certain boundaries and so some controversies will be more relevant for academics than debaters, but it also may be one of the most engaging topics for those interested in T in some time.

2. The scope of "domestic" surveillance most likely refers to the target of action as a "U.S. Person" – a term of art for citizens and resident aliens. This draws upon statutory language and legal interpretation of FISA (The Foreign Intelligence Surveillance Act of 1978), a critical piece of legislation that shapes the context of the topic. It is also possible to define it as referring to the location of the surveillance activity.

3. "Surveillance" has a huge lit base, written primarily by scholars within the emerging field of "Surveillance Studies". It is so broad that this file could not include all the great evidence available. I recommend that camps expand upon it and that students continue to research over the course of the year.

4. The strongest and most useful negative interpretation of "surveillance" is that it is information gathering with the intent to prevent something from occurring. This distinguishes "surveillance" from pure "information gathering" and requires the active purpose of suppressing behavior. This interpretation will be useful for excluding cases that restrict data collection for routine or bureaucratic purposes, or where there is not intent to use the data to surpress behavior (i.e. disaster warning, weather, environment, etc.).

5. "Curtail" is an interesting word and I am glad that the Topic Committee deviated from standard terms like "reduce", but lacks a deep evidentiary base. Defining it as "restrict" for the purposes of limits is strong.

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*** DOMESTIC

Domestic---Targets---1NC

"Domestic" surveillance is defined by the target---the subject of surveillance must be U.S. persons

Donohue 6 – Laura K. Donohue, Fellow, Center for International Security and Cooperation, Stanford University, "ANGLO-AMERICAN PRIVACY AND SURVEILLANCE", Journal of Criminal Law & Criminology, Spring, 96 J. Crim. L. & Criminology 1059, Lexis

5. The Foreign Intelligence Surveillance Act

As the extent of the **domestic surveillance** operations emerged, Congress attempted to scale back the Executive's power while leaving some flexibility to address national security threats. n183 The legislature **focused on the targets of surveillance**, limiting a new law to foreign powers, and agents of foreign powers - which included groups "engaged in international terrorism or activities in preparation therefor." n184 Congress **distinguished between U.S. and non-U.S. persons**, creating tougher standards for the former. n185

[FOOTNOTE]

n185. The former included **citizens** and **resident aliens**, as well incorporated entities and unincorporated associations with a substantial number of U.S. persons. Non-U.S. persons qualified as an "agent of a foreign power" by virtue of membership - e.g., if they were an officer or employee of a foreign power, or if they participated in an international terrorist organization. Id. 1801(i). U.S. persons had to engage knowingly in the collection of intelligence contrary to U.S. interests, the assumption of false identity for the benefit of a foreign power, and aiding or abetting others to the same. Id. 1801(b).

[END FOOTNOTE]

The Foreign Intelligence Surveillance Act ("FISA") considered any "acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication," as well as other means of surveillance, such as video, to fall under the new restrictions. n186 Central to the statute's understanding of surveillance was that, by definition, consent had not been given by the target. Otherwise, the individual would have a reasonable expectation of privacy and, under ordinary circumstances, the Fourth Amendment would require a warrant. n187

They curtail foreign, not domestic, surveillance---voting issue:

Limits---the explode the topic to include all foreign spying and espionage. There are hundreds of military and specific country Affs, each with distinct lit bases and advantages---makes in-depth preparation impossible

Precision---our interpretation is based on FISA, the gold standard for defining surveillance

Chiarella 97 – Major Louis A Chiarella, Chief, Administrative Law Office of the Staff Judge Advocate Fort Carson, Colorado and Major Michael A. Newton Professor, International and Operational Law Department The Judge Advocate General's School, United States Army Charlottesville, Virginia, ""So Judge, How Do I Get That FISA Warrant?": The Policy and Procedure for Conducting Electronic Surveillance", THE ARMY LAWYER, October, http://fas.org/irp/agency/doj/fisa/sojudge.pdf

What is the FISA?

On 25 October 1978, President Carter signed the FISA into law. The explicit purpose of the FISA was to balance the protection of individual privacy with the needs of national security through the development of a **regulatory framework** for certain counterintelligence activities of the executive branch of the federal government.31 Many factors necessitated this express balancing act. First, the Supreme Court's decision in Keith did not address the extent of the executive's constitutional powers in the area of counterintelligence.32 Writing for the majority, Justice Powell explicitly stated that the opinion made no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers or their agents.33 Second, congressional hearings revealed that both the FBI and the Central Intelligence Agency (CIA) had operated outside the law, in the name of intelligence collection.34 The Church Committee35 realized that counterintelligence was essential to the preservation of American civil liberties, and it recognized the need to collect intelligence and to establish appropriate limits on intrusive investigative techniques.36 Through the efforts of key officials from the DOJ and the Church Committee,37 the FISA became "the **gold standard** of legality in the world of counterintelligence." 38

The FISA is a complex statute, with an elaborate structure and flexible procedures. 39 It is not, however, a comprehensive statute for all intelligence activities. The FISA regulates counterintelligence investigations;40 it does not extend to domestic security investigations. The FISA also regulates specific counterintelligence collection techniques—primarily "electronic surveillance,"41 but physical searches as well. Other intelligence collection techniques have separate statutory and regulatory provisions.42 Additionally, the FISA has no extraterritorial applicability;43 therefore, it does not regulate the use of electronic surveillance outside of the United States. Because of the limited application under the FISA, there are other statutory and regulatory sources which control other counterintelligence activities.

All electronic surveillance for counterintelligence purposes within the United States is subject to the requirements of the FISA. This does not mean, however, that prior judicial authorization is always required. The Attorney General may acquire foreign intelligence information for periods up to a year without a judicial order if the Attorney General certifies in writing under oath that:

(A) the electronic surveillance is solely directed at . . . communications used exclusively between or among foreign powers44. . . [or] technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power . . .;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and (C) the proposed minimization procedures45 . . . meet [the statutory definition] of minimization procedures 46

Domestic---Targets

Domestic surveillance targets U.S. persons

Freiwald 9 – Susan Freiwald, Professor, University of San Francisco School of Law, "ELECTRONIC SURVEILLANCE AT THE VIRTUAL BORDER", MISSISSIPPI LAW JOURNAL, 1-14, http://www.olemiss.edu/depts/ncjrl/pdf/ljournal09Freiwald.pdf

That a member of the judiciary must be intimately involved in purely domestic surveillance for violations of domestic crimes and that the executive branch has discretion over purely foreign surveillance of **foreign people** in **foreign places** seems **clear**.22 But many, if not most, surveillance operations are neither purely domestic nor purely foreign, which substantially complicates the analysis. In fact, regulation of government surveillance of communications depends on so many factors that the rules Congress has formulated to handle them seem almost impenetrably complex.23

The **pertinent statutory provisions** may be found in the Foreign Intelligence Surveillance Act ("FISA").24 Those rules currently grant more discretion to executive branch monitors when (1) the purpose of the investigation is to gather foreign intelligence information rather than information pertaining to criminal offenses, (2) the target of the surveillance is located in a foreign country rather than in the United States, (3) the monitoring itself is conducted in a foreign place rather than in the United States, (4) the target is a foreign citizen rather than a U.S. citizen or a resident alien, (5) the U.S. Person targeted communicates with someone in a foreign country rather than here, (6) there is probable cause to believe that the U.S. Person targeted is an agent of a foreign power rather than there being no association between the target and a foreign power.25 Any one scenario involves some combination of the above pairings, which makes it even more difficult to determine the correct rule.

While the FISA scheme is a creature of Congress, it must conform to constitutional constraints.26 As Part II discusses, Fourth Amendment precedents require the judiciary to oversee executive branch surveillance of purely "domestic" surveillance.27 But the Fourth Amendment has much less, if anything, to say about executive branch conduct of purely "foreign" surveillance.28 One could defensibly arrange the scenarios along a spectrum from most "domestic," and therefore protected by the Fourth Amendment, to most "foreign," and therefore least protected.

Rather than viewing the Fourth Amendment as providing decreasing judicial oversight as the character of the electronic surveillance becomes increasingly foreign, however, one could instead view Fourth Amendment protection as being all or nothing. In other words, one could view the Fourth Amendment as providing strict regulation for purely domestic investigations and no regulation for purely foreign investigations because the latter are governed by executive branch discretion. Then one would view the rules for cases that fall in the middle as designed to determine whether to treat the investigation as domestic or foreign. Under this view, in cases that are neither clearly domestic nor clearly foreign, the judge's role would be to review the executive's decision to deprive the target of judicial oversight of the surveillance that the Fourth Amendment mandates. The executive makes such a determination when a target effectively acts in the interest of a foreign power; in such a case, the executive may be said to "exile" that target if she is a U.S. Person.29

In this analysis, the virtual border plays a key role. On this side of the virtual border, domestic targets enjoy extensive judicial review of executive branch surveillance, pursuant to the dictates of the Fourth Amendment.30 On the other side, foreign targets are subject to whatever electronic surveillance the executive branch chooses to conduct in the exercise of its foreign affair powers.31 Foreign targets have no right to complain about surveillance techniques in our courts, though they may of course raise their complaints in their own courts.32

That is not to say that judicial review over mixed domestic and foreign cases is not mandated by the Fourth Amendment, but rather that judicial oversight in these cases plays an additional role besides keeping electronic surveillance within permissible bounds. In addition, judges review the executive branch's decision to exile and ensure that U.S. Persons are not deprived of their Fourth Amendment rights either by being exiled over the virtual border without sufficient cause, or by being swept up in the surveillance of exiled U.S. Persons and foreigners.33 The Fourth Amendment also calls for admitting foreign people inside our virtual border in some cases. For example, resident aliens and those with sufficient connections to this country who are targeted in ordinary criminal investigations benefit from the highest level of Fourth Amendment protection of their communications, even though they are not American citizens.34

By viewing the Fourth Amendment regulation of electronic surveillance as "on" for surveillance of people on the domestic side of the virtual border and "off" for those on the foreign side of the border, one can get a clearer view of how much is at stake in the "exiling decision." With that in mind, one can appreciate the importance of judicial oversight of the executive's decision to exile and can assess the rules governing that decision by how well they protect against improper exile.35 Again, while one may view judicial review in these cases as quasi-constitutional Fourth Amendment protection,36 one should also evaluate the judiciary's performance of its responsibility to oversee the exiling decision.

As mentioned, FISA contains the rules that determine the amount of review provided by a judge over the exiling decision.37 As will be discussed in Part II, those rules permit the executive branch to use special procedures that accord meaningfully fewer rights to **foreign targets**.38 Foreign targets include those who are **neither American citizens nor resident aliens** (which together **constitute "U.S. Persons"**). But such targets also include those U.S. Persons who have effectively become foreigners through virtual exile. To exile a U.S. Person across the virtual border, high level executive branch

officials must have probable cause to believe that the U.S. Person targeted for exile works as an "[a]gent of a foreign power,"39 and the officials must seek "foreign intelligence information"40 about that agent. If a reviewing judge approves the executive branch's showing, agents may conduct surveillance of the exiled target without according her the full Fourth Amendment rights granted to domestic targets.4

"Domestic surveillance" is only against U.S. citizens---anything else is spying

Ross 12 – Jeffrey Ian Ross, Professor in the School of Criminal Justice, College of Public Affairs, and a Research Fellow of the Center for International and Comparative Law, and the Schaefer Center for Public Policy, at the University of Baltimore, An Introduction to Political Crime, p. 101

Introduction

Domestic surveillance consists of a variety of information-gathering activities, conducted primarily by the states coercive agencies (that is, police, national security, and the military). These actions are carried out against **citizens**, **foreigners**, **organizations** (for example, businesses, political parties, etc.), and **foreign governments**. Such operations usually include opening mail, listening to telephone conversations (eavesdropping and wiretapping), reading electronic communications, and infiltrating groups (whether they are legal, illegal, or deviant).

Although a legitimate law enforcement/intelligence-gathering technique, surveillance is often considered unpalatable to the public in general and civil libertarians in particular. This is especially true when state agents break the law by conducting searches without warrants, collecting evidence that is beyond the scope of a warrant, or harassing and/or destabilizing their targets.1 These activities arc illegal (because the Constitution, statutes, regulations, and ordinances specify the conditions under which surveillance may be conducted), and they violate individual rights to privacy.

Not only should legitimate surveillance be distinguished from illegal **domestic surveillance**, but the latter practice should also be **separated** from espionage/spying.2 In short, spying/espionage, covered in chapter four, is conducted against a foreign government, its businesses, and/or its citizens, and illegal **domestic surveillance** takes place **inside a specific individual's country**.

Domestic---Targets---Limits

Strict limits on "domestic" are vital to meaningful debate about the topic---our interpretation is already sufficiently broad because there are many forms of intelligence gathering about U.S. persons---expanding the topic more wrecks it

Small 8 – Matthew L. Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis", cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Before one can make **any sort of assessment** of domestic surveillance policies, it is **first** necessary to **narrow the scope** of the term "domestic surveillance." Domestic surveillance is a **subset** of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community **best understands** domestic surveillance as the **acquisition of nonpublic information concerning United States persons** (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an **overly broad** concept. This paper's analysis, in terms of President Bush's policies, focuses on **electronic surveillance**; specifically, **wiretapping** phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is **in the United States**, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Adhering to the above definition allows for a **focused analysis** of one part of President Bush's domestic surveillance policy as its implementation relates to the executive's ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis.

Domestic---Targets---Precision

"Domestic surveillance" refers to targets that are within the U.S.---this is the most accurate and historically grounded interpretation and vital to precise topic education

Wainstein 7 – Kenneth L. Wainstein, Assistant Attorney General for National Security on FISA Modernization at the Georgetown University Law Center's National Security Center, Prepared Remarks at the Department of Justice, 9-10, http://www.justice.gov/archive/opa/pr/2007/September/07_nsd_699.html

This conference is a great idea. It gives us an opportunity to share thoughts about where our surveillance authorities should be -- how the powers should be defined and where the lines should be drawn. And the line I'd like to talk about today is the **line** between domestic surveillance and overseas surveillance – how the law **should distinguish** between those two areas of surveillance and how much each area should be subject to judicial review.

There is no question that we should have to get court orders when we want to collect domestic communications or target individuals **within the U.S.** The question for today is whether we should have to do so when we are targeting surveillance against a person who is **outside the United States**, where constitutional and privacy protections do not apply.

And, this is not a discussion with only legal or theoretical implications. There are **very practical, operational implications** here -- implications that will dictate whether we have sufficient coverage overseas or only narrow coverage of our foreign adversaries; whether we can move nimbly and quickly among overseas coverages, or whether we have to go through a resource-consuming court approval process before we go up on one of our adversaries.

In considering this issue, it's useful to look back at the **history** and the **evolution** of our surveillance laws. And, when you do that you see that this is a **recurring theme**. There have been a number of major turning points in the law along the way, and at each of these turning points, we've seen the **repetition** and **reinforcement** of this **fundamental distinction between foreign and domestic surveillance** -- a distinction that finds its origins in the Constitutional balancing between executive authority to take efforts to protect the nation against external threats and the judiciary's authority to protect privacy interests.

You can see this consistent theme as you go back through the evolution of the law. The first turning point in the development of our surveillance law came in the 1960s. In 1967, the Supreme Court held that telephone conversations were protected by the Fourth Amendment. The next year, Congress responded to the Court's decision by passing the wiretap statute that established a procedure by which the government had to secure a court-issued warrant before wiretapping the subject of a criminal investigation.

While both the Supreme Court decision and the ensuing legislation were clear on the need for a warrant requirement when the government was wiretapping a person in the United States for purposes of a criminal investigation, both the Court and Congress were very careful to carve out surveillances for national security purposes. They made it clear that domestic surveillance for evidence in a criminal case was covered by the warrant requirement, but that national security surveillance involving foreign threats was not.

The next turning point came a decade later, when Congress passed the Foreign Intelligence Surveillance Act, which imposed a court review mechanism for electronic surveillance designed to collect foreign intelligence information. We came to this juncture after it was disclosed in the Church and Pike Hearings that the government had abused its flexibility in the area of national security investigations to investigate domestic persons who had no connection to a foreign power. After those disclosures, Congress and the country were understandably looking for a way to ensure that the executive branch could no longer invade their privacy under the guise of protecting against foreign threats. The result was legislation that subjected our foreign intelligence surveillances to court review.

The Foreign Intelligence Surveillance Act (FISA) was passed in 1978, and it created a regime of court approval for national security surveillances. However, once again, Congress reinforced the distinction between domestic and foreign surveillance. Congress designed a judicial review process that would apply primarily to surveillance activities within the United States where privacy interests are the most pronounced and not to overseas surveillance where privacy interests are minimal or non-existent. Congress gave effect to this careful balancing through its definition of the statutory term "electronic surveillance," the term that identifies those government activities that fall within the scope of the statute and, by implication, those that fall outside it. Congress established this dichotomy by defining "electronic surveillance" by reference to the manner of the communication under surveillance -- by distinguishing between "wire" communications -- which included most of the local and domestic traffic in 1978 -- and "radio" communications -- which included most of the transoceanic traffic in that era.

Based on the communications reality of that time, that dichotomy more or less accomplished the Congressional purpose, as it distinguished between domestic communications that generally fell within FISA and foreign international communications that generally did not.

But, that finely-balanced distinction has eroded with the dramatic changes in communications technology in the 29 years since FISA was enacted. In that time, we've seen the migration of the majority of international communications from satellite transmission (which qualified as "radio" communications under the statute) over to fiber-optic cable (which is "wire" under the statute); and, as a result, we've seen the tipping of that careful balance in the FISA statute. As the technology evolved further and further away from the paradigm established in the statute, we had to subject more and more of our overseas collections to review by the FISA Court.

So we had a situation where, on one hand, we have this technological change making it more difficult for us to surveil overseas threats. And on the other, we have the backdrop of an increasing national security threat from international terrorism -- from terrorists who had hit us hard on 9/11; who were bent on inflicting catastrophic damage to us and our allies; who were taking full advantage of modern modes of communication to organize and command their international network of terrorist operatives; and who have continued to show resiliency and a determination about their work -- as reflected quite clearly in the disruption last week of a large-scale terrorist plot in Germany, and also as reflected in the recently-issued National Intelligence Estimate.

And it is the combination of these two historical trends -- the changing technology that handicapped our efforts to surveil our adversaries and the increasing threat posed by those adversaries -- that produced the turning point we came to this year.

And, this is the turning point that Congress addressed last month when they passed the Protect America Act. The legislation was very straight-forward but very effective. In short, it returned FISA to its original focus on domestic surveillance. And it did that by making it clear that -- **regardless of the type of communication being surveilled** or the **location where the surveillance takes place** -- FISA does not apply when the surveillance is **targeting persons outside the United States**. It does apply – and we have to get a court order – when the communications are domestic or when we target someone in the U.S. But, when the target is **truly foreign**, when we're **targeting someone in another country**, we don't need to go through the FISA Court.

This is true, even if communications are intercepted domestically

Lewis 7 – James Lewis, Senior Fellow and Director of Technology Policy at the Center for Strategic and International Studies, "Domestic Surveillance, FISA, and Terrorism", 11-7, http://csis.org/media/csis/pubs/071107_lewis.pdf

Q4: What is the distinction between foreign and domestic communications?

A4: The distinction between foreign and domestic communications was a linchpin of the 1978 act, but unfortunately, technology has eroded that distinction. FISA was careful to carve out intelligence collection of radio signals (an NSA mission) from court oversight. As telecommunications moved from satellites (a radio signal) to fiber optic cables (which the law defined as a wire and subject to the court), more foreign intelligence activities became subject to FISA than were originally intended. The Protect America Act helped to fix this problem by making clear that FISA does not apply when foreign persons outside of the United States are under surveillance, **even if** the communication passes through (and is intercepted) **domestically**. FISA should be drafted to be technologically neutral and to carefully clarify that protections apply to citizens and residents of the United States, not communications that are just passing through.

Domestic---Targets---Aff

Clear distinctions between foreign and domestic surveillance are impossible because of modern communication networks

Lee 13 – Timothy B. Lee, Senior Editor at Vox, "The NSA Is Trying To Have It Both Ways On Its Domestic Spying Programs", Washington Post, 12-22, http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/22/the-nsa-is-trying-to-have-it-both-ways-on-its-domestic-spying-programs/

Traditionally, **domestic surveillance powers** were held by law enforcement agencies, not the NSA. And the existence of the spying powers were not secret. Everyone knows that the FBI and local police departments have the power to compel telecommunications companies to disclose their customers' communications. But first they must get a warrant, supported by probable cause, from a judge. That oversight gives Americans confidence that domestic surveillance powers won't be abused.

Things are **very different** when the U.S. government spies on people **overseas**. Obviously, U.S. intelligence agencies don't generally have the power to compel foreign telecommunications companies to cooperate with surveillance efforts. So instead of a formal legal process, they traditionally have used covert means—bribing insiders, installing bugs, tapping undersea cables, hacking into foreign networks—to intercept foreign communications. For these methods to work, the government must keep secret not only the specific surveillance targets, but the fact that the surveillance program exists at all. If the program's existence is revealed, the foreign government is likely to shut it down.

That secrecy meant that American foreign intelligence-gathering operations have not had the checks and balances that applied to domestic law enforcement surveillance. But Americans were protected by the rule that American foreign intelligence agencies were only supposed to operate overseas.

But **now the Internet has made a hash of the tidy distinction between foreign and domestic surveillance**. Today, citizens of France, Brazil and Nigeria routinely use Facebook, Gmail, and other American online services to communicate. Americans make calls with Skype. And much Internet traffic between two foreign countries often passes through the United States.

Either *wholly* or *one-end* communications are "domestic"

Dickerson 15 – Julie Dickerson, JD Candidate at Harvard Law School, "Meaningful Transparency: The Missing Numbers the NSA and FISC Should Reveal", Harvard Law School National Security Journal, 2-17, http://harvardnsj.org/2015/02/meaningful-transparency-the-missing-numbers-the-nsa-and-fisc-should-reveal/

There are **two types** of domestic communications: **wholly** domestic (sent to and from a U.S. citizen) and **one-end** domestic (communications to, from, or concerning a U.S. citizen). Upstream acquisitions inadvertently sweep in tens of thousands, up to 56,000 wholly domestic communications (0.248% of all communications collected under § 702 upstream authorities). However, the number of one-end domestic communications remains unknown. The multiple categories – all Internet communications, communications collected under § 702, communications collected under the § 702 upstream program, and wholly domestic or one-end communications – combined with the mix of percentages and absolute numbers of both total data traffic and total communications can be difficult to keep straight. A simple chart placing the 56,000 wholly domestic communications

(small black box below), in its greater context of all communications collected under the § 702 upstream program (the white box below) and all internet communications (big black box below), would demonstrates the NSA's low margin of error.

"Domestic" means relating to one's country

Webster's 15 – Merriam-Webster's Online Dictionary, 11th Edition, "domestic", http://www.merriam-webster.com/dictionary/domestic

a : living near or about human habitations

b : tame, domesticated <the domestic cat>

2 : of, relating to, or originating within a country and especially one's own country <domestic politics> <domestic wines>

Domestic---Within the U.S.

"Domestic" surveillance must occur within the United States

Oxford 15 – Oxford Advanced Learner's Dictionary, "domestic", http://www.oxforddictionaries.com/us/definition/american_english/domestic

Definition of domestic in English:

adjective

1Of or relating to the running of a home or to family relations:

domestic chores

domestic violence

1.1chiefly British Of or for use in the home rather than in an industrial or office environment:

domestic appliances

1.2(Of a person) fond of family life and running a home:

she was not at all domestic

1.3(Of an animal) tame and kept by humans:

domestic cattle

2Existing or occurring **inside a particular country**; **not foreign or international**:

the current state of US domestic affairs

"Domestic" refers to activity in the 50 states and DC

Energy Dictionary 7 – "domestic", 11-3http://www.photius.com/energy/glossaryd.html#domest

Domestic: **See United States**.

[CONTINUES]

United States: The **50 States** and the **District of Columbia**. Note: The United States has varying degrees of jurisdiction over a number of territories and other political entities outside the 50 States and the District of Columbia, including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Johnston Atoll, Midway Islands, Wake Island, and the Northern Mariana Islands. EIA data programs may include data from some or all of these areas in U.S. totals. For these programs, data products will contain notes explaining the extent of geographic coverage included under the term "United States."

Domestic---Interception Location

"Domestic surveillance" must collect information from within the United States

Sladick 12 – Kelli Sladick, Blogger at the Tenth Amendment Center, "Battlefield USA: The Drones are Coming", Tenth Amendment Center, 12-10, http://blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/

In a US leaked document, "Airforce Instruction 14-104", on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, "any imagery collected by satellite (national or commercial) and airborne platforms that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas." In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises.

They allow Affs that reduce surveillance internationally because data of U.S. citizens are stored in servers overseas

Tracy 15 – Sam Tracy, "NSA WHISTLEBLOWER JOHN TYE EXPLAINS EXECUTIVE ORDER 12333", Digital Fourth, 3-18, http://warrantless.org/2015/03/tye-12333/

It's been widely reported that the NSA, under the constitutionally suspect authority of Section 215 of the PATRIOT Act, collects all Americans' phone metadata. Congress has not yet passed any reforms to this law, but there have been many proposals for changes and the national debate is still raging. Yet Americans' data is also being collected under a different program that's entirely hidden from public oversight, and that was authorized under the Reagan-era Executive Order 12333.

That's the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled "Why I spoke out against the NSA." Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 **governs data collected overseas**, as **opposed to domestic surveillance** which is authorized by statute. However, because Americans' emails and other communications are **stored in servers all over the globe**, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

*** SURVEILLANCE

Surveillance---Preventive Intent---1NC

"Surveillance" is monitoring with preventive intent

Lemos 10 – André Lemos, Associate Professor at Faculty of Communication at Federal University of Bahia, Brazil, "Locative Media and Surveillance at the Boundaries of Informational Territories", ICTs for Mobile and Ubiquitous Urban Infrastructures: Surveillance, Locative Media and Global Networks, Ed. Firmino, p. 130-132

Although they often appear to be synonymous, it is **important to distinguish** between **informational control**, **monitoring** and **surveillance** so that the problem can be **better understood**. We consider control to be the supervision of activities, or actions normally associated with government and authority over people, actions and processes. Monitoring can be considered a form of observation to gather information with a view to making projections or constructing scenarios and historical records, i.e., the action of following up and evaluating data. Surveillance, however, can be defined as an act **intended to avoid something**, as an observation whose **purposes** are **preventive** or as behavior that is attentive, cautious or careful. It is interesting to note that in English and French the two words "vigilant" and "surveillance", each of which is spelt the same way and has the same meaning in both languages, are applied to someone who is particularly watchful and to acts associated with legal action or action by the police intended to provide protection against crime, respectively. We shall define surveillance as actions that imply control and monitoring in accordance with Gow, for whom surveillance "implies something **quite specific** as the **intentional** observation of someone's actions or the intentional gathering of personal information in order to observe actions taken in the past or future" (Gow, 2005, p. 8).

According to this definition, surveillance actions presuppose monitoring and control, but **not all forms of control and/or monitoring can be called surveillance**. It could be said that all forms of surveillance require two elements: **intent** with a view to avoiding causing something and **identification** of individuals or groups by **name. It seems** to me to be **difficult to say** that **there is surveillance if there is** no identification of the person under observation (anonymous) and **no preventive intent (avoiding something)**. To my mind it is an **exaggeration** to say, for example, that the system run by my cell phone operator that controls and monitors my calls is keeping me under surveillance. Here there is identification but **no intent**. However, it can certainly be used for that purpose. The Federal Police can request wiretaps and disclosure of telephone records to monitor my telephone calls. The same can be said about the control and monitoring of users by public transport operators. This is **part of the administrative routine** of the companies involved. Once again, however, the system can be used for surveillance activities (a suspect can be kept under surveillance by the companies' and/or police's safety systems). Note the example further below of the recently implemented "Navigo" card in France. It seems to me that the social networks, collaborative maps, mobile devices, wireless networks and countless different databases that make up the information society do indeed control and monitor and offer a real possibility of surveillance.

They curtail "information gathering", not "surveillance"---distinguishing clearly is vital to topic education, precision, and limits

Fuchs 11 – Christian Fuchs, Professor of Social Media at the University of Westminster's Centre for Social Media Research, "New Media, Web 2.0 and Surveillance", Sociology Compass, 5(2), p. 135-137

Theoretical foundations of surveillance studies

‘Living in ‘‘surveillance societies’’ may throw up challenges of a fundamental – ontological – kind’ (Lyon 1994, 19). Social theory is a way of clarifying such ontological questions that concern the basic nature and reality of surveillance. An important ontological question is how to define surveillance. One can distinguish **neutral** concepts and **negative** concepts.

For Max Horkheimer, neutral theories ‘define universal concepts under which all facts in the field in question are to be subsumed’ (Horkheimer 1937/2002, 224). Neutral surveillance approaches define surveillance as the systematic collection of data about humans or non-humans. They argue that surveillance is a characteristic of all societies. An example for a well-known neutral concept of surveillance is the one of Anthony Giddens. For Giddens, surveillance is ‘the coding of information relevant to the administration of subject populations, plus their direct supervision by officials and administrators of all sorts’ (Giddens 1984, 183f). Surveillance means ‘the collation and integration of information put to administrative purposes’ (Giddens 1985, 46). For Giddens, all forms of organization are in need of surveillance in order to work. ‘Who says surveillance says organisation’ (Giddens 1981, xvii). As a consequence of his general surveillance concept, Giddens says that all modern societies are information societies (Giddens 1987, 27; see also: Lyon 1994, 27).

Basic assumptions of neutral surveillance concepts are:

• There are positive aspects of surveillance.

• Surveillance has two faces, it is enabling and constrainig.

• Surveillance is a fundamental aspect of all societies.

• Surveillance is necessary for organization.

• Any kind of systematic information gathering is surveillance.

Based on a neutral surveillance concept, all forms of online information storage, processing and usage in organizations are types of Internet surveillance. Examples include: the storage of company information on a company website, e-mail communication between employees in a governmental department, the storage of entries on Wikipedia, the online submission and storage of appointments in an e-health system run by a hospital or a general practitioner’s office. The example shows that based on a neutral concept of surveillance, the notion of Internet surveillance is **fairly broad**.

Negative approaches see surveillance as a form of systematic information gathering that is **connected to** domination, **coercion**, the threat of using violence or the actual use of violence in order to attain certain goals and accumulate power, in many cases against the will of those who are under surveillance. Max Horkheimer (1947/1974) says that the ‘method of negation’ means ‘the denunciation of everything that mutilates mankind and impedes its free development’ (Horkheimer 1947/1974, 126). For Herbert Marcuse, negative concepts ‘are an indictment of the totality of the existing order’ (Marcuse 1941, 258).

The best-known negative concept of surveillance is the one of Michel Foucault. For Foucault, surveillance is a form of disciplinary power. Disciplines are ‘general formulas of domination’ (Foucault 1977, 137). They enclose, normalize, punish, hierarchize, homogenize, differentiate and exclude (Foucault 1977, 183f). The ‘means of coercion make those on whom they are applied clearly visible’ (Foucault 1977, 171). A person that is under surveillance ‘is seen, but he does not see; he is the object of information, never a subject in communication’ (Foucault 1977, 200). The surveillant panopticon is a ‘machine of power’ (Foucault 2007, 93f).

In my opinion, there are **important arguments** speaking against defining surveillance in a neutral way:

1. Etymology: The French word surveiller means to oversee, to watch over. It implies a hierarchy and is therefore connected to notions, such as watcher, watchmen, overseer and officer. Surveillance should therefore be conceived as technique of coercion (Foucault 1977, 222), as 'power exercised over him [an individual] through supervision' (Foucault 1994, 84).

2. Theoretical conflationism: Neutral concepts of surveillance put certain phenomena, such as taking care of a baby or the electrocardiogram of a myocardial infarction patient, on one analytical level with very different phenomena, such as preemptive state-surveillance of personal data of citizens for fighting terrorism or the economic surveillance of private data or online behaviour by Internet companies (Facebook, Google, etc.) for accumulating capital with the help of targeted advertising. Neutral concepts might therefore be used for legitimatizing coercive forms of surveillance by arguing that surveillance is ubiquitous and therefore unproblematic.

3. Difference between information gathering and surveillance: If surveillance is conceived as systematic information gathering, then no difference can be drawn between surveillance studies and information society studies and between a surveillance society and an information society. Therefore, given these circumstances, there are no grounds for claiming the existence of surveillance studies as discipline or transdiscipline (as argued, for example, by Lyon 2007)

4. The normalization of surveillance: If everything is surveillance, it becomes difficult to criticize coercive surveillance politically.

Given these **drawbacks** of neutral surveillance concepts, I prefer to define surveillance as a negative concept: surveillance is the collection of data on individuals or groups that are used so that **control** and **discipline** of behaviour can be exercised by the threat of being targeted by violence. A negative concept of surveillance allows drawing a **clear distinction** of what is and what is not Internet surveillance. Here are, based on a negative surveillance concept, some examples for Internet surveillance processes (connected to: harm, coercion, violence, power, control, manipulation, domination, disciplinary power, involuntary observation):

• Teachers watching private activities of pupils via webcams at Harriton High School, Pennsylvania.

• The scanning of Internet and phone data by secret services with the help of the Echelon system and the Carnivore software.

• Usage of full body scanners at airports.

• The employment of the DoubleClick advertising system by Internet corporations for collecting data about users' online browsing behaviour and providing them with targeted advertising.

• Assessment of personal images and videos of applicants on Facebook by employers prior to a job interview.

• Watching the watchers: corporate watch systems, filming of the police beating of Rodney King (LA 1992), YouTube video of the police killing of Neda Soltan (Iran 2009). There are other examples of information gathering that are oriented on care, benefits, solidarity, aid and co-operation. I term such processes monitoring. Some examples are:

• Consensual online video sex chat of adults.

• Parents observing their sleeping ill baby with a webcam that is connected to their PC in order to be alarmed when the baby needs their help.

• The voluntary sharing of personal videos and pictures from a trip undertaken with real life friends who participated in the trip by a user.

• A Skype video chat of two friends, who live in different countries and make use of this communication technology for staying in touch.

Limits are key to depth of research and clash. Topicality is a voting issue because it tells us what to prepare for.

Surveillance---Preventive Intent---Interpretation

"Surveillance" requires an intentional purpose to shape future action---"monitoring" without objective isn't T

Santaella 10 – Lucia Santaella, Full Professor at São Paulo Catholic University, Director of the Center of Research in Digital Media, One of the Honorary Presidents of the Latin-American Federation of Semiotics, and Member of the Argentinian Academy of Arts, ICTs for Mobile and Ubiquitous Urban Infrastructures: Surveillance, Locative Media and Global Networks, Ed. Firmino, p. 297

THREE REGIMES OF SURVEILLANCE: PANOPTIC, SCOPIC AND TRACKING

The word surveillance and its concept are widely used. Even one seems to intuitively know what surveillance means. In a research context, however, we must follow an **ethics of terminology**, by defining our sources and the meaning implied in the terms being used. A simple definition is given by Bennet & Regan (2004: 452): "surveillance is a way of determining who is where and what s/he is doing in the physical or virtual world, on a given moment in time." Bruno (2008b) mentions a functional definition of surveillance given by Wood et al. (2006:9): "Wherever we may find purposeful, routine oriented, systematic and focused attention given to personal details, with the **objective** of control, authorization, management, influence or protection, we are facing surveillance." For Lyon (2004: 129). serious and systemic attention to personal details for purposes of influence, administration and control is defined as surveillance. More recently Lyon (2010:6) added to the definition that "in part due to its reliance on electronic technologies, surveillance is generalized across populations, for numerous, overlapping purposes and in virtual and fluid spaces."

Lemos (2010:8) cites Gow (2005a), according to whom surveillance "implies something very specific such as the observation of someone's actions or the gathering of personal information in order to monitor actions taken in the past or in the future." Lemos questions this definition by pointing out that **"not every form of control and or monitoring might be called surveillance"**, since surveillance **requires the presence of two elements**: "**intentionality**, aimed at **avoiding or causing something**, and a nominal identification of individuals and groups". Lemos finds anonymous surveillance a difficult concept to grasp without preventive intention, which aims to avoid something, and the identification of the one being surveilled.

"Surveillance" must be connected to a specific purpose

Lyon 7 – David Lyon, Director of the Surveillance Studies Centre, Queen's Research Chair in Surveillance Studies, Professor of Sociology, and Professor of Law at Queen's University, Canada, Surveillance Studies: An Overview, p. 13-16

Defining surveillance

Before going any further, I should make clear what is meant by surveillance. Although the word 'surveillance' often has connotations of surreptitious cloak-and-dagger or undercover investigations into individual activities, it also has some fairly straightforward meanings that refer to routine and everyday activity. Rooted in the French verb sur-veiller, literally to 'watch over', surveillance refers to processes in which special note is taken of certain human behaviours that go well beyond idle curiosity. You can 'watch over' (or, more clumsily, 'sur-veill') others because you are concerned for their safety; lifeguards at the edge of the swimming pool might be an example. Or you can

watch over those whose activities are in some way dubious or suspect; police officers watching someone loitering in a parking lot would be an example of this kind of surveillance.

Surveillance always has some ambiguity, and that is one of the things that make it both intriguing and highly sensitive. For example, parental concern and care for children may lead to the adoption of some surveillance technologies in order to express this. But at what point does this become an unacceptable form of control? Does the answer depend on whether or not the offspring in question are aware that they are being tracked, or is the practice itself unethical by some standards? At the same time, putting the question this way assumes that people in general are wary, if not positively spooked, when they learn that others may be noting their movements, listening to their conversations or profiling their purchase patterns. But this assumption is not always sound. Many seem content to be surveilled, for example by street cameras, and some appear so to relish being watched that they will put on a display for the overhead lenses, or disclose the most intimate details about themselves in blogs or on webcams.

So what is surveillance? For the sake of argument, we may start by saying that it is the focused, systematic and routine attention to personal details **for purposes of influence, management, protection or direction**. Surveillance directs its attention in the end to individuals (even though aggregate data, such as those available in the public domain, may be used to build up a background picture). It is focused. By systematic, I mean that this attention to personal details is not random, occasional or spontaneous; it is deliberate and depends on certain protocols and techniques. Beyond this, surveillance is routine; it occurs as a 'normal' part of everyday life in all societies that depend on bureaucratic administration and some kinds of information technology. Everyday surveillance is endemic to modern societies. It is one of those major social processes that actually constitute modernity as such (Giddens 1985).

Having said that, there are exceptions. Anyone who tries to present an 'overview' has to admit that particular circumstances make a difference. The big picture may seem over-simplified but, equally, the tiny details can easily lose a sense of significance. For example, not all surveillance is necessarily focused. Some police surveillance, for instance, may be quite general - a 'dragnet' - in an attempt somehow to narrow down a search for some likely suspects. And by the same token, such surveillance may be fairly random. Again, surveillance may occur in relation to non-human phenomena that have only a secondary relevance to 'personal details'. Satellite images may be used to seek signs of mass graves where genocide is suspected or birds may be tagged to discover how avian flu is spread. Such **exceptions are important**, and **add nuance** to our understanding of the big picture. By looking at various sites of surveillance, and exploring surveillance in both 'top-down' and 'bottom-up' ways, I hope to illustrate how such variations make a difference to how surveillance is understood in different contexts.

The above definition makes reference to 'information technology', but digital devices only increase the capacities of surveillance or, sometimes, help to foster particular kinds of surveillance or help to alter its character. Surveillance also occurs in down-to-earth, face-to-face ways. Such human surveillance draws on time-honoured practices of direct supervision, or of looking out for unusual people or behaviours, which might be seen in the factory overseer or in neighbourhood watch schemes. Indeed, to accompany the most high-tech systems invented, the US Department of Homeland Security still conscripts ordinary people to be the 'eyes and ears' of government, and some non-professional citizen-observers in Durban, South Africa have been described by a security manager (without irony) as 'living cameras' (Hentschel 2006).

But to return to the definition: it is crucial to remember that surveillance is **always hinged to some specific purposes**. The marketer wishes to influence the consumer, the high school seeks efficient ways of managing diverse students and the security company wishes to insert certain control mechanisms - such as PIN (personal identification number) entry into buildings or sectors. So each will garner and manipulate data for those purposes. At the same time, it should not be imagined that the influence, management or control is necessarily malign or unsocial, despite the frequently negative connotations of the word 'surveillance'. It may involve incentives or reminders about legal requirements; the management may exist to ensure that certain entitlements - to benefits or services - are correctly honoured and the control may limit harmful occurrences.

On the one hand, then, surveillance is a set of practices, while, on the other, it **connects with purposes**. It usually involves relations of power in which watchers are privileged. But surveillance often involves participation in which the watched play a role. It is about vision, but not one-sidedly so; surveillance is also about visibility. Contexts and cultures are important, too. For instance, infra-red technologies that reveal what is otherwise shrouded in darkness help to alter power relations. But the willing self-exposure of blog-writers also helps to change the contours of visibility. To use infra-red devices to see into blog-writers' rooms at night would infringe personal rights and invade private spaces. But for blog-writers to describe their nocturnal activities online may be seen as an unexceptional right to free expression.

"Surveillance" is observation for the purposes of transforming behavior

Andrzejewski 8 – Anna Vemer Andrzejewski, Assistant Professor of Art History at the University of Wisconsin-Madison, Building Power: Architecture and Surveillance in Victorian America, p. 3-4

Given the loaded nature of terms such as surveillance, modernity, and even architecture in contemporary scholarly discourse, it is **important to define them** as used in this book. A good place to begin is to consider what I mean by surveillance, especially since a major goal of this study is to reconsider it in a more comprehensive manner than previous accounts, scholarly and otherwise. According to contemporary popular associations, surveillance refers to a fixed, purposeful, and typically visual act, often offered in stealth, which has a correctional or punitive intent. In our twenty-first century culture, replete with closed-circuit television (CCTV) in stores, schools, casinos, airports, urban streets, and the workplace, wiretaps, high-definition satellite images, and Internet spy software, all of which arc prominently promoted through print media, network television, and Hollywood films, it is hardly surprising that many tend to view surveillance as a covert operation of bureaucratic forces.'1 Previous scholarly studies centered on surveillance, including those by Foucault and by the urban historian Mike Davis, also define it along these lines. Although 1'oucault insists that surveillance is not solely negative, in that it produces knowledge for those who exercise it, surveillance in these terms remains inherently disciplinary in the sense that it ultimately functions as a means or obtaining power by delimiting movement of bodies in space and thus serves principally as a means of control. These forms of surveillance presume and prescribe a set of rules for its subjects under the gaze. Through its exercise, surveillance of this sort aims to recognize transgressions and use this knowledge in order to correct (repression) or to gain information about the subject (production of knowledge). Such a definition implies a voyeuristic, somewhat sexualized, notion of surveillance, since these kinds of gazes arc largely hidden and dependent on this concealment as a means of obtaining knowledge and pleasure.

This book treats surveillance in a much more expansive sense and seeks to transcend definitions that equate it with a watchdog form of spying. By surveillance I refer to acts of sustained, close observation of others

that have **transformation of behavior** as their **intent**. Like sociologist David Lyon, who has examined contemporary modes of data collection outside of a policing context, I consider surveillance beyond its associations with inherently sinister and surreptitious means by which those in power attempt to affirm and enforce their dominance.'1 An act of surveillance refers to any purposeful act in which information about others is collected for all kinds of transformative purposes, of which punishment is but one. This more flexible definition allows for attentive and purposeful gazes that examine subjects closely but not necessarily with the goal of detecting wrongdoing or condemning behavior relative to a particular expectation or standard. Although surveillance certainly has operated in this way in many institutional settings, it is not limited in aim or practice to this disciplinary purpose. At late-nineteenth- and early-twentieth-century camp meetings discussed in the fourth chapter, for example, surveillance worked in a more affirmative context. Camp-meeting goers gazed on other campers as much to find a model Christian whose behavior they wished to emulate as they did to find a sinner to rebuke, the **expansive** definition of surveillance offered here also allows for purposeful gazes known, and sometimes welcomed, by those under watch. In workplaces discussed in chapter 2, for example, surveillance was highly visible, and thus known, to workers. What constitutes an act ofl surveillance in this study revolves around the intentional focus of the gaze, rather than whether it is conducted anonymously, in stealth, or with a disciplinary intent.

"Surveillance" must be intentional observation

Gow 5 – Gordon A. Gow, Lecturer in the Department of Media and Communications at the London School of Economics and Political Science, "PRIVACY AND UBIQUITOUS NETWORK SOCIETIES", March,

2.1.2 A point of clarification of terms

A number of terms are used when discussing privacy and privacy-related concerns and ubiquitous networks. Among these are five common concepts, each with slightly different connotations:

• Privacy

• Anonymity

• **Surveillance**

• Security

• Trust

'Privacy' and 'anonymity' are related concepts, but with some important differences. With respect to communications, privacy implies the possession of personal information and the subsequent terms and conditions by which it is used, retained, and disclosed to others. Anonymity, however, implies an absence of information about a person and relates to the terms and conditions by which such information might be collected in the first instance. Both concepts highlight the importance of empowering people to control information about themselves.

'Surveillance' is also related to privacy, but **implies something quite specific** as the **intentional** observation of someone's actions or the intentional gathering of personal information in order to observe actions taken in the past or future. Unwanted surveillance is usually taken to be an invasion of privacy. This concept highlights the importance of privacy as a utility that protects people against unwanted intrusions and the right to be left alone.

‘Security’ is a term often used in software development to describe the capability of a technical system to protect and maintain the integrity of personal data circulating within that system. Privacy violations can occur when a system is not secure and it leaks personal data to unauthorized parties. This concept highlights the importance of providing regulating mechanisms to balance and check powers of those that provide and those that collect data.

Finally, the term ‘trust’ suggests the quality of a reciprocal relationship between two or more parties with respect to the use and disclosure of personal information and the respect of privacy rights. This concept highlights the importance of dignity and mutual obligations between human beings (often interacting through corporate or other bureaucratic systems.

Each of these concepts has a **distinct emphasis**, which is **important** in the range of considerations affecting ubiquitous networks; however, for the sake of simplicity in this paper the term ‘privacy’ will be used to refer to them as a bundle of related issues and concerns.

Observation without intentional purpose is not “surveillance”

Saulnier 13 – Alana Saulnier, Queen’s University, “Book Review: Gilliom, John and Torin Monahan. 2013. SuperVision: An Introduction to the Surveillance Society. Chicago: University of Chicago Press”, Surveillance & Society 11, http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/download/gilliom_monahan/gilliom_monahan

The field of Surveillance Studies is fortunate to have had many dedicated scholars produce a number of excellent books geared towards the accomplished reader of surveillance literature. While quality texts exist that overview the field (see e.g., Surveillance Studies: An Overview by David Lyon, or the Routledge Handbook of Surveillance Studies edited by Kirstie Ball, Kevin Haggerty and David Lyon), an entry level introductory text to orient the inexperienced student or surveillance enthusiast to a variety of conceptual footholds has been sorely lacking. John Gilliom and Torin Monahan help address this gap in SuperVision: An Introduction to the Surveillance Society. In their concise crash course, Gilliom and Monahan engage the reader in an accessible and witty dialogue. The authors encourage the reader to not only recognize the ubiquitous nature of surveillance in everyday life by providing a variety of practical and highly relatable examples, but also prompt the reader to consider how omnipresent surveillance shapes their social reality. In no way forceful, Gilliom and Monahan maintain their focus of initiating a dialogue, not having the final word.

Eager to avoid the hindrance of conceptual baggage, the authors note that they define surveillance broadly as “monitoring people in order to regulate or govern their behaviour” (2). With this definition Gilliom and Monahan impress upon the reader that **surveillance is not voyeurism**—**surveillance never simply involves the act of looking**. The authors maintain that surveillance is, in fact, an act of power: it invokes purposeful watching with the **intention** of gaining information and/or controlling behaviour. Through this orientation, Gilliom and Monahan prime the reader to begin questioning their basic assumptions about surveillance.

Surveillance---Preventive Intent---Interpretation---A2: Rule

Their interpretation unlimits

Allmer 15 – Thomas Allmer, Lecturer in Social Justice at the University of Edinburgh, Critical Theory and Social Media: Between Emancipation and Commodification, p. 79

Rule (1973) stresses in his empirical ease study the idea of a total surveillance society. Although he describes the political and economic context, he uses a non-judgemental term and a **broad definition** of surveillance. Rule (2007, 13-17; 2012) still accentuates a **broad term** of surveillance with advantages and disadvantages in his continuing work on surveillance, published recently in his book Privacy in Peril, and in his book chapter "'Needs' for Surveillance and the Movement to Protect Privacy".

Surveillance---Preventive Intent---A2: We Meet

Data collection that could have coercive *potential* isn't "surveillance" until it has actually been analyzed by human agents who monitor to make decisions about individuals---they collapse routine collection into the category, which trivializes the concept and makes specific analysis impossible

Bennett 13 – Colin J. Bennett, Associate Professor of Political Science at the University' of Victoria, British Columbia, Global Surveillance and Policing, Ed. Zureik and Salter, p. 132-133

Have I been the subject of surveillance or, more precisely, 'dataveillance' [Clarke 1989]. Again, the literature would suggest that any capture of personal information (however benign) constitutes a surveillance process. Surveillance, Lyon contends, is 'any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data have been garnered.' It is simply the outcome of the 'complex ways in which we structure our political and economic relationships' (2001: 2). Marx (1938) It has also argued that there is a 'new surveillance' - routine, everyday, invisible and pre-emptive. Linked to this broad definition is the power of classification and sorting. It is a powerful means of creating and reinforcing social identities and divisions [[Candy 1993H I.yon 20031.

Without dissenting from these judgements, two insights suggest themselves as a result of the case studies above. First, my personal data (so far as I know) has not been processed for any purpose beyond that of ensuring that I am a valid passenger on the days and flights reserved. It has not been **analysed**, **subjected to any investigation**, **manipulated** or **used to make any judgement about me**. No doubt, a certain amount of data mining of de-identified information occurs within the industry to analyse general travel patterns and demands. No doubt, had I not opted out under the Aero-plan privacy policy, my data might have ended up with a variety of Aeroplan's partners, and I might have received related, and unrelated, promotional materials.

It seems, however, that there is a **fundamental difference** between the **routine** capture, collection and storage of this kind of personal information, and any **subsequent analysis** of that information from which decisions (benign or otherwise) might be made about me. The new process for API/PNR analysis serves to highlight the distinction. As a passenger, when I return to Canada, that information is automatically transferred ahead of my arrival to the CCRA's Passenger Assessment Unit at the Canadian airport, and it is systematically analysed. Anybody within a 'high-risk' category is then subject to further investigation. The **crucial process**, therefore, is not the capture and transmission of the information, but the **prior procedures**, and the **assumptions** that underpin them, about who is or is not a high-risk traveler. Surveillance might be 'any collection and processing of personal data, whether identifiable or not.' If we are to use such a broad definition, however, we need to find another concept to describe the **active intervention** of **human agents** who then **monitor that data** to make decisions about individuals. 'Surveillance' **conflates** a number of distinct processes. To describe what has happened to me as surveillance perhaps serves to **trivialize the real surveillance** to which some individuals, perhaps with 'risky' surnames and meal preferences, can be subjected during air travel.

Surveillance is, therefore, highly contingent. If social scientists are to get beyond **totalizing metaphors** and **broad abstractions**, it is absolutely necessary to understand these contingencies. Social and individual risk is governed by a complicated set of organizational, cultural, technological, political and legal factors. The crucial questions are therefore distributional ones: Why do some

people get more 'surveillance' than others |[Bennett nd Raab 1997 2003)? But to address those questions, it is crucial to conduct the kind of finely tuned empirical studies such as the one attempted above.

They curtail detection, not "surveillance", because the primary purpose of the data is not to enable intervention to suppress behavior

Langlois 13 – Stephane Leman-Langlois, Professor of Criminology at the School of Social Work, Laval University, The Surveillance-Industrial Complex: A Political Economy of Surveillance, Ed. Ball and Snider, Google Books

Though they are not synonyms, security and surveillance cover vastly overlapping fields of activity and can easily be amalgamated. It does not help that many of those fields are identified as 'security' instead of surveillance' for political and/or marketing reasons because it is safer to speak of security, a universal good, than surveillance, which may raise suspicion. The positive and non-political appearance of 'security' is one of its most important characteristics to those in the field of science and engineering, who sec their work as isolated from politics. At any rate, it is not within the goals of this chapter to clarify the boundaries and functions of this vocabulary. Consequently, I shall concentrate on security technologies whose main function is clearly to enable surveillance, rather than those that play a **peripheral** surveillance role, **avoiding the fuzzy edges** of the concepts. To that end, I define surveillance as any form of information-gathering that is **meant to enable intervention**. In the context of security, this intervention usually involves the **prevention or repression of behaviours** identified as unwanted conduct (Leman-Langlois 2007; Lcman-Langlois and Dupuis 2007). This **excludes** surveillance devices meant to detect **natural disasters**, **accidents**, **fires**, **electrical power supply problems** or other system malfunction, **command-and-control appliances** (such as Supervisory Control and Data Acquisition [SCADA] computers) as well as those forms of surveillance that bear on social relationships, consumer behaviour or markets. It also excludes all security technologies that do not primarily serve surveillance objectives (though they may peripherally), such as physical locks, weapons, armour and protection technologies, etc.

Surveillance---Preventive Intent---Limits

They blow the lid off the topic---without preventive intent, dozens of Affs and entirely new categories of policy become topical because any information gathering, including benign forms like weather monitoring and disaster warning, would meet

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", Matrizes, July/December, http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

Normalization of surveillance

If everything is surveillance, it becomes difficult to criticize repressive forms of surveillance politically because surveillance is then a term that is used in everyday language for **all sorts of harmless information processes** that do not inflict damage on humans. The post 9/11 world has seen an intensification and extension of repressive surveillance. Therefore I consider it important to have categories available that allow scholars, activists, and citizens to criticize these developments. If surveillance is a normalized concept of everyday language use that characterizes all forms of information gathering, storage, and processing and not only a critical concept, then this normative task becomes more difficult. If everything is surveillance, then there is no outside of surveillance left, no transcendental humanistic sphere, idea, or subject that allows to express discontent coercive information gathering and the connected human rights violations. Repressive surveillance has slowly, but steadily, crept into our lives and it therefore becomes easier that policy makers and other powerful actors present its implementation as necessary and inevitable. The normalization of the concept of surveillance may ideologically support such developments. It is therefore in my opinion a better strategy to make surveillance a strange concept that is connected to feelings of alienation and domination. For doing so, it is necessary to alienate the notion of surveillance from its normalized neutral usage.

CONCLUSION

The task of this paper was to argue that it is important to deal with the theoretical question of how surveillance can be defined. My view is that it will be impossible to find one universal, generally accepted definition of surveillance and that it is rather importance to stress different approaches of how surveillance can be defined, to work out the commonalities and differences of these concepts, and to foster constructive dialogue about these questions. A homogenous state of the art of defining surveillance is nowhere in sight and maybe is not even desirable. Constructive controversy about theoretical foundations is in my opinion not a characteristic of the weakness or of a field, but an indication that it is developing and in a good state. It is not my goal to establish one specific definition of surveillance, although I of course have my own view of what is surveillance and what is not surveillance, which I try to ground by finding and communicating arguments. Theorizing surveillance has to take into account the **boundary** between surveillance and information and it has to reflect the desirability or undesirability of normative and critical meanings of the term. No matter how one defines surveillance, each surveillance concept positions itself towards theoretical questions such as the relation of abstractness and concreteness, generality and specificity, normative philosophy and analytical theorizing, etc.

My personal view is that information is a **more general concept** than surveillance and that surveillance is a **specific kind** of information gathering, storage, processing, assessment, and use that involves potential or actual harm, coercion, violence, asymmetric power relations, control, manipulation, domination, disciplinary power. It is instrumental and a means for trying to derive and accumulate benefits for certain groups or individuals at the expense of other groups or individuals. Surveillance is based on a logic of competition. It tries to bring about or prevent certain behaviours of groups or individuals by gathering, storing, processing, diffusing, assessing, and using data about humans so that potential or actual physical, ideological, or structural violence can be directed against humans in order to influence their behaviour. This influence is brought about by coercive means and brings benefits to certain groups at the expense of others. Surveillance is in my view therefore never co-operative and solidary – it never benefits all. Nonetheless, there are certainly information processes that aim at benefiting all humans. I term such information processes **monitoring**, it involves information processing that aims at care, benefits, solidarity, aid, and co-operation, benefits all, and is **opposed to surveillance**.

Here are some examples of what I consider to be forms of surveillance:

* teachers watching private activities of pupils via webcams at Harriton High School, Pennsylvania;

* the scanning of the fingerprints of visitors entering the United States;

* the use of speed cameras for identifying speeders (involves state power);

* electronic monitoring bracelets for prisoners in an open prison system;

* the scanning of Internet and phone data by secret services with the help of the Echelon system and the Carnivore software;

* the usage of full body scanners at airports;

* biometrical passports containing digital fingerprints;

* the use of the DoubleClick advertising system by Internet corporations for collecting data about users' online browsing behaviour and providing them with targeted advertising;

* CCTV cameras in public means of transportation for the prevention of terrorism;

* the assessment of customer shopping behaviour with the help of loyalty cards;

* the data collection in marketing research;

* the publication of sexual paparazzi photos of celebrities in a tabloid;

* the assessment of personal images and videos of applicants on Facebook by employers prior to a job interview;

* the collection of data about potential or actual terrorists in the TIDE database (Terrorist Identities Datamart Environment) by the US National Counterterrorism Center;

* Passenger Name Record (PNR) data transfer from Europe to the United States in aviation;

* Telekomgate: spying on employees, trade unionists, journalists, and members of the board of directors by the German Telekom;

* the video filming of employees in Lidl supermarkets and assessment of the data by managers in Germany;

* watching the watchers: corporate watch systems, filming of the police beating of Rodney King (LA 1992), YouTube video of the police killing of Neda Soltan (Iran, 2009).

The point about these examples is that they all involve asymmetrical power relations, some form of violence, and that systematic information processing inflicts some form of harm.

We live in heteronomous societies, therefore surveillance processes can be encountered very frequently. Nonetheless, it would be a mistake to argue that domination is a universal characteristic of all societies and all social systems. Just think of the situations in our lives that involve altruism, love, friendship, and mutual care. These are examples that show that nondominative spheres are possible and actual. My argument is that it is possible to think about alternative modes of society, where co-operation, solidarity, and care are the guiding principles (Fuchs, 2008). If information processes are central in such a society, then I would not want to term it surveillance society, but solidary information society or participatory, co-operative, sustainable information society (Fuchs, 2008, 2010).

Here are some **examples of monitoring** that are **not forms of surveillance**:

* consensual online video sex chat of adults;

* parents observing their sleeping sick baby with a camera or babyphone in order to see if it needs their help;

* the permanent electrocardiogram of a cardiac infarction patient;

* the seismographic early detection of earthquakes;

* the employment of the DART system (Deep-ocean Assessment and Reporting of Tsunamis) in the Pacific Ocean, the Atlantic Ocean, and the Caribbean Sea for detecting tsunamis;

* the usage of a GPS-based car navigation system for driving to an unknown destination;

* the usage of a fire detector and alarm system and a fire sprinkling system in a public school;

* drinking water quality measurement systems;

* the usage of smog and air pollution warning systems;

* the activities of radioactivity measuring stations for detecting nuclear power plant disasters;

* systems for detecting and measuring temperature, humidity, and smoke in forest areas that are prone to wildfires;

* measurement of meteorological data for weather forecasts.

The point about these examples is that there are systematic information processes in our societies that do not involve systematic violence, competition, and domination, but aim at benefits for all. One can certainly discuss if these are particularly good examples and if the boundaries between the first and the second list can be clearly drawn, but the central point I want to make is that there are political choices between advancing and regulating systematic information processing that has repressive or solidary effects and that this difference counts normatively. Certainly, forms of monitoring can easily turn into forms of surveillance, and surveillance technologies might be refined in ways that serve solidary purposes. The more crucial point that I want to make is that normative theories, critical thinking, and critical political practices matter in our society and that they need a clear understanding of concepts. I question postmodern and constructivist approaches that want to tell us that it has become completely impossible to distinguish what is desirable and undesirable or that all normative ideas and political projects are inherently prone to producing new forms of violence and domination. I am convinced that a non-violent, dominationless society is possible and that it is especially in times of global crisis important to have clearly defined concepts at hand that help criticizing violence and domination and points towards a different world. I therefore see a need for a realist, critical concept of surveillance.

"Surveillance" should be interpreted narrowly based on intent---broad definitions undermine meaningful scholarship that differentiates surveillance based on purpose and makes all bureaucratic data collection topical---this outweighs the benefits of a bigger topic

Hier 10 – Sean Hier, Assistant Professor in the Department of Sociology, University of Victoria, British Columbia and Joshua Greenberg, Assistant Professor in the School of Journalism and Communication, Carleton University, Surveillance: Power, Problems, and Politics, p. 17-18

There is no contention among surveillance scholars that the number of systems used to gather, store, and share personal information in its individual and aggregate forms is growing. But not all observers agree that every information- gathering and data storage practice is tantamount to surveillance. Bennett (2005), for example, contends that much of the literature on information gathering and data storage lends itself to **hyperbole** when it comes to new technologies and associated privacy implications. He observes a growing tendency among surveillance scholars to make **exaggerated claims** about the dangers of contemporary information-gathering and data storage and sharing practices based on highly abnormal or exceptional cases (and see Haggerty's foreword to this volume). An example of exaggeration is the common tendency for surveillance scholars to lay claim to the inevitable abuses of CCTV cameras in the absence of comprehensive and comparative empirical data (e.g., Norris and Armstrong 1999).

In their efforts to explain how data circulate in interconnected or networked societies, scholars have **defined** surveillance in **broad terms** as the routine collection and storage of personal information for myriad reasons. Among the reasons for routine information gathering are law enforcement and border security as well as consumption, health care, education, and entertainment. For Bennett (2005, 132), however, "there is a **fundamental difference** between the **routine** capture, collection, and storage of this kind of personal information [primarily for the **purposes of consumer convenience** and **bureaucratic expediency**], and any **subsequent analysis** of that information from which decisions (benign or otherwise) might be made."

Although Bennett (2005) does not offer an alternative conceptual perspective to stipulate what actually counts as surveillance, his point about the **differential applications** of surveillance systems

is important. In an attempt to characterize the dynamics of contemporary information- and data-gathering techniques, surveillance scholars have conceptualized surveillance in such a way that they are unable to discriminate analytically among unequal applications or differential effects of information-gathering and data-sharing techniques without falling back on broad judgments about the "caring" and "controlling" aspects of contemporary surveillance systems (see, e.g., Lyon 2001). **There is merit** in conceptualizing surveillance in broad terms: it helps us to move beyond the view that surveillance only involves asymmetrical monitoring, where the few watch the many. It also helps us to appreciate the extent to which surveillance data, regardless of their applications, are gleaned from the routine activities of everyday life – as potential resources in a wide range of programs, policies, campaigns, and projects. Yet conceptualizing surveillance broadly runs the risk of **underestimating** and, as Bennett (2005) would suggest, **trivializing** the asymmetrical material applications of surveillance systems – particularly the ways in which new surveillance technologies are integrated into existing institutional relations of power. As we argue below, however, analytically inflating the concept of surveillance to encompass a wide range of undifferentiated practices and applications, with **only secondary interest in intention** or legitimating ideology, has as **much to do** with how the community of surveillance scholars is organized and how knowledge about surveillance is produced as it does with the fundamental characteristics of contemporary surveillance practices.

Their interpretation makes restrictions on any information gathering topical---an explicit focus on intentionality is key to keep the topic manageable

Wood 9 – Dr. Murakami Wood, Lecturer in Town Planning at the School of Architecture Planning and Landscape at the University of Newcastle, Surveillance: Evidence, p. 26

Q37 Chairman: Thank you very much indeed. You are very welcome and we arc most grateful to you for coming. I said to the Committee that we have a large area to cover and I have asked that questions be brief and so. out of fairness, perhaps I could ask that replies should be fairly concise too. Gentlemen, your expertise is in the field of surveillance. Are you able to say how easy it is to define "surveillance" and to what extent it is possible, if at all, to break the concept into subcategories?

Dr Murakami Wood: There are a large number of definitions of surveillance, some of which would seem to cast **almost all information gathering** as surveillance and some of which would seem to only argue that "bad" forms of information gathering are surveillance. I think **we would regard neither of these extremes as being useful definitions**. We would argue that the **intentionality is the important aspect**. I think that information gathering with the intent to influence and control aspects of behaviour or activities of individuals or groups would be our working definition. So, it is the **intention** that we regard as **important**. However, we also argue that not all data that is gathered with no surveillance intention cannot become useful for surveillance in future and also there is the question of unintentional consequences of information gathering that are not thought of when the information is gathered.

Surveillance---Preventive Intent---Precision/Topic Education

Their interpretation flattens the topic by functionally equating all forms of information gathering as "surveillance"---this makes nuanced analysis impossible and crushes education

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

Theoretical conflationism

Neutral concepts of surveillance analyze phenomena as for example **taking care of a baby** or the **electrocardiogram of a myocardial infarction patient** on the same analytical level as for example preemptive state-surveillance of personal data of citizens for fighting terrorism or economic surveillance of private data and online behaviour by Internet companies such as Facebook, Google, etc for accumulating capital by targeted advertising. If surveillance is seen as an all-encompassing concept, it **becomes difficult to see the differences** between phenomena of violence and care. The danger of surveillance conflationism is that violence and care can no longer be analytically separated because they are always both at the same time contained within the very concept of surveillance. If surveillance is used as a neutral term, then the distinction between non-coercive information gathering and coercive surveillance processes becomes **blurred**, both phenomena are **amassed in an undifferentiated unity** that **makes it hard to distinguish** or categorically fix the degree of coercive severity of certain forms of surveillance. The double definitional strategy paves the categorical way for **trivializing** coercive forms of surveillance. It becomes **more difficult to elaborate, apply, and use normative, critical concepts** of surveillance. There is a danger that surveillance conflationism results in merely analytical concepts of surveillance that **lack normative and political potential**.

"Surveillance" must be conceptually distinguished from "information gathering" based on coercion to guide specific, targeted analysis

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

Difference between information gathering and surveillance

If surveillance is any form of systematic information gathering, then surveillance studies is the same as information society studies and the surveillance society is a term synonymous for the category of the information society. Given these assumptions, there are no grounds for claiming that surveillance studies is a distinct discipline or transdiscipline. For me, information and information society are the **more general** terms. I consider surveillance as one specific kind of information process and a surveillance society as one specific kind of information society. The notion of the surveillance society characterizes for me certain negative aspects of heteronomous information societies. It is opposed to the notion of a participatory, co-operative, sustainable information society (Fuchs, 2008, 2010; Fuchs, Boersma, Albrechtslund and Sanvoal; Fuchs and Obrist, 2010). Depending on societal contexts and political regulation, information has different effects. I suggest that the opposing term of surveillance is solidarity, which allows to categorically separate negative and positive aspects and effects of information processes. I do not intend to say that information technologies do not have positive potentials and I do agree with David Lyon and others that Foucault's account is too dystopian and lacks positive visions and strategies for the transformation of society. The

relationship of information technology and society is complex and dialectical and therefore creates multiple positive and negative potentials that frequently contradict each other (Fuchs, 2008). But under heteronomous societal conditions we cannot assume that the pros and cons of information technology are equally distributed, the negative ones are automatically present, the positive ones remain much more latent, precarious, and have to be realized in struggles. My suggestion is therefore that the term surveillance should be employed for describing the **negative side of information gathering**, processing, and use that is **inextricably bound up with coercion**, domination, and (direct or indirect; physical, symbolic, structural, or ideological) violence.

Etymology

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

A CRITIQUE OF NEUTRAL SURVEILLANCE CONCEPTS

In my opinion, there are four reasons that speak against defining surveillance in a neutral way.

Etymology

Surveillance stems etymologically from the French surveiller, to oversee, watch over. Lyon (2001, p. 3) says that literally surveillance as "watching over" implies both involves care and control. Watching over implies that there is a social hierarchy between persons, in which one person exerts power over the other. Watching, monitoring, seeing over someone is etymologically connected to nouns such as watcher, watchmen, overseer, and officer. If the word surveillance implies power hierarchies, then it is best to assume that surveillance always has to do with domination, violence, and (potential or actual) coercion. Foucault there fore sees surveillance as a technique of coercion (Foucault, 1977, p. 222), it is "power exercised over him [an individual] through supervision" (Foucault, 1994, p. 84). John Gilliom (2001) studied the attitudes of women who were on welfare in Ohio, whose personal activities are intensively documented and assessed by computerized systems. Gilliom stresses that this system works as "overseer of the poor". He concludes that these women saw surveillance as inherently negative. Surveillance would be "watching from above", an "expression and instrument of power" used "to control human behavior" (Gilliom, 2001, p. 3). "The politics of surveillance necessarily include the dynamics of power and domination" (Gilliom 2001, p. 2). Gilliam also notes the connectedness of the term surveillance to the categories overseer and supervisor (Gilliom, 2001, p. 3).

Surveillance---Doesn't Require Intent

"Surveillance" is gathering data---it doesn't require preventive intent

Rule 12 – James B. Rule, Distinguished Affiliated Scholar at the Center for the Study of Law and Society at the University of California, Berkeley, Routledge Handbook of Surveillance Studies, Ed. Lyon, Ball, and Iaggerty, p. 64-65

For many people, the term "surveillance" conjures up images of the systematic tracking of individuals' lives by distant and powerful agencies. These pop-up cartoon images are not entirely misleading. To be sure, surveillance takes many different forms. But since the middle of the twentieth century, the monitoring of ordinary people's affairs by large institutions has grown precipitously. Such direct intakes of detailed information on literally millions of people at a time—and their use by organizations to shape their dealings with the people concerned—represent one of the most far-reaching social changes of the last 50 years. These **strictly *bureaucratic* forms** of surveillance, and their tensions with values of privacy, are the subject of this chapter.

Surveillance

Surveillance is a **ubiquitous ingredient** of social life. In virtually every enduring social relationship, parties note the actions of others and seek to influence future actions in light of information thus collected. This holds as much for intimate dyads—mutually preoccupied lovers, for example, or mothers and infants—as for relations among sovereign states. Surveillance and concomitant processes of social control are as basic to the life of neighborhoods, churches, industries and professions as they are to relations between government or corporate organizations and individuals.

But whereas the ability of communities, families, and local associations to track the affairs of individuals has widely declined in the world's "advanced" societies, **institutional** surveillance has lately made vast strides. Throughout the world's prosperous liberal societies, people have come to expect their dealings with all sorts of large organizations to be mediated by their "records." These records are ongoing products of past interactions between institutions and individuals—and of active and resourceful efforts by the institutions to **gather data** on individuals. The result is that all sorts of corporate and state performances that individuals expect—from allocation of consumer credit and social security benefits to the control of crime and terrorism—turn on one or another form of institutional surveillance. Perhaps needless to say. the outcomes of such surveillance make vast differences in what Max Weber would have called the "life chances" of the people involved.

No twenty-first-century society, save perhaps the very poorest, is altogether without such large-scale collection, processing and use of data on individuals' lives. Indeed, we might arguably regard the extent of penetration of large-scale institutions into the details of people's lives as one measure of modernity (if not post-modernity). The feet that these activities are so consequential—for the institutions, and for the individuals concerned—makes anxiety and opposition over their repercussions on privacy values inevitable.

Despite the slightly foreboding associations of the term, **surveillance need not be unfriendly** in its effects on the individuals subjected to it. In the intensive care ward at the hospital, most patients probably do not resent the intrusive and constant surveillance directed at them. Seekers of social security benefits or credit accounts will normally be quick to call attention to their

recorded eligibility for these things—in effect demanding performances based on surveillance. Indeed, it is a measure of the pervasiveness of surveillance in our world that we reflexively appeal to our "records" in seeking action from large institutions.

But **even relatively benevolent forms** of surveillance require some tough-minded measures of institutional enforcement vis-a-m individuals who seek services. Allocating social security payments to those who deserve them—as judged by the letter of the law—inevitably means hoi allocating such benefits to other would-be claimants. Providing medical benefits, either through government or private insurance, means distinguishing between those entitled to the benefits and others. When the good things of life are passed around, unless everyone is held to be equally entitled, the logic of surveillance demands distinctions between the deserving, and others. Ami this in turn sets m motion requirements for positive identification, close record-keeping, precise recording of each individual case history, and so on (see also Webster, this volume).

"Surveillance" includes routine data collection---they exclude the majority of contemporary activity and over-focus on dramatic manifestations

Ball 3 – Kirstie Ball, Professor of Organization at The Open University, and Frank Webster, Professor of Sociology at City University, London, The Intensification of Surveillance: Crime, Terrorism and Warfare in the Information Age, p. 1-2

Surveillance involves the observation, recording and categorization of information about people, processes and institutions. It calls for the collection of information, its storage, examination and - as a rule - its transmission. It is a distinguishing feature of modernity, though until the 1980s the centrality of surveillance to the making of our world had been underestimated in social analysis. Over the years surveillance has become **increasingly systematic** and **embedded** in everyday life, particularly as state (and, latterly, supra-state) agencies and corporations have strengthened and consolidated their positions. More and more we are surveilled in **quite routine** activities, as we make telephone calls, pay by debit card, walk into a store and into the path of security cameras, or enter a library through electronic turnstiles. It is **important** that this **routine character** of much surveillance is registered, since commentators so often **focus exclusively on the dramatic manifestations of surveillance** such as communications interceptions and spy satellites in pursuit of putative and deadly enemies.

In recent decades, aided by innovations in information and communications technologies (ICTs), surveillance has expanded and deepened its reach enormously. Indeed, it is now conducted at unprecedented intensive and extensive levels while it is vastly more organized and technology-based than hitherto. Surveillance is a matter of such routine that generally it escapes our notice - who, for instance, reflects much on the traces they leave on the supermarkets' checkout, and who worries about the tracking their credit card transactions allow? Most of the time we do not even bother to notice the surveillance made possible by the generation of what has been called transactional information (Burnham, 1983) - the records we create incidentally in everyday activities such as using the telephone, logging on to the Internet, or signing a debit card bill. Furthermore, different sorts of surveillance are increasingly melded such that records collected for one purpose may be accessed and analysed for quite another: the golf club's membership list may be an attractive database for the insurance agent, address lists of subscribers to particular magazines may be especially revealing when combined with other information on consumer preferences. Such personal data are now routinely abstracted from individuals through economic transactions, and our interaction with communications networks, and the data are circulated, as

data flows, between various databases via 'information superhighways'. Categorizations of these data according to lifestyle, shopping habits, viewing habits and travel preferences are made in what has been termed the 'phenetic fix' (Phillips & Curry, 2002; Lyon, 2002b), which then informs how the economic risk associated with these categories of people is managed. More generally, the globe is increasingly engulfed in media which report, expose and inflect issues from around the world, these surveillance activities having important yet paradoxical consequences on actions and our states of mind. Visibility has become a social, economic and political issue, and an indelible feature of advanced societies (Lyon, 2002b; Haggerty & Ericson, 2000).

Broad interpretations of "surveillance" are key to advance discussion of the topic beyond a limited fixation on overt monitoring---that's critical to capture the essence of modern, bureaucratic information gathering

Ericson 6 – Richard V. Ericson, Principal of Green College, University of British Columbia, and Kevin D. Haggerty, Doctoral Candidate in sociology at the University of British Columbia, The New Politics of Surveillance and Visibility

p. 3-4

Surveillance involves the collection and analysis of information about populations in order to govern their activities. This **broad definition advances discussion** about surveillance **beyond the usual fixation** on cameras and undercover operatives. While spies and cameras are important, they are **only two manifestations** of a **much larger** phenomenon.

The terrorist attacks of September 11, 2001 (hereafter 9/11) now inevitably shape any discussion of surveillance (Lyon 2003). While those events intensified anti-terrorist monitoring regimes, surveillance against terrorism is **only one use** of monitoring systems. Surveillance is now a **general tool** used to accomplish **any number** of institutional goals. The **proliferation** of surveillance in **myriad contexts** of everyday life suggests the **need to examine** the political consequences of such developments.

Rather than seek a single factor that is driving the expansion of surveillance, or detail one overriding political implication of such developments, the volume is concerned with demonstrating both the **multiplicity** of influences on surveillance and the **complexity** of the political implications of these developments. Contributors to this volume are concerned with the **broad social remit** of surveillance - as a tool of governance in military conflict, health, commerce, security and entertainment - and the new political responses it engenders.

"Surveillance" doesn't require intent

Bowers 3 – Jeremy Bowers, Master's Degree in Computer Science from Michigan State University, "Traditional Privacy Broken Down", 8-24, http://www.jerf.org/iri/blogbook/communication_ethics/privacy

I define "surveillance" as "collecting information about people". I deliberately leave out any considerations of "intent". When you accidentally look into your neighbor's window and happen to see them, for the purposes of this essay, that's "surveillance", even though I'd never use the term that way normally. I'd like a more neutral term but I can't think of one that doesn't introduce its own distortions.

Surveillance---Systematic---1NC

"Surveillance" must be systematic---one-shot, random recording isn't topical

Stefanick 11 – Lorna Stefanick, Associate Professor in the Governance, Law, and Management Program in the Centre for State and Legal Studies at Athabasca University, Controlling Knowledge: Freedom of Information and Privacy Protection in a Networked World, p. 129-130

According to the report prepared for the Information Commissioner, surveillance can be thought of as a set of activities that share certain characteristics:

Where we find purposeful, routine, systematic and focused attention paid to personal details, for the sake of control, entitlement, management, influence or protection, we are looking at surveillance. To break this down:

■ The attention is first *purposeful*; the watching has a point that can be justified, in terms of control, entitlement, or some other publicly agreed goal.

■ Then it is *routine*; it happens as we all go about our daily business, it's in the weave of life.

■ But surveillance is also ***systematic***; it is **planned** and carried out according to a **schedule** that is **rational, not merely random**.

■ Lastly, it is *focused*; surveillance gets down to details. While some surveillance depends on aggregate data, much refers to identifiable persons, whose data are collected, stored, transmitted, retrieved, compared, mined and traded." (Emphasis in the original.)

What this means is that **walking through a tourist area videotaping** your **surroundings with your Handycam** video recorder **is not considered surveillance** because it is a **one-off event** that records randomly selected things for your own pleasure. In contrast, a camera installed at a strategic spot along that same street to film the patrons who routinely come out of a local bar intoxicated and proceed to urinate on the street or vandalize local businesses is purposeful (identifying wrongdoers), routine, systematic, and focused. Similarly, a proud parent videotaping his child playing with her nanny in a park on a sunny Sunday afternoon would **not fit the definition** of surveillance. Installing a camera at a daycare to enable parents to view the interaction of their children with their caregivers on demand would be considered surveillance. Many parents insert the so-called "nanny cams" surreptitiously in items like teddy bears to ensure that their children are taken care of in a manner that they find appropriate. Instances of abuse caught by this surveillance have been posted to the Internet, creating predictable rage among those viewing the videos — an example of how panopticon surveillance can become synopticon surveillance. While the latter brings with it its own set of problems, it gives hope to those who fear that surveillance will result in the top-down surveillance described by George Orwell.

Voting issue---

1. Limits---they explode the topic to include <u>limited</u>, single-event recording of specific events. Each has distinct advantages and significantly expands the research burden.

2. Ground---our interpretation forces the Aff to defend <u>broad</u>, <u>system-wide</u> changes that force a dramatic departure from the status quo---that's key to unique links on a topic that's contemporary and constantly changing

Surveillance---Systematic---Interpretation

"Surveillance" must be sustained over time

Macnish 11 – Kevin Macnish, Teaching Fellow and Consultant in Applied Ethics at the University of Leeds, "Surveillance Ethics", Internet Encyclopedia of Philosophy, http://www.iep.utm.edu/surv-eth/

Surveillance Ethics

Surveillance involves paying close and **sustained** attention to another person. It is **distinct** from casual yet focused people-watching, such as might occur at a pavement cafe, to the extent that it is **sustained over time**. Furthermore the design is not to pay attention to just anyone, but to pay attention to some entity (a person or group) in particular and for a particular reason. Nor does surveillance have to involve watching. It may also involve listening, as when a telephone conversation is bugged, or even smelling, as in the case of dogs trained to discover drugs, or hardware which is able to discover explosives at a distance.

One-shot data collection is not "surveillance"---it must be systemic and ongoing

McQueen 3 – David V. McQueen, Senior Biomedical Research Scientist and Associate Director for Global Health Promotion at the National Center for Chronic Disease, Pekka Puska, Global Behavioral Risk Factor Surveillance, p. 226

4.1. Time as a Variable

The one thing that **distinguishes surveillance** from other forms of public health research and data collection is that time is a significant variable. Behaviour changes over time—some slowly, others quickly—but time is always a key variable. Surveillance is **not just a single survey**, just three or four surveys, or something done every 5 years; it is an **ongoing**, **systematic** data collection system.

"Surveillance" is ongoing, not time-limited

DH 12 – Department of Health of the United Kingdom, "Public Health Surveillance: Towards a Public Health Surveillance Strategy for England", December, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213339/Towards-a-Public-Health-Surveillance-Strategy.pdf

3.1 Surveillance encompasses the processes of data collection, analysis, interpretation and dissemination that are:

(a) undertaken on an ongoing basis (i.e. there is a defined but **not time-limited** cycle of processing),

(b) provide measures of population or group health status or determinants of health (hazards, exposures, behaviours) against historical or geographical baselines/comparators or defined levels/triggers for action, and

(c) for which there is an agreed and explicit set of actions, timeframes and accountabilities for taking those actions, that will be initiated or informed by the outputs.

3.2 This **definition of scope**, which is irrespective of disease type (i.e. is equally applicable to assessing acute and chronic disease occurrence and risks), **clearly distinguishes surveillance** from (most) research, which is usually time-limited and for which there is not generally an a priori

agreed set of actions, and accountabilities for taking those actions, based on the outcome of the research. The **continuous or ongoing nature** of surveillance also differentiates it from other ad hoc surveys and analyses (particularly secondary analyses) that are often undertaken to inform the initial stages of policy development or planning, or the reevaluation of policy. It distinguishes surveillance from clinical audit and service evaluation because surveillance generally provides health status (or health determinant status) measures related to a defined population, irrespective of whether or what interventions that population might be in receipt of, rather than provides measures against standards for individuals defined in terms of a specific health service intervention.

"Surveillance" is continuous observation

Choi 12 – Bernard C. K. Choi, Injury Prevention Research Centre, Medical College of Shantou University, "The Past, Present, and Future of Public Health Surveillance", Scientifica, http://www.hindawi.com/journals/scientifica/2012/875253/

The term "surveillance", derived from the French roots, sur (over) and veiller (to watch) [1], is defined in the dictionary as the "close and continuous observation of one or more persons for the purpose of direction, supervision, or control" [2]. For the purpose of this paper, the following definition is used, "Public health surveillance is the ongoing systematic collection, analysis, interpretation and dissemination of health data for the planning, implementation and evaluation of public health action" (see Section 2.3 below).

"Surveillance" must be systematic---one-shot observation is "reconnaissance"---they ruin precision

Kaminski 11 – Paul Kaminsky, Chairman of the Board of the RAND Corporation, Ph.D. in Aeronautics and Astronautics from Stanford University, et al., "Counterinsurgency (COIN) Intelligence, Surveillance, and Reconnaissance (ISR) Operations", Report of the Defense Science Board Task Force on Defense Intelligence, February, http://www.acq.osd.mil/dsb/reports/ADA543575.pdf

5 - Surveillance and reconnaissance refer to the means by which the information is observed. Surveillance is **"systematic" observation** to collect whatever data is available, while reconnaissance is a **specific mission** performed to obtain specific data.

Military Transformation: Intelligence Surveillance, and Reconnaissance (Jan 2003)

TABLE 2. DEFINITIONS OF ISR

As indicated previously, different definitions of terms and associated interpretations of their meaning allow the DoD components, including the intelligence components of the military departments and combatant commands and the combat support agencies that are part of the IC, to choose the one(s) they prefer. This, in turn, produces a **lack of clarity** and **causes confusion** about what is meant by both COIN and ISR.

Surveillance---Many Forms

"Surveillance" is close observation---it can be done in a number of forms, be mass or individual, and overt or covert

Senker 11 – Cath Senker, Non-Fiction Writer who Specialises in Writing About Modern History, Global Issues and World Religions, Privacy and Surveillance, p. 6

Surveillance

The **O**xford **E**nglish **D**ictionary defines surveillance as "**close observation**, especially of a suspected person." Methods of observation include watching, listening, filming, recording, tracking, listing people and entering their details onto databases. The different types of surveillance carried out **include mass surveillance** of large groups of people **as well as targeted observation** of specific individuals. Surveillance may be carried out openly, for example, using closed-circuit television (CCTV) cameras in public places, or covertly; using undercover agents.

"Surveillance" is more than visual observation

UK 9 – UK House of Lords, "Surveillance: Citizens and the State – CHAPTER 2: Overview of Surveillance and Data Collection", http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

Part One—**Key definitions**

BACKGROUND

18. The term "surveillance" is used in different ways. A literal definition of surveillance as "watching over" indicates monitoring the behaviour of persons, objects, or systems. However surveillance is **not only a visual process** which involves looking at people and things. Surveillance can be undertaken in a **wide range of ways** involving a variety of technologies. The instruments of surveillance include closed-circuit television (CCTV), the interception of telecommunications ("wiretapping"), covert activities by human agents, heat-seeking and other sensing devices, body scans, technology for tracking movement, and many others.

Close observation

Oxford 15 – Oxford Advanced Learner's Dictionary, "surveillance", http://www.oxforddictionaries.com/us/definition/american_english/surveillance

Definition of surveillance in English:

noun

Close observation, especially of a suspected spy or criminal:

he found himself put under surveillance by military intelligence

Many types of info collection are "surveillance

O'Connor 11 – Dr. Thomas Riley Kennedy O'Connor, Assoc Prof, Criminal Justice/Homeland Security Director, Institute for Global Security Studies Austin Peay State University, "INFORMANTS, SURVEILLANCE, AND UNDERCOVER OPERATIONS", 9-27, http://www.drtomoconnor.com/3220/3220lect02c.htm

SURVEILLANCE

Surveillance is the clandestine collection and analysis of information about persons or organizations, or put another way, methods of watching or listening without being detected. Most surveillance has physical and electronic aspects, and is preceded by reconnaissance, and not infrequently, by surreptitious entry (to plant a monitoring device). Surveillance can be a valuable and essential tool in combating a wide range of sophisticated criminal activities, including such offenses as kidnapping, gambling, narcotics, prostitution, and terrorism. There are many different types of surveillance. Peterson and Zamir (2000), for example, list seventeen types: audio, infra/ultra-sound, sonar, radio, radar, infrared, visual, aerial, ultraviolent, x-ray, chemical and biological, biometrics, animals, genetic, magnetic, cryptologic, and computers. A shorter list would include four general types of surveillance: visual; audio, moving, and contact. Here is an outline of the four types from that shorter list:

Data collection is a primary form of "surveillance"

Verri 14 – Gabriela Jahn Verri, Federal University of Rio Grande do Sul, "GOVERNMENT AND CORPORATIVE INTERNET SURVEILLANCE", World Summit on the Information Society Forum, http://www.ufrgs.br/ufrgsmun/2014/files/WSI1.pdf

David Lyon describes governmental and corporative surveillance as the "focused, systematic, and routine attention to personal details for purposes of influence, management, protection, or direction" (Lyon 2007, 14). The **most common form** this practice takes in the context of information and communication technologies (hereinafter ICT) is still so-called **data surveillance**, which implies the collection and retention of information about an "identifiable individual", often from multiple sources3, which help recognize multiple activities and establish a pattern of behavior in both the virtual and material realms (Stanley & Steinhardt 2003, 3). Although less common and fairly recent, institutional Internet surveillance may also acquire the shape of media surveillance, done by means of – recognized or ignored – image (still or video) and sound hoarding through a subject's personal apparatus such as private webcams and microphones, as well as screen-recording (RWB 2013, 9-33; Stanley & Steinhardt 2003, 2-4)4.

Surveillance---Individuated

"Surveillance" must be individuated---general overlook isn't topical

Zoufal 8 – Donald R. Zoufal, Retired Colonel in the US Army Reserve and Master of Arts in Security Studies from the Naval Postgraduate School ""SOMEONE TO WATCH OVER ME?" PRIVACY AND GOVERNANCE STRATEGIES FOR CCTV AND EMERGING SURVEILLANCE TECHNOLOGIES", Naval Postgraduate School Thesis, March, http://calhoun.nps.edu/bitstream/handle/10945/4167/08Mar_Zoufal.pdf?sequence=1

A more comprehensive definition of surveillance is offered in A Report on the Surveillance Society, the work of the Surveillance Studies Network, for the United Kingdom's Information Commissioner.89 That work provides this definition of surveillance:

Rather than starting with what intelligence services or police may define as surveillance it is best to begin with a set of activities that have a similar characteristic and work out from there. Where we find purposeful, routine, systematic and focused attention paid to **personal details**, for the sake of control, entitlement, management, influence or protection, we are looking at surveillance.90

This definition adds **important components** to understanding surveillance. Perhaps most importantly, it links the concept to identifying **individuals**. It is **not just a generalized overlook** of the crowd, although the technology may be used to gather the big picture view. **Ultimately, observations must be linked to the individual to be surveillance**. Moreover, this definition recognizes that the results of surveillance activity can be (and usually are) manipulated in a variety of ways all linked to the individual.

The Report's definition also requires the observation to be systematic in nature. Unlike the historic concept of surveillance described by Lyons, with people watching over each other, this definition presupposes a more organized and comprehensive examination. The only real controversial component of this definition is the requirement that the surveillance be routine. While such a definition may characterize surveillance in the United Kingdom, it is unclear why occasional surveillance could not occur. Despite this quibble, the Report's definition provides a good starting point for understanding surveillance. It links together the concepts of observation and the compiling and processing of the data generated by observation.

Surveillance---Not Just Individuated

"Surveillance" can be personal or mass

Clarke 13 – Roger Clarke, Visiting Professor in the Cyberspace Law & Policy Centre at the University of N.S.W., "Introduction to Dataveillance and Information Privacy, and Definitions of Terms", 10-21, http://www.rogerclarke.com/DV/Intro.html

Data Surveillance

Information privacy is valued very highly by individuals. But it is under threat from particular kinds of management practices, and from advances in technology. This section explains the concept of 'data surveillance'. To do so, it is first necessary to define some underlying terms.

Surveillance is the systematic investigation or monitoring of the actions or communications of one or more persons.

The primary purpose of surveillance is generally to collect information about the individuals concerned, their activities, or their associates. There may be a secondary intention to deter a whole population from undertaking some kinds of activity.

Two separate classes of surveillance are usefully identified:

Personal Surveillance is the surveillance of an identified person. In general, a specific reason exists for the investigation or monitoring. It may also, however, be applied as a means of deterrence against particular actions by the person, or represssion of the person's behaviour.

Mass Surveillance is the surveillance of groups of people, usually large groups. In general, the reason for investigation or monitoring is to identify individuals who belong to some particular class of interest to the surveillance organization. It may also, however, be used for its deterrent effects.

Surveillance---Crime

"Surveillance" is watching related to crime

Cambridge 15 – Cambridge Advanced Learners Dictionary & Thesaurus, "surveillance", http://dictionary.cambridge.org/dictionary/british/surveillance

surveillance

noun [U] UK /səˈveɪ.ləns/ US /sɚ-/

› the careful watching of a person or place, especially by the police or army, because of a crime that has happened or is expected:

The police have kept the nightclub under surveillance because of suspected illegal drug activity.

More banks are now installing surveillance cameras.

Surveillance---Not Just Crime

"Surveillance" is more than observation of criminals

Marx 5 – Gary T. Marx, Professor Emeritus at the Massachusetts Institute of Technology, "Surveillance and Society", Encyclopedia of Social Theoryhttp://web.mit.edu/gtmarx/www/surandsoc.html

Traditional Surveillance

An organized crime figure is sentenced to prison based on telephone wiretaps. A member of a protest group is discovered to be a police informer. These are instances of traditional surveillance --defined by the dictionary as, "close observation, especially of a suspected person".

Yet surveillance **goes far beyond** its' popular association with crime and national security. To varying degrees it is a property of **any** social system --from two friends to a workplace to government. Consider for example a supervisor monitoring an employee's productivity; a doctor assessing the health of a patient; a parent observing his child at play in the park; or the driver of a speeding car asked to show her driver's license. **Each of these** also **involves surveillance**.

Information boundaries and contests are found in all societies and beyond that in all living systems. Humans are curious and also seek to protect their informational borders. To survive, individuals and groups engage in, and guard against, surveillance. Seeking information about others (whether within, or beyond one's group) is characteristic of all societies. However the form, content and rules of surveillance vary considerably --from relying on informers, to intercepting smoke signals, to taking satellite photographs.

In the 15th century religious surveillance was a powerful and dominant form. This involved the search for heretics, devils and witches, as well as the more routine policing of religious consciousness, rituals and rules (e.g., adultery and wedlock). Religious organizations also kept basic records of births, marriages, baptisms and deaths.

In the 16th century, with the appearance and growth of the embryonic nation-state, which had both new needs and a developing capacity to gather and use information, political surveillance became increasingly important relative to religious surveillance. Over the next several centuries there was a gradual move to a "policed" society in which agents of the state and the economy came to exercise control over ever-wider social, geographical and temporal areas. Forms such as an expanded census, police and other registries, identity documents and inspections appeared which blurred the line between direct political surveillance and a neutral (even in some ways) more benign, governance or administration. Such forms were used for taxation, conscription, law enforcement, border control (both immigration and emigration), and later to determine citizenship, eligibility for democratic participation and in social planning. In the 19th and 20th centuries with the growth of the factory system, national and international economies, bureaucracy and the regulated and welfare states, the content of surveillance expanded yet again to the collection of detailed personal information in order to enhance productivity and commerce, to protect public health, to determine conformity with an ever-increasing number of laws and regulations and to determine eligibility for various welfare and intervention programs such as Social Security and the protection of children. Government uses in turn have been supplemented (and on any quantitative scale likely overtaken) by contemporary private sector uses of surveillance at work, in the market place and in medical, banking and insurance settings. The contemporary commercial state with its' emphasis on consumption is inconceivable without the

massive collection of personal data. A credentialed state, bureaucratically organized around the certification of identity, experience and competence is dependent on the collection of personal information. Reliance on surveillance technologies for authenticating identity has increased as remote non face-to-face interactions across distances and interactions with strangers have increased. Modern urban society contrasts markedly with the small town or rural community where face-to-face interaction with those personally known was more common. When individuals and organizations don't know the reputation of, or can't be sure with whom they are dealing, there is a turn to surveillance technology to increase authenticity and accountability.

The microchip and computer are of course central to surveillance developments and in turn reflect broader social forces set in motion with industrialization. The increased availability of personal information is a tiny strand in the constant expansion in knowledge witnessed in the last two centuries, and of the centrality of information to the workings of contemporary society.

The New Surveillance

The traditional forms of surveillance noted in the opening paragraph contrast in important ways with what can be called the new surveillance, a form that became increasingly prominent toward the end of the 20th century. The new social surveillance can be defined as, "scrutiny through the use of technical means to extract or create personal or group data, whether from individuals or contexts". Examples include: video cameras; computer matching, profiling and data mining; work, computer and electronic location monitoring; DNA analysis; drug tests; brain scans for lie detection; various self-administered tests and thermal and other forms of imaging to reveal what is behind walls and enclosures.

Their interpretation is outdated

Odoemelam 15 – Chika Ebere Odoemelam, Ph.D. in Media Studies from the University of Malaya, Visiting Research Postgraduate Scholar at Lehigh University, "Adapting to Surveillance and Privacy Issues in the Era of Technological and Social Networking", International Journal of Social Science and Humanity, 5(6), June, p. 573

The concise Oxford Dictionary defines surveillance as "close observation", especially of a suspected person". From the above definition, one can deduce that surveillance is supposed to apply to "a suspected person". But the big question is , is that the case in our today's world? Electronic surveillance has become a common phenomenon especially in the developed world as a way of monitoring the activities of every member of the society irrespective of whether or not they are a suspect. Again, in our present day world filled with all kinds of modern technology, surveillance could be carried out from afar instead of only from "close observation", as the dictionary meaning suggests. Satellite images and remote monitoring of communications via highpowered infra-red technologies can be used for long distance surveillance activities. Thus, governments and big corporations have made surveillance part of everyday life, in that it includes, but is not limited to, hidden cameras in an ATM machines, data bases of all employees in a particular company, scanners that picks mobile phone communications, computer programs that monitor keystrokes, or key words and video cameras that parents can use, to monitor, their children at a day care centre.

Surveillance---Not a Specific Person

"Surveillance" can be broad---their definition is outdated

Hier 7 – Sean Hier, Assistant Professor in the Department of Sociology, University of Victoria, British Columbia and Joshua Greenberg, Assistant Professor in the School of Journalism and Communication, Carleton University, The Surveillance Studies Reader, p. 84-86

A deficient definition

One indicator of rapid change is the **failure of dictionary definitions** to capture current understandings of surveillance. For example in the Concise Oxford Dictionary surveillance is defined as 'close observation, especially of a suspected person'. Yet today many of the new surveillance technologies are not 'especially' applied to 'a suspected person'. They are commonly applied categorically. In broadening the range of suspects the term 'a suspected person' takes on a different meaning. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular lime periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand.

The dictionary definition also implies a clear distinction between the object of surveillance and the person carrying it out. In an age of servants listening behind closed doors, binoculars and telegraphic interceptions, that separation made sense. It was easy to separate the watcher from the person watched. Yet self-monitoring has emerged as an important theme, independent of the surveilling of another. In the hope of creating self-restraint, threats of social control (i.e. the possibility of getting caught) arc well-publicized with mass media techniques.

A general ethos of self-surveillance is also encouraged by the availability of home products such as those that test for alcohol level, pregnancy, menopause and AIDS. Self-surveillance merges the line between the surveilled and the surveillant. In some cases we see parallel or co-monitoring, involving the subject and an external agent.: The differentiation of surveillance into ever more specialized roles is sometimes matched by a rarely studied de-differentiation or generalization of surveillance to non-specialized roles. For example regardless of their job, retail store employees are trained to identify shoplifters and outdoor utility workers are trained to look for signs of drug manufacturing.

The term 'close observation' also fails to capture contemporary practices. Surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and work. Nor need it be close as in detailed - much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail.

The dated nature of the definition is further illustrated in its seeming restriction lo visual means as implied in 'observation*. The eyes do contain the vast majority of the body's sense receptors and die visual is a master metaphor for the other senses (e.g., saying 'I sec' for understanding or being able to 'sec through people'). Indeed 'seeing through' is a convenient short hand for the new surveillance.

To be sure the visual is usually an clement of surveillance, even when it is not the primary means of data collection (e.g. written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to "observe' a text or a printout is in many ways different from a detective or supervisor directly observing behavior. The eye as the major means of direct surveillance is increasingly joined or replaced by

hearing, touching and smelling. The use of multiple senses and sources of data is an important characteristic of much of the new surveillance.

A better definition of the new surveillance is the use of technical means to extract or create personal data. This may be taken from individuals or contexts. In this definition the use of 'technical means' to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples extend the senses by using material artifacts or software of some kind, but the technical means for rooting out can also be deception, as with informers and undercover police. The use of 'contexts' along with 'individuals' recognizes that much modern surveillance also looks at settings and patterns of relationships. .Meaning may reside in cross-classifying discrete sources of data (as with computer matching and profiling) that in and of themselves arc not of revealing. Systems as well as persons are of interest.

This definition of the new surveillance excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a cooperative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient

I do not include a verb such as 'observe' in the definition because the nature of the means (or the senses involved) suggests subtypes and issues for analysis and ought not to be foreclosed by a definition, (e.g. how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity?). If such a verb is needed I prefer 'attend to' or 'to regard' rather than observe with its tilt toward the visual.

While the above definition captures some common elements among new surveillance means, contemporary tactics are enormously varied and would include:

• a parent monitoring a baby on closed circuit television during commercials or through a day care center webcast;

• a data base for employers containing the names of persons who have filed workman compensation claims;

• a video monitor in a department store scanning customers and matching their images to those of suspected shoplifters;

• a supervisor monitoring employee's e-mail and phone communication;

• a badge signaling where an employee is at all times;

• a hidden camera in an ATM machine;

• a computer program that monitors the number of keystrokes or looks for key words or patterns;

• a thermal imaging device aimed at the exterior of a house from across the street

• analyzing hair to determine drug use;

• a self-test for level of alcohol in one's system;

• a scanner that picks up cellular and cordless phone communication;

• mandatory provision of a DNA sample;

- the polygraph or monitoring brain waves to determine truthfulness;
- Caller ID.

Surveillance---Includes Remote Monitoring

"Surveillance" does not have to be "close" observation---remote monitoring is more common

Hier 7 – Sean Hier, Assistant Professor in the Department of Sociology, University of Victoria, British Columbia and Joshua Greenberg, Assistant Professor in the School of Journalism and Communication, Carleton University, The Surveillance Studies Reader, p. 84-86

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Surveillance---Covert

"Surveillance" must be covert

Ngwenya 12 – Mboiki Obed Ngwenya, Magister Technologiae in Forensic Investigation at University of South Africa, "CLOSED CIRCUIT TELEVISION AS A SURVEILLANCE TECHNIQUE: A CASE STUDY OF FILLING STATIONS IN MIDDELBURG, MPUMALANGA, SOUTH AFRICA", February, http://uir.unisa.ac.za/bitstream/handle/10500/7703/dissertation_ngwenya_mo.pdf?sequence=1

3.7 SURVEILLANCE

According to Buckwalter (1983:1), surveillance is the **covert** observation of places, persons and vehicles for the purpose of obtaining information concerning the identities of subjects. The term surveillance comes from the French word surveiller which derives from sur (over) and veiller (to watch); literally, it means to 'watch over' (Buckwalter, 1983:3).

Tyska and Fennelly (1999:165) define surveillance as a **secretive** and continuous **watching** of persons, vehicles, places and objects, to obtain information concerning the activities and identities of an individual or conditions. Van Rooyen (2001:99) defines surveillance as the careful and continuous watching of something or someone, carried on in a secretive or discreet manner, in order to obtain information on a subject.

All the above authors agree that surveillance has to do with watching in a **secretive manner**, with the aim of obtaining or gathering information. Tyska and Fennelly (1999:164), further say that the effort begins with determining just what one's objectives are for conducting surveillance, as surveillance is a way to find an individual by watching his or her associates and friends. When seeking detailed data about a person's activity, there is no better method than to use frequent surveillance.

"Surveillance" is covert activity

Berkeley 95 – Berkeley Police Department, "GENERAL ORDER S-3 SUBJECT: SURVEILLANCE", 9-5, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEEQFjAH&url=http%3A%2F%2Fwww.cityofberkeley.info%2FuploadedFiles%2FPolice%2FLevel_3_-_General%2FGO%2520S-03_95Sep05.pdf&ei=d3xoVaGpBouQyASan4G4CQ&usg=AFQjCNHvVPtYwL3kgHA2EqGysqJiFdslJw&sig2=oq2v_8OXHrab56ADwDeoOQ

"Surveillance" is that **covert activity** which is directed at a particular person or location and intended to gather evidence of, or prevent, criminal activity. The routine investigation and watch of a suspect, vehicle or location by uniformed personnel is not considered "surveillance."

"Surveillance" must be covert

O'Connor 11 – Dr. Thomas Riley Kennedy O'Connor, Assoc Prof, Criminal Justice/Homeland Security Director, Institute for Global Security Studies Austin Peay State University, "INFORMANTS, SURVEILLANCE, AND UNDERCOVER OPERATIONS", 9-27, http://www.drtomoconnor.com/3220/3220lect02c.htm

SURVEILLANCE

Surveillance is the **clandestine** collection and analysis of information about persons or organizations, or put another way, methods of watching or listening **without being detected**. Most surveillance has physical and electronic aspects, and is preceded by reconnaissance, and not infrequently, by surreptitious entry (to plant a monitoring device). Surveillance can be a valuable and essential tool in combating a wide range of sophisticated criminal activities, including such offenses as kidnapping, gambling, narcotics, prostitution, and terrorism. There are many different types of surveillance. Peterson and Zamir (2000), for example, list seventeen types: audio, infra/ultra-sound, sonar, radio, radar, infrared, visual, aerial, ultraviolent, x-ray, chemical and biological, biometrics, animals, genetic, magnetic, cryptologic, and computers. A shorter list would include four general types of surveillance: visual; audio, moving, and contact. Here is an outline of the four types from that shorter list:

Surveillance---Includes Overt Monitoring

"Surveillance" can be overt or covert

Wall 7 – David S. Wall, Professor of Criminal Justice and Head of the School of Law at the University of Leeds, Cybercrime: The Transformation of Crime in the Information Age, p. 230

surveillance is the act of monitoring the behaviour of another either in real-time using cameras, audio devices or key-stroke monitoring, or in chosen time by data mining records of internet transactions. **Surveillance can be overt or covert**. User awareness of being surveilled in real or chosen time can shape their online behaviour. See panopticon.

Limiting "surveillance" to only covert action is outdated

UNODC 9 – United Nations Office on Drugs and Crime, "Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime", http://www.unodc.org/documents/organized-crime/Law-Enforcement/Electronic_surveillance.pdf

1.2 Electronic surveillance

The term "electronic surveillance" covers an array of capabilities and practices. To better understand what is meant by electronic surveillance, it is useful to break it down into parts. Surveillance has previously been defined on the basis of covert/overt distinctions, or determined according to the level of contact with the target, whether remote or direct. These distinctions might, arguably, create a **false dichotomy**, particularly in the context of modern surveillance technologies, where overt/covert lines are **not as easy to draw**. Thus, a framework based on function is perhaps **more useful**. The table below provides some examples. Although this too is flawed in that modern surveillance technologies will often have multiple capabilities (see below discussion at section 5.2 on regulating technologies with multiple capabilities).

Surveillance---Excludes Disease

Domestic surveillance is distinct from disease surveillance.

EPIS 15 (Empire Pacific Investigative Service – an organization run by retired U.S. Federal Special Agents. They specialize in surveillance cases, http://www.epis.us/domestic_surveillance.html)

SURVEILLANCE IN DEFINITION

Domestic Surveillance - Surveillance is the monitoring of the behavior, activities, or other changing information, usually **of people** and often in a surreptitious manner. It most usually refers to observation of individuals or groups by government organizations, but disease surveillance, for example, is monitoring the progress of a disease in a community.

Surveillance---Excludes Animals

Domestic surveillance is of non-human animals.

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Surveillance---Precision Impacts

Precision's vital because surveillance debates shape policy

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

These randomly collected news clippings from newspapers give us an idea of how important the topic of surveillance has become for the media and for our lives. Economic and state surveillance seem to be two issues that affect the lives of all citizens worldwide. Economic organizations are entangled into both workplace/workforce surveillance and consumer surveillance in order to enable the capital accumulation process. State institutions (like the police, the military, secret services, social security and unemployment offices) are using surveillance for organizing and managing the population. All of this takes place in the context of the extension and intensification of surveillance (Ball and Webster, 2003; Lyon, 2003) in post-9/11 new imperialism that is afraid of terrorism and at the same time creates this phenomenon and in the context of neoliberal corporate regimes that subjugate ever larger spheres and parts of life to commodity logic (Harvey, 2003, p. 2005). If organizations are an important source and space of surveillance, then it is **important to understand** how surveillance can be defined.

Given the circumstance that there is much public talk about surveillance and surveillance society, it is an **important task** for academia to **discuss** and **clarify the meaning** of these terms because **academic debates to a certain extent inform and influence public and political discourses**. The task of this paper is to explore compare ways of defining surveillance. In order to give meaning to concepts that describe the realities of society, social theory is needed. Therefore social theory is employed in this paper for discussing ways of defining surveillance. "Living in 'surveillance societies' may throw up challenges of a fundamental – ontological – kind" (Lyon, 1994, p. 19). Social philosophy is a way of clarifying such ontological questions that concern the basic nature and reality of surveillance.

Surveillance---Public Health Definitions Bad

Their interpretation is from a public health source---reject that---it's imprecise on a public policy topic

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, "How Can Surveillance Be Defined?", http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

In everyday language use, citizens tend to use the concept of surveillance in a negative way and to connection the Orwellian dystopia of totalitarianism with this notion. In academia, the notion of surveillance is besides in the social sciences especially employed in medicine. Surveillance data and surveillance systems in medicine are connected to the monitoring of diseases and health statuses. In the Social Sciences Citation Index (SSCI), the most frequently cited paper that contains the word surveillance in its title, is a medical work titled "Annual report to the nation on the status of cancer, 1975-2000, featuring the uses of surveillance data for cancer prevention and control" (SSCI search, April 30, 2010). This shows that there is a difference between the everyday usage and the predominant academic usage of the term surveillance. The first tends to be more political and normative, the latter more analytical. My argument is that the **social science usage of the term surveillance should not be guided by the understandings given to the term in medicine**, the natural sciences, or engineering because the specific characteristic of the social sciences is that it has a strong normative and critical tradition that should in my opinion not be dismissed. The question is if surveillance should be considered as a political concept or a general concept.

*** CURTAIL

Restriction---1NC

"Curtail" means to restrict

Webster's 15 – Webster's New World College Dictionary, 4th Ed., "curtail", http://www.yourdictionary.com/curtail

verb

To curtail is defined as to **restrict something**, stop something or deprive of something.

An example of curtail is when a town wants to stop drunk driving.

That refers only to outright prohibitions, not any action that has the consequence of decreasing surveillance

Caiaccio 94 (Kevin T., "Are Noncompetition Covenants Among Law Partners Against Public Policy?", Georgia Law Review, Spring, 28 Ga. L. Rev. 807, Lexis)

The Howard court began its analysis by examining the California Business and Professions Code, which expressly permits reasonable restrictive covenants among business partners. 139 The court noted that this provision had long applied to doctors and accountants and concluded that the general language of the statute provided no indication of an exception for lawyers. 140 After reaching this conclusion, however, the court noted that, since it had the authority to promulgate a higher standard for lawyers, the statute alone did not necessarily control, 141 and the court therefore proceeded to examine the California Rules of Professional Conduct. 142 The court avoided the apparent conflict between the business statute and the ethics rule by undertaking a strained reading of the rule. In essence, the court held that the word "restrict" referred **only to outright prohibitions**, and that a **mere** "economic **consequence"** does **not** equal a prohibition. 143

Voting issue---

1. Limits---allowing effectual reductions explodes the topic. Any action can potentially result in less surveillance. Limits are key to depth of preparation and clash.

2. Ground---our interpretation is key to establish a stable mechanism of legal prohibition that guarantees core ground based on *topic direction*. They allow the Aff to defend completely different processes like "oversight" that dodge core DAs and rob the best counterplan ground.

Restriction---Interpretation

"Curtail" means to impose a restriction on

Oxford 15 – Oxford Dictionaries, "curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on:

civil liberties were further curtailed

This is based on the etymology of the word

AHD 14 – American Heritage Dictionary, "curtail", https://www.ahdictionary.com/word/search.html?q=curtail

tr.v. cur·tailed, cur·tail·ing, cur·tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

[Middle English curtailen, **to restrict**, probably blend of Old French courtauld, docked; see CURTAL, and Middle English taillen, to cut (from Old French tailler; see TAILOR).]

cur·tail · er n.

cur·tail · ment n.

Restriction---Violation---Effects

"Restrictions" are direct governmental limitations

Viterbo 12 (Annamaria, Assistant Professor in International Law – University of Torino, PhD in International Economic Law – Bocconi University and Jean Monnet Fellow – European University Institute, International Economic Law and Monetary Measures: Limitations to States' Sovereignty and Dispute, p. 166)

In order to distinguish an exchange restriction from a trade measure, the Fund chose not to give relevance to the purposes or the **effects** of the measure and to adopt, instead, a **technical criterion** that focuses on the **method** followed to design said measure.

An interpretation that considered the economic effects and purposes of the measures (taking into account the fact that the measure was introduced for balance of payments reasons or to preserve foreign currency reserves) would have inevitably extended the Fund's jurisdiction to trade restrictions, blurring the boundaries between the IMF and the GATT. The result of such a choice would have been that a quantitative restriction on imports imposed for balance of payments reasons would have fallen within the competence of the Fund.

After lengthy discussions, in 1960 the IMF Executive Board adopted Decision No. 1034-(60/27).46 This Decision clarified that the **distinctive feature** of a restriction on payments and transfers for current international transactions is "whether it involves a **direct governmental limitation** on the availability or use of exchange as such*.47 This is a limitation imposed directly on the use of currency in itself, for all purposes.

Assess whether the means themselves are a limit---allowing actions that effect a reduction ruins precision

Randall 7 (Judge – Court of Appeals of the State of Minnesota, "Dee Marie Duckwall, Petitioner, Respondent, vs. Adam Andrew Duckwall, Appellant", 3-13, http://law.justia.com/cases/minnesota/court-of-appeals/2007/opa0606 95-0313.html#_ftnref2)

[2] When referring to parenting time, the term "restriction[,]" is a **term of art** that is **not the equivalent of "reduction"** of parenting time. "A modification of visitation that **results in** a reduction of total visitation time, is not necessarily a restriction' of visitation.' Danielson v. Danielson, 393 N.W.2d 405, 407 (Minn. App. 1986). When determining **whether a reduction constitutes a restriction**, the court should consider the **reasons** for the change as well as the amount of the reduction." Anderson v. Archer, 510 N.W.2d 1, 4 (Minn. App. 1993).

Economic consequences do not "restrict"

Mosk 93 (J., Judge – Supreme Court of California, "Howard v. Babcock", 25 Cal. Rptr. 2d 80, ***; 1993 Cal. LEXIS 6006, 12-6, Lexis)

(4) We are not persuaded that this rule was intended to or should prohibit the type of agreement that is at issue here. HN10 An agreement that assesses a **reasonable cost** against a partner who chooses to compete with his or her former partners **does not restrict** the practice of law. Rather, it attaches an **economic consequence** to a departing partner's **unrestricted** choice to pursue a particular kind of practice.

Raising costs isn't a direct restriction, even if it has limiting effects

WTO 4 (World Trade Organization – Report of the Dispute Resolution Panel, "Dominican Republic – Measures Affecting The Importation and Internal Sale of Cigarettes", 11-26, http://www.smoke-free.ca/trade-and-tobacco/dominicanrepublic/dr-cigarettes(panel)(full).pdf)

4.250 The foreign exchange fee is not justified under Article XV:9 of the GATT. The International¶ Monetary Fund ("IMF") has its own "guiding principle" in determining what constitutes a "[foreign]¶ exchange restriction". As cited by the Dominican Republic, "[t]he guiding principle in ascertaining¶ WT/DS302/R¶ Page 52¶ whether a measure is a restriction on payments and transfers for current transactions under¶ Article VIII, Section 2, is whether it involves a **direct governmental limitation** on the availability or¶ use of exchange as such".¶ 4.251 Since there does not exist in the WTO "a formal decision on how to distinguish between trade¶ and exchange controls … the [WTO Members] have thus in practice used the same definition as the¶ IMF even though they have not formally taken a decision to that effect". Thus, applying the IMF's¶ guiding principle, Honduras submits that the foreign exchange fee is not a "[foreign] exchange¶ restriction" because it is not a "direct… limitation on the availability or use of exchange as such". "As¶ such" in relation to "limitation on the availability or use" means that the limitation must be on access¶ to or the use of (foreign) exchange, as such, or per se. While the foreign exchange fee **increases the costs** of imports (which renders it a "trade restriction"), the availability of foreign exchange to pay for¶ those imports remains **unrestricted**.

Restriction---Violation---No Regulation

Only direct prohibitions are “restrictions”
Sinha 6

http://www.indiankanoon.org/doc/437310/

Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a **distinction** between regulation and **restriction or prohibition** has **always been drawn**, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The **O**xford **E**nglish **D**ictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

Conditions aren’t restrictions---this distinction matters

Pashman 63 Morris is a justice on the New Jersey Supreme Court. “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. Lexis

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [***11] p. 479. It is **within** these **rules of construction** that this policy must be construed.¶ Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. **The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition."** A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that **the word "restrictions," as used** [***12] **by defendant** insurers, **is ambiguous.** The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [**472] of redevelopment work within 32 months because (1) the word is **used ambiguously** and **must be strictly construed** against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added).

“Regulation” is not “restriction”

Mohammed 7 Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed

Microlight aircrafts or hang gliders shall not be flown over an assembly of persons or over congested areas or restricted areas including cantonment areas, defence installations etc. unless prior permission in writing is obtained from appropriate authorities. These provisions do not create any restrictions. There is no **total prohibition** of operation of microlight aircraft or hang gliders. The **distinction between 'regulation' and 'restriction'** must be clearly perceived. The 'regulation' is a process which aids main function within the legal precinct whereas 'restriction' is a process which prevents the function without legal sanction. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only regulations and not restrictions, complete or partial. They are issued with authority conferred on the first respondent, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India.

Restriction---Violation---Binding

"Restriction" requires binding enforcement---policies that have discouraging effects on surveillance but don't legally limit it aren't topical

Barnett 3 (Stephen R., Boalt Professor of Law Emeritus – University of California, Berkeley, "No-Citation Rules Under Siege: A Battlefield Report and Analysis", The Journal of Appellate Practice and Process, Fall, 5 J. App. Prac. & Process 473, Lexis)

C. "Restrictions" on Citation: Introducing Draft B

Despite this assurance, under the present drafting it is not clear that the proposed Rule 32.1 does preserve circuit choice on the question of citation weight. When the proposed Rule says, "No prohibition or restriction may be imposed upon the citation of [unpublished] judicial opinions," what does "restriction" [*491] mean? If a circuit's rule provides - as several do 122 - that unpublished opinions may be cited only for their "persuasive" value, is that not a "restriction" on their citation? One might think **so**. And if so, it would follow that circuit rules limiting citation to persuasive value are forbidden by Rule 32.1, because no such limit is imposed on the citation of published opinions. 123

Two possible remedies come to mind. One is legislative history, or drafter's gloss. The Committee Note might declare the committee's view that the Rule deals only with citability and "says nothing whatsoever about the effect that a court must give" to the cited opinions. 124 If we may assume that the judges and lawyers operating in the federal appellate courts have no aversion to legislative history, 125 this approach might produce the committee's desired interpretation of its Rule.

The other approach would proceed on the basis that if you want to permit citation, you might just say that citation is permitted. 126 Draft B thus would simply provide:

Any opinion, order, judgment, or other disposition by a federal court may be cited to or by any court.

This language would make quite clear the committee's view that the Rule deals only with permitting citation and says nothing about the weight to be given citations. Draft B also would take the lead out of the drafting. You don't have to be Bryan Garner to object to the present draft's double negative ("no prohibition)"; its vast passive ("may be imposed"); its [*492] awkward laundry list of unpublished dispositions; or its backhanded approach of making opinions citable by banning restrictions on citation.

Before concluding, however, that the elegant Draft B should replace the committee's cumbersome Draft A, it is necessary to consider how each draft would handle a major problem that will arise.

D. Discouraging Words

This is the problem of discouraging words. Although nine of the thirteen circuits now allow citation of their unpublished opinions, all nine discourage the practice; they all have language in their rules stating that such citation is "disfavored," that unpublished opinions should not be cited unless no published opinion would serve as well, that the court "sees no precedential value" in unpublished opinions, and so forth. 127 The question is whether such **discouraging** words are a forbidden **"restriction"** on citation under proposed Rule 32.1.

The Advisory Committee addresses this question with the following Delphic pronouncement:

Unlike many of the local rules of the courts of appeals, Rule 32.1(a) does not provide that citing "unpublished" opinions is "disfavored" or limited to particular circumstances (such as when no "published" opinion adequately addresses an issue). Again, it is difficult to understand why "unpublished" opinions should be subject to restrictions that do not apply to other sources. 128

The first sentence of this passage does not say that Rule 32.1 would overrule those local rules - only that it is "unlike" them. The second sentence, however, characterizes the discouraging words as "restrictions," so in the committee's apparent view, Rule 32.1 would overrule them.

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be **wholly admonitory** - and **unenforceable**. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." 129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would **not be a** "prohibition or **restriction**" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language **disfavoring** citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an **objective** "prohibition or **restriction**" determinable by a court. 130 A court might find, for example, that

the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" 131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has **bite** and **is a "restriction,"** then Rule 32.1 strikes it down, and again the citation is permitted.

2. What Difference Does It Make Whether Discouraging Words Are "Restrictions"?

There is one live question, however, that would turn on whether a local rule's discouraging language constituted a "restriction" on citation. If the language was a restriction, it would be condemned by Rule 32.1 132 and so presumably would have to be removed from the local circuit rule. Each circuit's rule thus would have to be parsed to determine whether its discouraging words were **purely hortatory** or **legally enforceable**; and each circuit thus would have to decide - subject to review by the Judicial Conference? - which of its discouraging words it could keep.

"Restrictions" mean regulation

Words and Phrases 7 (37A W&P, p. 406)

N.H. 1938. As used in statute giving towns power to "regulate and restrict" buildings by zoning regulations, "regulation" is **synonymous** with "restrict" and "restrictions" are embraced in "regulations." Pub.Laws 1926, c. 42, 48—53.—Stone v. Cray, 200 A. 517, 89 N.H. 483.—Zoning 9.

That excludes non-binding guidance

Pfister 10 (Kara, DOI, Office of the Solicitor, Twin Cities, "Policy Making 101", 4-29, http://www.bie.edu/cs/groups/xbie/documents/text/idc-008058.pdf)

In general, there are two types¶ of agency policy that impact members of the public:

Regulations and **Guidance**.

◦Regulations are **legally binding**.

◦ Guidance is **non-binding**.

Recommendations aren't "restrictions"

Chasanow 11 (Deborah K., United States District Judge, "Young v. United Parcel Service, Inc.", 2-14, 2011 U.S. Dist. LEXIS 14266, Lexis)

Young had another checkup appointment on October 11, 2006 with nurse midwife Cynthia Shawl. (Young Dep., at 156). Following an "encouraging appointment" (Young Dep., at 157), Shawl released Young "without limitations" (ECF No. 76-12 ¶ 2). Nonetheless, Shawl wrote a note stating: "Due to her pregnancy it is recommended that she not lift more than 20 pounds." (ECF Nos. 76-12 ¶ 3; 60-13, at 1). Shawl did not normally [*14] write such notes, but "wrote this note only because Ms. Young told me she needed a letter for work stating her restrictions." (ECF No. 76-12 ¶ 4). Her letter did **not include the word "restriction"** because she felt she "was making **only a recommendation**." (ECF No. 76-12 ¶ 4).

Restriction---Violation---Government

"Restriction" must be created by authorities with statutory powers

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, "Chapter 6 – Purpose and Nature of Covenants", Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC_Final_Report_ch_6.pdf)

31. A restriction created by section 24(2)(d) of the Subdivision Act 1988 (Vic) should be **defined** as a restriction that is required by a responsible **authority** or a referral authority in the exercise of its **statutory powers**.

Only governmental "restrictions" are topical --- privately-created limitations are restrictive covenants

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, "Chapter 6 – Purpose and Nature of Covenants", Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC_Final_Report_ch_6.pdf)

Restrictions

6.32 The term 'restriction' is sometimes used in a functional sense, to mean the effect¶ of any **legal instrument** (such as a transfer, plan or statutory agreement) that¶ imposes a specific restriction on the use of a lot. Sometimes it is used to mean the¶ instrument itself. For the sake of clarity, we use the term in its functional sense.30

6.33 'Restriction' has no fixed meaning in legislation. Its meaning depends on the context. The Subdivision Act contains a definition but it is inadequate and the¶ related statutes do not assist:

• The Subdivision Act defines 'restriction' as 'a restrictive covenant or¶ restriction which can be registered or recorded in the register under the¶ Transfer of Land Act'.31

• The Transfer of Land Act provides for the recording of 'restrictive covenants'¶ only.32 Plans that may include restrictions can be registered, but the¶ restrictions specified in the plans are not recorded.33

• Adding to the confusion, the Planning and Environment Act defines¶ 'registered restrictive covenant' to mean 'a restriction within the meaning¶ of the Subdivision Act'.34

6.34 This 'circle of definitions' was the subject of comment by VCAT in Focused Vision¶ Pty Ltd v Nillumbik SC :35

[I]t is confusing to employ the defined word itself in a definition. The result¶ is that there is no effective definition and no fixed meaning in law of the¶ concept of restriction.36

VCAT added that 'the definitions make clear that the primary, if not exclusive,¶ meaning of a "restriction" is a "restrictive covenant"'.37

6.35 In Gray v Colac Otway SC, VCAT said '[a] restriction is a limitation placed on the¶ use or enjoyment of land'.38 VCAT noted that the references to both a 'restrictive¶ covenant' and a 'restriction' in the Subdivision Act's definition of 'restriction'¶ indicate a **distinction** between a **restrictive covenant created privately** between parties and a **restriction created under a statutory power**.39

The division is clear --- private parties have no statutory power and can only create covenants that have the effect of "restricting" --- "restriction" refers to a specific legal category that requires authority and the exercise of specific powers

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, "Chapter 6 – Purpose and Nature of Covenants", Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC_Final_Report_ch_6.pdf)

6.47 We consider that developers should not be able to use section 24(2)(d) of the Subdivision Act to create restrictions that are not required by the public planning system. Private parties should not be able to create restrictions by exercising a **statutory power** provided for a regulatory purpose. If restrictions are to be created by developers independently of the requirements of regulatory authorities, they should be created as **restrictive covenants** in accordance with the rules of property law.

6.48 To create a restrictive covenant, equity requires the benefited owner to enter¶ a valid agreement with the burdened owner. In addition, section 88(1) of the Transfer of Land Act requires the consent of all registered owners and¶ mortgagees of the burdened land for the covenant to be recorded. We see no¶ policy justification for dispensing with the requirement that a restrictive covenant¶ be created by an agreement. A developer should not be able to bypass the¶ market and create restrictions unilaterally with the aid of a statute.

6.49 There is a need to change the procedures in the Subdivision Act to prevent¶ the inclusion in registered plans of restrictions other than those required by¶ responsible authorities or referral authorities. Currently, plans are drafted by or¶ on behalf of developers, and councils must certify the plans if they satisfy the¶ requirements in section 6(1) of the Subdivision Act. There is a need to empower¶ councils to refuse certification if the plan includes restrictions other than those¶ required by the responsible authority or a referral authority.

6.50 Any restrictions required by authorities should be consistent with the planning scheme¶ and policies. In Northern Land Investments Pty Ltd v Greater Bendigo City Council,53¶ VCAT deleted a condition in a permit for subdivision issued by a council that required¶ the plan to include a restriction on further subdivision and a restriction on the¶ construction of more than one dwelling per lot. The restrictions were inconsistent¶ with planning policies and with the purpose of the Residential 1 zone, which included promoting a range of densities and housing types. VCAT said that the council should not attempt, by imposing a restriction, to rule out exercising its discretion to grant¶ permission for future proposals that might otherwise be acceptable.54

Recommendations

32. Section 6(1) of the Subdivision Act 1988 (Vic) should be amended to¶ provide that, if a plan creates a restriction, the restriction must be one that is required by a responsible **authority** or referral authority in the exercise of its statutory powers.

"Statutory power" means governmental limitation

Feigenbaum 12 (Eric, Contributing Writer – eHow, "What are Statutory Powers?", eHow, http://www.ehow.com/info_7934027_statutory-powers.html)

Statutes

Statutes are laws. In the **U**nited **S**tates, law are created and passed by the legislatures, including the federal legislature --- Congress --- and state legislatures and assemblies. Bills become laws when an executive --- the president or a governor --- signs them. If an executive refuses to sign a bill into law, then the legislature can still make the law valid by super-majority vote known as a veto-override. In the case of the federal government, this requires three quarters of both the House of Representatives and Senate.

Powers

Statutes can do many things, including creating budgets, criminalizing behaviors and developing new forms of governmental agencies. When a statute creates a new **agency** or **governmental position**, it usually gives legal **authority**. For example, when Congress created the Social Security Administration, it gave the director the authority to run the agency in accordance with its mission and within guidelines prescribed by Congress. Similarly, Congress and the president created the United States Citizenship and Immigration Services (USCIS) and gave it the authority to control and oversee immigration and visa issuance.

Don't trust contextual evidence. "Restrictions" are commonly confused because of poor legal understanding.

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, "Chapter 6 – Purpose and Nature of Covenants", Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC_Final_Report_ch_6.pdf)

WHY A 'RESTRICTION' ON A PLAN OF SUBDIVISION IS NOT A RESTRICTIVE COVENANT

6.40 It is **commonly assumed** that a restriction created by registration of a plan is a¶ restrictive covenant and that all lot owners in the subdivision have the benefit of¶ it. The idea is likely to have been fostered by the inclusion of 'restrictive covenant'¶ in the definition of 'restriction' in the Subdivision Act. It also finds some support¶ from administrative provisions recently inserted into the Transfer of Land Act,¶ which refer to a 'restrictive covenant created by plan'.45

6.41 We disagree with this assumption. A restriction created in a plan is not one that¶ equity would recognise or enforce, as the restriction is not created for the benefit of¶ specified land. Equity has strict requirements about identifying the benefited land.46¶ 6.42 In order for a restriction in a plan to operate as a restrictive covenant, the¶ legislation would need to expressly give it that effect and confer the benefit of the¶ covenant on other land.47 Section 24(2)(d) of the Subdivision Act does not deem a¶ restriction in a plan to be enforceable as if it were a restrictive covenant or provide¶ for the benefit to be attached to other land. Nor does anything in the Transfer¶ of Land Act give a restriction created under the Subdivision Act the effect of a¶ restrictive covenant.

6.43 If, as we maintain, statutory **restrictions are not restrictive covenants**, they¶ are enforceable under administrative law rather than as property rights.48¶ Administrative law is the branch of public law that regulates the exercise of public¶ powers and duties. Statutory duties and restrictions can be enforced by obtaining¶ an injunction or declaration by a court. The Attorney-General has the right to¶ enforce the public interest in the observance of a statutory duty or a restriction,¶ and can apply to a court for an injunction or declaration or authorise somebody¶ else to do it.49

6.44 A private person otherwise has ‘standing’ to apply for an injunction or declaration¶ where ‘the interference with the public right is such that some private right of his¶ [or hers] is at the same time interfered with’,50 or where he or she has ‘a special¶ interest in the subject matter’.51 Although a neighbour may have standing under¶ administrative law to enforce a statutory restriction on the use of other land, there¶ are no ‘benefited owners’ of a statutory restriction in the property law sense.¶ 6.45 We believe the term ‘restrictive covenant’ is a **misnomer** for a ‘restriction’¶ created upon registration of a plan by section 24(2)(d) of the Subdivision Act. A ‘restriction’ created upon registration of a plan should be **confined** to a restriction required by a responsible authority or referral **authority in the exercise of their statutory powers**.

Reduce

"Curtail" means to reduce

AHD 14 – American Heritage Dictionary, "curtail", https://www.ahdictionary.com/word/search.html?q=curtail

tr.v. cur•tailed, cur•tail•ing, cur•tails

To **cut short** or **reduce**: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

Reduce or limit

Macmillan 15 – Macmillan Dictionary, "curtail", http://www.macmillandictionary.com/dictionary/american/curtail

to reduce or limit something, especially something good

a government attempt to curtail debate

Reduce or diminish

Flatt 14 – Victor Flatt* and Heather Payne**, Thomas F. and Elizabeth Taft Distinguished Professor in Environmental Law, and Director, Center for Law, Environment, Adaptation, and Resources (CLEAR) at the University of North Carolina School of Law, Fellow, Center for Law, Environment, Adaptation, and Resources (CLEAR) at the University of North Carolina School of Law, "CURTAILMENT FIRST: WHY CLIMATE CHANGE AND THE ENERGY INDUSTRY SUGGEST A NEW ALLOCATION PARADIGM IS NEEDED FOR WATER UTILIZED IN HYDRAULIC FRACTURING", University of Richmond Law Review, March, 48 U. Rich. L. Rev. 829, Lexis

With water shortages, policy requires that supplies be curtailed. Curtailment is defined as a **reduction** or **diminishment** of the water available for a particular use or user. The curtailment mechanism - the amount of the curtailment, whether it affects all users or only some users, and whether it affects all uses or only specific uses - is often determined by local or state law. n27

Regulate

"Curtail" means to regulate, not ban

Oluwagbemi 7 – Michael Oluwagbemi, Co-founder and Executive Partner at LoftyInc Allied Partners Limited, "How Dangote Is Double-Crossing Nigeria!", Nigeria Village Square, 7-19, http://www.nigeriavillagesquare.com/articles/michael-oluwagbemi/how-dangote-is-double-crossing-nigeria.html

Note however, that Dangote is not the problem. Business for a few thrives in the absence of regulation simply because businessmen are opportunistic. If you were Aliko Dangote, what will you do? Assuming you were connected to the powers that be, won't you at least try to obtain some favors? Hence, Dangote's behavior while perfectly opportunistic and capitalistic should be curtailed by a society interested in capitalism and its twin which is competition. Note, that I have not used the word "banned", or "stopped", rather I used the word, "curtailed". Our government is failing sorely in **curtailing** the **activities** of the Oligarchs **by instituting** minimum standards and **regulations** to encourage competition and discourage monopoly and collusion either in the disposal of public assets or after such assets are in the hands of the new generation Nigerian multi-trillionaires –Dangote, Otedola, Jimoh Ibrahim, Mike Adenuga (actually IBB) or Emeka Offor.

Cut Short

“Curtail” means to cut short

Collins 15 – Collins Dictionary, “curtail”, http://www.collinsdictionary.com/dictionary/english/curtail

curtail (kɜːˈteɪl Pronunciation for curtail)

Definitions

verb

(transitive) to cut short; abridge

Includes Less Than Termination

"Curtail" means to diminish and includes actions less than termination

Zuccaro 6 – Edward R. Zuccaro, Chairperson of the Vermont Labor Relations Board, "GRIEVANCE OF VERMONT STATE COLLEGES FACULTY FEDERATION,", 4-14, http://vlrb.vermont.gov/sites/vlrb/files/AlchemyDecisions/Volume%2028/28%20VLRB%20220.pdf

We first address whether the President was obligated by the Contract to bring his decision to not enroll new students to the attention of the Faculty Assembly. Article 19 of the Contract provides: "Recognizing the final determining authority of the President, matters of academic concern shall be initiated by the Faculty Assembly or by the President through the Faculty Assembly which shall consider the matter and respond within a reasonable time". Included among "matters of academic concern" is the "curtailment . . . of academic programs". The Employer contends that the decision to stop the enrollment of new students in a program is not a "curtailment" of a program because curtailment means that the program is actually being closed, and the non-enrollment of new students is not the same as final **termination** of a program.

We **disagree** with the Employer's interpretation of the word "curtailment". A contract will be interpreted by the **common meaning** of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). Black's Law Dictionary (6th Ed., West Pub. Co., 1990) defines "curtail" as "to shorten, abridge, diminish, lessen, or reduce". Thus, **curtailment of a program may constitute something less than closure** of a program. The non-enrollment of new students **squarely fits within** the dictionary definition of "curtail". Accordingly, we conclude that the VTC President had a contractual obligation to consult with the Faculty Assembly with respect to the matter of academic concern of the non-enrollment of students in the Bioscience program for the Fall 2005 semester.

"Curtailment" reduces a part of a program---it's not the same as closure

Tatro 15 – Wendy K. Tatro, Director and Asst. General Counsel, Union Electric Company d/b/a Ameren Missouri, "REPLY BRIEF OF AMERENMISSOURI", 4-10, https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935923768

Noranda does describe some options if it should encounter problems. In its brief, Noranda quotes from its SEC filings on this issue.345 Notably, these filings never say "close," let alone "will close." They do, however, use the term "curtailment."346 Webster's defines "curtail" as "to make less by or as if by cutting off or away **some part**," as in "curtail the power of the executive branch."347 Thus, Noranda discusses **reducing its operations, but not closure**. In these same filings, Noranda also uses the terms "restructuring," "bankruptcy," and "divest."348 Thus, while Noranda argues to this Commission that closure "will" occur, the fine print in Noranda's SEC filings list every option but closure. Outside of illogical and factually unsupported threats, Noranda presents nothing that suggests the smelter's mandatory closure.

"Curtail" does not mean to terminate

Chase 49 – Chase, Circuit Judge on the United States Court of Appeals for the Second Circuit, "UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT", 12-13, Lexis

When these provisions are read in the light of the background stated and particularly the rejection of express provisions for the power now claimed by the New Haven, it is obviously difficult to

accept the New Haven's present view that a complete abandonment of passenger service was not intended. Even the words used point to the decisive and- under the circumstances- clean-cut step. The word 'discontinue' is defined by Webster's New International [**29] Dictionary, 2d Ed. 1939, as meaning ' * * * to put an end to; to cause to cease; to cease using; to give up'- **meanings quite other than** the connotations implicit in **the word 'curtail,'** which it defines ' * * * to shorten; abridge; diminish; lessen; **reduce**.' It goes on to give the meaning of 'discontinue' at law as being 'to abandon or terminate by a discontinuance'- an even more direct interpretation of the critical term. An interesting bit of support from the court itself for this view is found in Art. XI, §. 2(m), of the final Consummation Order and Decree, which reserved jurisdiction in the District Court: 'To consider and act on any question respecting the 'Critical Figures' established by the Plan with respect to the termination by the Reorganized Company of passenger service on the Old Colony Lines.' A 'termination' is **quite different** from a 'reduction.'

"Curtail" does not mean "abolish"

O'Niell 45 – O'Niell, Chief Justice, Supreme Court of Louisiana, "STATE v. EDWARDS", 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783, 2-19, Lexis

The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." **The word "abolish"** or the word "suspend" **is not given** in the dictionaries **as one of the definitions of the word "curtail"**. In fact, in **common parlance**, or in law composition, the word "curtail" has **no such meaning** as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Conceding, for the sake of argument, that the authority given by the statute, to each parish, "to curtail the open season, but for not more than three consecutive [***7] years", includes the authority to "abolish" the open season for a continuous period not exceeding three years, the [*512] ordinance in this instance does not purport to "abolish" the open season for the three [**626] consecutive years, or to suspend the right to hunt wild deer, bear or squirrels for the continuous period of three years. If the author of the ordinance intended to abolish the open seasons for hunting wild deer, bear and squirrels for a period of three years, he need not have specified the three annual open seasons, 1943-1944, 1944-1945, and 1945-1946; nor should he have used the word "curtail", with reference to the three annual open seasons, and without indicating the extent of the curtailment. It would have been an easy matter to word the ordinance so as to have no open season for hunting wild deer, bear and squirrels in the parish for a period of three years, if the police jury intended -- and if the statute gave the authority to the police jury -- to suspend the right to hunt wild deer, bear and squirrels in the parish for a period of three years.

“Curtail” does not mean “eliminate”

Simons 94 – J. Simons, Judge of the Municipal Court for the Mt. Diablo Judicial District, “NOTIDES v. WESTINGHOUSE CREDIT CORPORATION”, 40 Cal. App. 4th 148; 37 Cal. Rptr. 2d 585; 1994 Cal. App. LEXIS 1321, 12-12, Lexis

4 Appellant suggests that Jenkins knew that the problem would be handled by curtailing new deals, not simply being selective. In his deposition he stated that "the step of curtailing new business is a logical one to take." Appellant seems to **misunderstand** the word "curtail" to mean "eliminate." Even if Jenkins made the same error, he said that this decision to curtail was not made until the Fall of 1990, several months after the hiring and shortly before Notides was informed of the decision.

Excludes Termination

"Curtail" means to reduce but not totally eliminate surveillance

Williams 00 – Cary J. Williams, Arbitrator, American Federation of Government Employees, Local 1145 and Department of Justice, Federal Bureau of Prisons, United States Penitentiary, Atlanta, GA, cyberFEDS® Case Report, 10-4, http://www.cpl33.info/files/USP_Atlanta_-_Annual_Leave_during_ART.pdf

The Agency relies on the language of Article 19, Section 1.2. for its right to "curtail" scheduled annual leave during training. The record is clear that the Agency has limited or curtailed leave during ART in the past, and has the right to do so in the future. **But there is a difference in curtailing leave** during ART **and totally eliminating it**. There was no testimony regarding the intent of the parties in including the term "curtail" in Section 1.2., but Websters New Twentieth Century Dictionary (2nd Ed) defines the term as, "to cut short, reduce, shorten, lessen, diminish, decrease or abbreviate". The import of the term "curtail" in the Agreement based on these definitions is to cut back the number of leave slots, but there is no proof the parties intended to give the Agency the right to totally eliminate leave slots in the absence of clear proof of an emergency or other unusual situation. The same dictionary on the other hand defines "eliminate" as, "to take out, get rid of, reject or ornit". From a comparison of the two terms there is **clearly a difference in curtailing and eliminating** annual leave. I disagree with the Agency's contention that curtailing leave can also mean allowing zero leave slots. If the parties had intended such a result they would have simply stated the Agency could terminate or eliminate annual leave during training and/or other causes. This language would leave no doubt the Agency had the right to implement the policy it put in place for January I through March 25, 2000. That language, however, is not in the Agreement, and **the term "curtail" does not allow the Agency to totally eliminate all** scheduled annual **leave** during the year.

Includes Termination

"Curtail" includes both restriction and termination

Hansen 2 – Andrea K. Hansen, "The Alaska National Interest Lands Conservation Act of 1980: How ANILCA's Provisions on Consumptive Uses Affect Backcountry Planning in Alaska National Park Areas", Journal of Land, Resources, & Environmental Law, 22 J. Land Resources & Envtl. L. 435, Lexis

On the other hand, there is one reference in the legislative history on section 816 stating that "subsistence may not be curtailed merely for reasons of public use and enjoyment... ." n206 The term "curtailed" could be construed as applying to **both** closures and restrictions. This one reference is insufficient to overcome the examples cited in the previous paragraph, however, since "curtailed" is only one word in one sentence of the legislative history which does not appear in the statute. This single word is not sufficient to overcome the numerous other references in the legislative history to allow only "existing levels" of subsistence, "minimize [user] conflicts," or limit the number of users allowed in a park area.

Curtailment Specification---1NC

Interpretation---

"Substantially" requires a considerable amount

Words and Phrases 2 (Volume 40A) p. 453

N.D.Ala. 1957. The word "substantial" means **considerable in amount**, value, or the like, large, as a substantial gain

Using the word "curtail" without specifying the extent means nothing

O'Niell 45 – O'Niell, Chief Justice, Supreme Court of Louisiana, "STATE v. EDWARDS", 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783, 2-19, Lexis

The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. **To declare** that these three open **seasons**, 1943-1944, 1944-1945, and 1945-1946, **"are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing**.

Conceding, for the sake of argument, that the authority given by the statute, to each parish, "to curtail the open season, but for not more than three consecutive [***7] years", includes the authority to "abolish" the open season for a continuous period not exceeding three years, the [*512] ordinance in this instance does not purport to "abolish" the open season for the three [**626] consecutive years, or to suspend the right to hunt wild deer, bear or squirrels for the continuous period of three years. If the author of the ordinance intended to abolish the open seasons for hunting wild deer, bear and squirrels for a period of three years, he need not have specified the three annual open seasons, 1943-1944, 1944-1945, and 1945-1946; nor should he have used the word "curtail", with reference to the three annual open seasons, and without indicating the **extent** of the curtailment. It would have been an easy matter to word the ordinance so as to have no open season for hunting wild deer, bear and squirrels in the parish for a period of three years, if the police jury intended -- and if the statute gave the authority to the police jury -- to suspend the right to hunt wild deer, bear and squirrels in the parish for a period of three years.

Voting issue---

Ground---links require a stable advocacy and clear scope of change. Refusing to specify lets them dodge core generics and clarify around our best positions.

Education---vague debates are shallow, non-specific, and devolving into non-central topics like process CPs or politics.

***** SUBSTANTIALLY**

Substantially – A2: Arbitrary

‘Substantially’ isn’t precise --- but still must be given meaning. The most objective way to define it contextually.

Devinsky 2 (Paul, “Is Claim "Substantially" Definite? Ask Person of Skill in the Art”, IP Update, 5(11), November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm)

In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," **erroneously concluded** the term "substantially" made a claim fatally indefinite. Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine. The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips. The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite. The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence: "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention." Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention." The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

“Substantially” needs to be given a quantitative meaning --- any other interpretation is more arbitrary

Webster’s 3 (Merriam Webster’s Dictionary, www.m-w.com)

Main Entry: sub.stan.tial

b : considerable in quantity : significantly great <earned a substantial wage>

Make the best determination available. Substantially must be given meaning

Words and Phrases 60 (Vol. 40, State – Subway, p. 762)

“Substantial” is a relative word, which, while it must be used with **care and discrimination**, **must nevertheless be given effect**, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

Using context removes the arbitrariness of assigning a fixed percentage to “substantial”

Viscasillas 4 – professor at the Universidad Carlos III de Madrid, (Pilar, “Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG)”, CISG Advisory Council Opinion No. 4, 10-24, http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146)

2.8. Legal writers who follow the economic value criterion have generally quantified the term "substantial part" by comparing Article 3(1) CISG (substantial) with Article 3(2) CISG (preponderant): substantial being less than preponderant. In this way, legal writers have used the following percentages to quantify substantial: 15%,[14] between 40% and 50%,[15] or

more generally 50%.[16] At the same time, other authors, although they have not fixed any numbers in regard to the quantification of the term "substantial" have declared that "preponderant" means "considerably more than 50% of the price" or "clearly in excess of 50%".[17] Thus it seems that for the latter authors, the quantification of the term "substantial" is placed above the 50% figure. Also, some Courts have followed this approach.[18]

2.9. To consider a fixed percentage might be arbitrary due to the fact that the particularities of each case ought to be taken into account; that the scholars are in disagreement; and that the origin of those figures is not clear.[19]

Therefore, it does not seem to be advisable to quantify the word "substantial" *a priori* in percentages. **A case-by-case analysis is preferable** and thus it should be determined on the basis of an overall assessment.

Contextual definitions of "substantial" solve arbitrariness

Tarlow 00 – Nationally prominent criminal defense lawyer practicing in Los Angeles, CA. He is a frequent author and lecturer on criminal law. He was formerly a prosecutor in the United States Attorney's Office and is a member of The Champion Advisory Board (Barry, The Champion January/February, lexis)

In *Victor,* the trial court instructed that: "A reasonable doubt is an actual and substantial doubt . . . as distinguished from a doubt arising from mere [*64] possibility, from bare imagination, or from fanciful conjecture." Victor argued on appeal after receiving the death penalty that equating a reasonable doubt with a "substantial doubt" overstated the degree of doubt necessary for acquittal. Although the court agreed that the instruction was problematic given that "substantial," could be defined as "that specified to a large degree," it also ruled that any ambiguity was removed by reading the phrase in the context of the sentence in which it appeared. Finding such an explicit distinction between a substantial doubt and a fanciful conjecture was not present in the *Cage* instruction, it held that the context makes clear that "substantial" was used in the sense of existence rather than in magnitude of the doubt and, therefore, it was not unconstitutional as applied. *Id. at 1250*.

Even if a substantial increase isn't precise --- you should still exclude their Aff for being tiny. Even judges can make a gut check.

Hartmann 7 – Judge, Hong Kong (IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE, 8/20, http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=58463&currpage=T

The word 'substantial' is not a technical term nor is it a word that lends itself to a precise measurement. In an earlier judgment on this issue, that of S. v. S. [2006] 3 HKLRD 251, I said that it is not a word —

"… that lends itself to precise definition or from which precise deductions can be drawn. To say, for example, that 'there has been a substantial increase in expenditure' does not of itself allow for a calculation in numerative terms of the exact increase. It is a statement to the effect that it is certainly more than a little but less than great. It defines, however, a significant increase, one that is weighty or sizeable."

Substantially – 2%

"Substantial" must be at least 2%
Words & Phrases 60

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making **1/48** of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App. 4.

Substantially – 10%

Less than 10% is insubstantial

Mickels 8 (Alissa, JD Candidate – Hastings College of Law, "Summary of Existing US Law Affecting Fourth Sector Organizations", 7-17, http://www.fourthsector.net/attachments/7/original/Summary_of_US_Law_Affecting_FS.pdf?1229493187)

Substantial v. insubstantial: Modern courts consider competition with commercial firms as "strong evidence of a substantial nonexempt purpose." Living Faith, Inc. v. Comm'r, 60 T.C.M. 710, 713 (1990). Although the tax court has held that the definition of insubstantial is **fact specific**, it has found that **less than ten percent** of a charity's total efforts is **"insubstantial"**, World Family Corp. v. Comm'r, 78 T.C. 921 (1982), where as unrelated business activity generating one-third of an organizations revenue does not qualify for tax-exempt status. Orange County Agric. Soc'y, Inc. v. Comm'r, 55 T.C.M. 1602, 1604 (1988), aff'd 893 F.2d 647 (2d Cir. 1990). However, this may be changing after an increasing emphasis on commensurate test.

Substantially – 33%

“Substantially” means 33 percent

Maples 7 (Larry, “Pitfalls in Preserving Net Operating Losses”, The CPA Journal, 3-1, Lexis)

If a new loss corporation has substantial nonbusiness assets, the value of the old loss corporation must be reduced by the amount of the nonbusiness assets less liabilities attributable to those assets. "Substantial" is defined as one-third of total assets. This is a difficult provision to interpret. IRC section 382(1)(4) provides that a value reduction in the old loss corporation is required if, just after an ownership change, the new loss corporation has substantial nonbusiness assets. This language seems odd because the purpose of IRC section 382 is to prevent loss trafficking, so it would seem that the asset test ought to apply to the old loss corporation.

Substantially – 40%

“Substantially” means 40% --- strict quantification avoids vagueness

Schwartz 4 (Arthur, Lawyer – Schwartz + Goldberg, 2002 U.S. Briefs 1609, Lexis)

In the opinion below, the Tenth Circuit suggested that a percentage figure would be **a way to avoid vagueness issues**. (Pet. App., at 13-14) Indeed, one of the Amici supporting the City in this case, the American Planning Association, produced a publication that actually makes a recommendation of a percentage figure that should be adopted by municipalities in establishing zoning [*37] regulations for adult businesses. n8 The APA's well researched report recommended that the terms "**substantial" and "significant" be quantified at 40 percent** for floor space or inventory of a business in the definition of adult business. n9 (Resp. Br. App., at 15-16)

Substantially – 50%

Less than 50% is insubstantial

Brown 94 (Mark R., Professor of Law – Stetson University College of Law, "The Demise of Constitutional Prospectivity: New Life for Owen?", Iowa Law Review, January, 79 Iowa L. Rev. 273, Lexis)

n241 I am assuming here that "foreseeable" means "probable," as in "more probable than not." This appears to be a safe assumption given the proliferance of cases granting immunity to officials who offend the Constitution. If this definition is correct, deterrence only works and liability should only attach if one's conduct, viewed ex ante, is more likely illegal than legal: the risk of illegality must be more than fifty percent. In other words, one cannot face deterrence, and liability will not attach, if the risk of illegality is less than fifty percent. (When viewed in this fashion, one might perceive a risk of illegality but still not be deterrable because the risk is **not substantial, i.e., not greater than fifty percent**.). Lawful conduct, of course, need not be probably lawful. That is what risk is about. Situations might arise where the objective risk is that conduct is unlawful, but ex post it is lawful. Lest judicial reasoning be completely askew, a fairly strong correlation exists, however, between action that is ex ante probably lawful and that which is lawful ex post in the courts. If this is not true, then courts are reaching objectively improbable conclusions, and the whole idea of reliance is illusory.

Legal experts agree

Davignon v. Clemmey 1 (Davignon v. Clemmey, 176 F. Supp. 2d 77, Lexis)

The court begins the lodestar calculation by looking at the contemporaneous billing records for each person who worked on the plaintiff's case. The absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance. **What is a "substantial reduction"? Fifty percent is a favorite among judges.**

Substantially – 90%

“Substantially” means at least 90%

Words & Phrases 5 (40B, p. 329)

N.H. 1949. -The word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, is 'an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but **cannot be less than 90 per cent** in the ordinary situation. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

Substantially – 85%

"Substantial curtailment" requires a reduction of more than 85 percent

Boomer 11 – Allison R. Boomer, Magistrate Pro Tempore, Oregon Tax Court, "HYNIX SEMICONDUCTOR MANUFACTURING AMERICA, INC., Plaintiff, v. LANE COUNTY ASSESSOR and DEPARTMENT OF REVENUE, State of Oregon, Defendants", 2011 Ore. Tax LEXIS 215, 5-12, Lexis

This case involves construction of a "serially amended statute." HN12Go to this Headnote in the case.In 1989, the definition of "substantially curtailed" was included within the same provision as disqualification:

HN13Go to this Headnote in the case."(a) Operation of a new business shall be **considered to be substantially curtailed** when the number of employes is reduced at the end of a calendar year by **more than 85 percent** from the highest number of employes at the end of any calendar year during which the business [*19] firm received a property tax exemption under section 14 of this Act * * *.

Substantially – Quantitative Definitions Bad

Defining "substantial curtailment" quantitatively is completely arbitrary

Albin 9 – J. Albin, Justice of the Supreme Court of New Jersey, 197 N.J. 339; 963 A.2d 289; 2009 N.J. LEXIS 6, 1-29, Lexis

Defining "stoppage of work" as a "substantial curtailment of work which is due to a labor dispute" is a sensible interpretation; because a "stoppage" is "the act of stopping or the state of being stopped[,]" Webster's Third New International Dictionary of the English Language Unabridged 2251 (1966), that portion of the definition appears both rational and reasonable on its face. The difficulty, however, arises from the regulatory definition of a "substantial curtailment [***66] of work" as a twenty percent reduction in output. The hospital/employer argues that there is **no factual basis** on which to ground that regulatory definition, and I am compelled to agree.

No doubt, administrative regulations are entitled to a presumption of validity, N.J. State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 222, 729 A.2d 21 (1999). That said,

[h]owever, the deference afforded regulations does not go so far as to permit an administrative agency under the guise of an administrative interpretation to give a statute any greater effect than is permitted by the statutory language. Nor can agency regulations alter the terms of a legislative enactment or frustrate the policy embodied in the statute. If a regulation is plainly at odds with the statute, the court must set it aside. As we have repeatedly stated, the judicial role is to ensure that an agency's action does not violate express and implied legislative intent. [*377] Thus, the meaning of enabling legislation is pivotal to any analysis of the legitimacy of a rule.

[T.H. v. Div. of Developmental Disabilities, 189 N.J. 478, 490-91, 916 A.2d 1025 (2007) (citations, internal quotation marks and editing marks omitted).]

And, in determining the [***67] validity of challenged administrative regulations, our point of departure is the statute's meaning and, "[o]rdinarily, we derive a statute's meaning from its language." Id. at 491, 916 A.2d 1025 (citing State v. Sutton, 132 N.J. 471, 625 A.2d 1132 (1993)).

Nothing in this record provides any basis whatsoever for the Department of Labor's adoption of what **clearly is a totally arbitrary "80% rule"** to define a "stoppage of work." Indeed, in its own answers to the public comments on this regulation, the Department of Labor boldly asserted that "[t]he rules provide that only those individuals involved in the labor dispute will be disqualified for benefits." Comments of the Department of Labor, Division of Employment Security and Job Training to the proposed adoption of N.J.A.C. 12:17-12.2, 29 N.J.R. 5162 (Dec. 15, 1997) (emphasis supplied). Repeatedly, the Department of Labor claimed that it "recognizes unemployment insurance as an insurance program and not an entitlement program . . . [and, therefore, i]ndividuals must contribute to the unemployment system and must meet eligibility requirements in order to receive unemployment benefits." Ibid. Yet, despite those clear statements of intent, nothing--absolutely nothing [***68] --in the published history of the adoption of this regulation supports the arbitrary "80% rule" [**313] adopted by the Department of Labor and on which the majority relies.

Substantially – Context Key

"Substantially" is a relative term --- context key

Words and Phrases 64 (Vol. 40, p. 816)

The word "substantially" is a **relative term** and should be interpreted **in accordance with the context** of claim in which it is used. Moss v. Patterson Ballagh Corp. D.C.Cal., 80 P.Supp. C10, 637.

"Substantially" must be gauged in context

Words and Phrases 2 (Volume 40A, p. 464)

Cal. 1956. "Substantial" is a **relative term**, its measure to be **gauged by all the circumstances surrounding** the matter in reference to which the expression has been used

Context is key --- "substantially" has no exact meaning

Words and Phrases 2 (Volume 40A, p. 483)

The word "substantial" is susceptible to different meanings according to the circumstances, and is variously defined as actual, essential, material, fundamental, although **no rule of thumb can be laid down fixing its exact meaning**

"Substantially" should be defined on a case-by-case basis

Edlin 2 (Aaron, Professor of Economics and Law – University of California Berkeley School of Law, January, 111 Yale L.J. 941)

Might price reductions of less than twenty percent qualify as substantial? In some markets they should, and it would be **reasonable to decide substantiality on a case-by-case basis**. One advantage of a bright-line rule is that it would let incumbents know where they stand. Monopolies that price only slightly above their average cost would be insulated from the entry of higher-cost entrants if they could credibly convey a willingness to price below the entrants' cost after entry, as illustrated in Part III. However, these monopolies do consumers little harm and may enhance market efficiency.

Substantially – Impact

"Substantially" must be given meaning

Words and Phrases 60 (Vol. 40, State – Subway, p. 762)

"Substantial" is a relative word, which, while it must be used with care and discrimination, **must** nevertheless be **given effect**, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

Substantially – Considerable

"Substantial" means of real worth or considerable value --- this is the USUAL and CUSTOMARY meaning of the term

Words and Phrases 2 (Volume 40A, p. 458)

D.S.C. 1966. The word "substantial" within Civil Rights Act providing that a place is a public accommodation if a "substantial" portion of food which is served has moved in commerce must be construed in light of its **usual and customary meaning**, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

"Substantial" means considerable or to a large degree --- this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, "Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources", Harvard Civil Rights-Civil Liberties Law Review, Winter,
37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. 99 It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, 100 and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). 101

Substantial means "of considerable amount" – not some contrived percentage

Prost 4 (Judge – United States Court of Appeals for the Federal Circuit, "Committee For Fairly Traded Venezuelan Cement v. United States", 6-18,
http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C). In fact, they merely suggest, without disqualifying other alternatives, a "clearly higher/substantial proportion" approach. Indeed, the SAA specifically mentions that no "precise mathematical formula" or "'benchmark' proportion" is to be used for a dumping concentration analysis. SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30. Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a "case-by-case basis." SAA at 860. Finally, the definition of the word "substantial" undercuts the CFTVC's argument. The word "substantial" generally means "considerable in amount, value or worth." Webster's Third New International Dictionary 2280 (1993). **It does not imply a specific number or cut-off**. What may be substantial

in one situation may not be in another situation. The very breadth of the term "substantial" undercuts the CFTVC's argument that Congress spoke clearly in establishing a standard for the Commission's regional antidumping and countervailing duty analyses. It therefore supports the conclusion that the Commission is owed deference in its interpretation of "substantial proportion." The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

Substantially – Considerable

"Substantial" means considerable in amount or value

Words and Phrases 2 (Volume 40A) p. 453

N.D.Ala. 1957. The word "substantial" means considerable in amount, value, or the like, large, as a substantial gain

"Substantial" means having worth or value

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

having worth or value

Substantially – Real

"Substantial" means actually existing, real, or belonging to substance
Words and Phrases 2 (Volume 40A) p. 460

Ala. 1909. "Substantial" means "belonging to substance; actually existing; real; *** not seeming or imaginary; not elusive; real; solid; true; veritable

"Substantial" means having substance or considerable
Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

having substance; considerable

Substantially – In the Main

"Substantial" means in the main

Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 "Substantial" means in substance, in the main, essential, including material or essential parts

Substantially – Without Material Qualification

Substantially is without material qualification

Black's Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

Substantially – Durable

"Substantial" means durable

Ballantine's 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful ("a substantial supply"); actual, concrete, existent, physical, righteous, sensible, tangible ("substantial problem"); affluent, comfortable, easy, opulent, prosperous, solvent.

Substantially – Mandate

“Substantial” requires a certain mandate

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain**: absolute: **real at present time**, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

Substantially – Not Covert

"Substantially" means not covert

Words & Phrases 64 (40 W&P 759)

The words "outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean **not concealed**; **not hidden**; **exposed to view**; **free from concealment**, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

*** OTHER DEFINITIONS

Resolved:

‘Resolved’ means to enact a policy by law

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

Determination reached by voting

Webster’s 98 (Revised Unabridged, Dictionary.com)

Resolved: 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

Firm decision

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

Specific course of action

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

Resolved implies immediacy

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve Audio Help /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

1. to come to a definite or **earnest** decision about; determine (to do something): I have resolved that I shall live to the full.

Resolved: – Aff Competition

"Resolved" doesn't require certainty

Webster's 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

Or immediacy

PTE 9 – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: "To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life."

Colon

Colon is meaningless --- everything after it is what's important

Webster's 00 (Guide to Grammar and Writing, 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.

The colon just elaborates on what the community was resolved to debate

Encarta 7 (World Dictionary, "colon", http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861 598666)

co·lon (plural co·lons)

noun

Definition:

1. punctuation mark: the punctuation mark (:) used to divide distinct but related sentence components such as clauses in which the second elaborates on the first, or to introduce a list, quotation, or speech. A colon is sometimes used in U.S. business letters after the salutation. Colons are also used between numbers in statements of proportion or time and Biblical or literary references.

The

"The" indicates reference to a noun as a whole

Webster's 5 (Merriam Webster's Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

Requires specification

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used, esp. before a noun, with a **specifying** or **particularizing** effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

Indicates a proper noun

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used to mark a proper noun, natural phenomenon, ship, building, time, point of the compass, branch of endeavor, or field of study as something well-known or unique): the sun; the Alps; the Queen Elizabeth; the past; the West.

"The" means all parts

Encarta 9 (World English Dictionary, "The", http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating generic class: used to refer to a person or thing considered **generically or** universally

- Exercise is good for the heart.
- She played the violin.
- The dog is a loyal pet.

Means the noun must be interpreted generically

Webster's 9 (Merriam-Webster's Online Dictionary, "The", http://www.merriam-webster.com/dictionary/the)

3 a—used as a function word before a **singular noun** to indicate that the noun is to be understood **generically** <the dog is a domestic animal> b—used as a function word before a singular substantivized adjective to indicate an abstract idea <an essay on **the** sublime>

United States

"United States" refers to the country as a whole

AHD 9 – American Heritage Dictionary, "United States", http://www.thefreedictionary.com/United+States

United States or United States of America Abbr. U.S. or US or U.S.A. or USA

A country of central and northwest North America with coastlines on the Atlantic and Pacific oceans. It includes the noncontiguous states of Alaska and Hawaii and various island territories in the Caribbean Sea and Pacific Ocean. The area now occupied by the contiguous 48 states was originally inhabited by numerous Native American peoples and was colonized beginning in the 16th century by Spain, France, the Netherlands, and England. Great Britain eventually controlled most of the Atlantic coast and, after the French and Indian Wars (1754-1763), the Northwest Territory and Canada. The original Thirteen Colonies declared their independence from Great Britain in 1776 and formed a government under the Articles of Confederation in 1781, adopting (1787) a new constitution that went into effect after 1789. The nation soon began to expand westward. Growing tensions over the issue of Black slavery divided the country along geographic lines, sparking the secession of the South and the Civil War (1861-1865). The remainder of the 19th century was marked by increased westward expansion, industrialization, and the influx of millions of immigrants. The United States entered World War II after the Japanese attack (1941) on Pearl Harbor and emerged after the war as a world power. Washington, D.C., is the capital and New York the largest city. Population: 302,000,000.

Federal Government

"Federal Government" means the United States government

Black's Law 99 (Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

National government, not states or localities

Black's Law 99 (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

Government of the USA

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

Not states

OED 89 (Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

Central government

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

"Federal" refers to a government in which states form a central government

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—1. Of, relating to, or being a form of government in which a union of states recognizes the sovereignty of a central authority while retaining certain residual powers of government.

"Government" is all three branches

Black's Law 90 (Dictionary, p. 695)

"[*Government*] In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments."

Includes agencies

Words & Phrases 4 (Cumulative Supplementary Pamphlet, v. 16A, p. 42)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the "Federal Government" for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government's consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

Should

Should refers to what should be NOT what should have been

OED, Oxford English Dictionary, **1989** (2ed. XIX), pg. 344

Should An utterance of the word *should*. Also, what 'should be'.

Should means an obligation or duty

AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—1. Used to express obligation or duty: *You should send her a note*.

Should expresses an expectation of something

AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—2. Used to express probability or expectation: *They should arrive at noon*.

Should expresses conditionality or contingency

AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—3. Used to express conditionality or contingency: *If she should fall, then so would I*.

"Should" expresses duty, obligation, or necessity

Webster's 61 – Webster's Third New International Dictionary 1961 p. 2104

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

Should – Desirable

"Should" means desirable --- this does not have to be a mandate

AC 99 (Atlas Collaboration, "Use of Shall, Should, May Can," http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement _will_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

"Should" doesn't require certainty

Black's Law 79 (Black's Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word "would," it **does not ordinarily express certainty** as "will" sometimes does.

Should – Mandatory

"Should" is mandatory

Nieto 9 – Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as **synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

"Should" means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is **not used in an advisory sense** but has the force or meaning of 'must', or 'ought to' and carries [***8] with it the sense of [*313] obligation and duty equivalent to **compulsion**. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

Should means must

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.D.Cal. 2005. "Should," as used in the Social Security Administration's ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means "must."—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

Should – Not Mandatory

Should isn't mandatory

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.A.6 (Tenn.) 2001. Word "should," in most contexts, is precatory, **not mandatory**. –U.S. v. Rogers, 14 Fed.Appx. 303. –Statut 227.

Strong admonition --- not mandatory

Taylor and Howard 5 (Michael, Resources for the Future and Julie, Partnership to Cut Hunger and Poverty in Africa, "Investing in Africa's future: U.S. Agricultural development assistance for Sub-Saharan Africa", 9-12, http://www.sarpn.org.za/documents/d0001784/5-US-agric_Sept2005_Chap2.pdf)

Other legislated DA earmarks in the FY2005 appropriations bill are smaller and more targeted: plant biotechnology research and development ($25 million), the American Schools and Hospitals Abroad program ($20 million), women's leadership capacity ($15 million), the International Fertilizer Development Center ($2.3 million), and clean water treatment ($2 million). Interestingly, in the wording of the bill, Congress uses the term *shall* in connection with only two of these eight earmarks; the others say that USAID *should* make the prescribed amount available. The **difference** between *shall* and *should* may have **legal significance**—one is clearly **mandatory** while the other is a **strong admonition**—but it makes little practical difference in USAID's need to comply with the congressional directive to the best of its ability.

Permissive

Words and Phrases 2 (Vol. 39, p. 370)

Cal.App. 5 Dist. 1976. Term "should," as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as **recommendation**, and is thus **not mandatory** but **permissive**. West's Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191.

Desirable or recommended

Words and Phrases 2 (Vol. 39, p. 372-373)

Or. 1952. Where safety regulation for sawmill industry providing that a two by two inch guard rail should be installed at extreme outer edge of walkways adjacent to sorting tables was immediately preceded by other regulations in which word "shall" instead of "should" was used, and word "should" did not appear to be result of inadvertent use in particular regulation, use of word "should" was intended to convey idea that particular precaution involved was desirable and recommended, but not mandatory. ORS 654.005 et seq.----Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556.---Labor & Emp. 2857

Should – Immediate

“Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16

[CONTINUES – TO FOOTNOTE]

13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Should – No Immediate

Should doesn't mean immediate

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should /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc (e) olde; see shall —Can be confused: could, should, would (see usage note at this entry). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. (You should get your flu shot before winter comes), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would) have called immediately. I should (American would) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or (Archaic) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or (Archaic) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

Should – Not Past Tense 2AC

-- We meet – plan says 'should'. This just changes the meaning of the plan – doesn't prove it isn't topical.

-- Ungrammatical – their interpretation assumes "should" is followed by 'have' – but its not. Grammar is key: it defines ground.

-- Kills neg ground – hindsight is 20/20, Aff's would always pick unbeatable cases

-- "Should" means future action
American Heritage 00

should (P) Pronunciation Key (shd)
aux.v. Past tense of shall

Used to express obligation or duty: You should send her a note.

-- Prefer our interpretation – theirs is outdated
American Heritage 00

Usage Note: Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are **largely ignored** in modern American practice. Either should or would can now be used in the first person to express **conditional futurity**: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause: if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or he) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. ·Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should've. See Usage Note at if. See Usage Note at rather. See Usage Note at shall.

-- Key to Aff ground –best literature supports prescriptive future action

-- Neg ground – all disads assume future action, otherwise they're non-unique.

-- No offense – future-oriented genealogical Affs can explore history.

-- Potential abuse isn't a voter – don't punish for what we didn't do

Its

Belonging to or associated with

Oxford Dictionary 10 ("Of", http://www.oxforddictionaries.com/definition/its?view=uk)

Pronunciation:/ɪts/

possessive determiner

belonging to or associated with a thing previously mentioned or easily identified:turn the camera on its side he chose the area for its atmosphere

Of or relating to

Webster's 10 (Merriam-Webster's Online Dictionary, "its", http://www.merriam-webster.com/dictionary/its)

Main Entry: its

Pronunciation: \ˈits, əts\

Function: adjective

Date: circa 1507

: of or relating to it or itself especially as possessor, agent, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

Its – Possessive

"Its" refers to the United States Federal Government and is possessive

Updegrave 91 (W.C., "Explanation of ZIP Code Address Purpose", 8-19, http://www.supremelaw.org/ref/zipcode/updegrav.htm)

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the **singular possessive** pronoun "its", not "their", therefore carrying the implication that it relates to the "**U**nited **S**tates" as a corporation domiciled in the **D**istrict of **C**olumbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

'Its' is possessive

English Grammar 5 (Glossary of English Grammar Terms, http://www.usingenglish.com/glossary/possessive-pronoun.html)

Mine, yours, his, hers, its, ours, theirs are the possessive pronouns used to substitute a noun and to show possession or ownership. EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

Grammatically, this refers solely to U.S. policy

Manderino 73 (Justice – Supreme Court of Pennsylvania, "Sigal, Appellant, v. Manufacturers Light and Heat Co"., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [***10] usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling [*236] semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage **make difficult, if not impossible, a clear understanding** of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

And it's a term of exclusion

Frey 28 (Judge – Supreme Court of Missouri, Supreme Court of Missouri,

320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis)

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a [*1074] strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [***37] them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had [**53] she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives **solely**, she would certainly have used the **possessive pronoun** "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical.

Its – Possessive – Violations

"Domestic surveillance" is conducted by government agencies

Ross 12 – Jeffrey Ian Ross, Professor in the School of Criminal Justice, College of Public Affairs, and a Research Fellow of the Center for International and Comparative Law, and the Schaefer Center for Public Policy, at the University of Baltimore, An Introduction to Political Crime, p. 101

Introduction

Domestic surveillance consists of a variety of information-gathering activities, conducted primarily by the state's coercive agencies (that is, police, national security, and the military). These actions are carried out against citizens, foreigners, organizations {for example, businesses, political parties, etc.). and foreign governments. Such operations usually include opening mail, listening to telephone conversations (eavesdropping and wiretapping), reading electronic communications, and infiltrating groups (whether they are legal, illegal, or deviant).

"Surveillance" can be broad and include private entities

Utwater 13 – Charles Utwater II, Political Blogger and Writer for the DailyKos, "The Dangers of Surveillance: Harvard Law Point Counterpoint", DailyKos, 7-13, http://www.dailykos.com/story/2013/07/18/1224589/-The-Dangers-of-Surveillance-Harvard-Law-point-counterpoint

Richards defines surveillance as the systematic, routine, and purposeful attempt to learn information about individuals. The purpose is often to control the individual. Surveillance is comprehensive, conducted by **both** private companies and by the government. It invades telephone conversations, any Internet activity, social networking, and reading of electronic books. Our faces are tracked with visual recognition software. We are tracked by our GPS devices. The government gives away our information to private companies, such as when it gave license plate scans to insurance companies. We even consent to some forms of surveillance, in what Richards calls "liquid surveillance."

Our legal protections are few:

"American law governing surveillance is piecemeal, spanning constitutional protections such as the Fourth Amendment, statutes like the Electronic Communications Privacy Act of 1986 (ECPA), and private law rules such as the intrusion-into-seclusion tort. But the general principle under which American law operates is that surveillance is legal unless forbidden." (emphasis added)

*** TOPICALITY IMPACTS

Framer's Intent Good

Framer's intent is the basis of predictability --- without it, it's impossible to interpret the topic

Hutchison 8 (Cameron, Assistant Professor of Law – University of Alberta, "Which Kraft of Statutory Interpretation", Alberta Law Review, November, 46 Alberta L. Rev. 1, Lexis)

Second, it is **not possible** to interpret **even a single word**, much less an entire text, without knowing the purpose of the statute. 123 To take Hart's "no vehicle in the park" example, if local patriots were to wheel a truck used in World War II on a pedestal, would this qualify as a core case? This example illustrates that meaning of language in a statute cannot be divorced from an inquiry into the purpose that a rule serves. When courts are offered competing interpretations, they **must choose** the one that is most sensible **in connection with its legislative purpose**, 124 and makes the statute "a coherent [and] workable whole." 125 Moreover, the purpose of a statute is not static, but through interpretation, courts engage in a process of redefining and clarifying the ends themselves. 126 As Fuller puts it, courts must "be sufficiently capable of putting [themselves] in the position of those who drafted the rule to know what they thought 'ought to be.' It is in the light of this 'ought' that [they] must decide what the rule 'is.'" 127

Legislative intent of the resolution outweighs limits

Clements 5 – Judge Jean Harrison Clements, Court of Appeals of Virginia, October 25, 2005, Bryan David Auer v. Commonwealth of Virginia – Court of Appeals of Virginia, http://www.courts.state.va.us/opinions/opncavtx/0851041.txt

Consequently, the fact that the statute does not expressly enumerate a particular item implies that the item "falls outside of the definition." Highway & City Freight Drivers, 576 F.2d at 1289; see County of Amherst Bd. of Supervisors v. Brockman, 224 Va. 391, 397, 297 S.E.2d 805, 808 (1992) (holding that the courts "may not add to a statute language" that the legislature intended not be included therein). Because the word "include" is susceptible to more than one meaning and because it is not immediately clear from the word's context which meaning is meant to apply in Code 19.2-295.1, we conclude that the statute's provision that "[p]rior convictions shall include convictions . . . under the laws of any state, the District of Columbia, the United States or its territories" is ambiguous. See Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (noting that words are ambiguous if they admit to "being understood in more than one way" or lack "clearness and definiteness"). See generally Liverpool v. Baltimore Diamond Exch., Inc., 799 A.2d 1264, 1274 (Md. Ct. Spec. App. 2002) (recognizing that "the term 'includes,' by itself, is not free from ambiguity" because it "has various shades of meaning," ranging from enlargement and expansion to limitation and restriction); Frame v. Nehls, 550 N.W.2d 739, 742 (Mich. 1996) ("When used in the text of a statute, the word 'includes' can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used."). "Therefore, we are called upon to construe this statutory language in a manner that will ascertain and give effect to the General Assembly's intent." Herndon v. St. Mary's Hosp., Inc., 266 Va. 472, 475, 587 S.E.2d 567, 569 (2003). In seeking to resolve the ambiguity in the statutory language and discern the legislature's intent, we apply established principles of statutory interpretation. See Va. Dep't of Labor & Industry v. Westmoreland Coal Co., 233 Va. 97, 101-02, 353 S.E.2d 758, 762 (1987). Consistent with such principles, we interpret the statute so as "to promote the end for which it was enacted, if such an interpretation can reasonably be made from the language used." Mayhew v. Commonwealth, 20 Va. App. 484, 489, 458 S.E.2d 305, 307 (1995). Thus, the "statute must be construed with reference to its subject matter, the object sought to be attained, and the legislative purpose in enacting it; the provisions should receive a construction that will render it harmonious with that purpose rather than one which will defeat it." Esteban v. Commonwealth, 266 Va. 605, 609, 587 S.E.2d 523, 526 (2003). Furthermore, although "[i]t is a cardinal principle of law that penal statutes are to be construed strictly against the [Commonwealth]" and "cannot be extended by implication, or be made to include cases which are not within the letter and spirit of the statute," Wade v. Commonwealth, 202 Va. 117, 122, 116 S.E.2d 99, 103 (1960), "we will not apply 'an unreasonably restrictive interpretation of the statute' that would subvert the legislative intent expressed therein," Armstrong v. Commonwealth, 263 Va. 573, 581, 562 S.E.2d 139, 144 (2002) (quoting Ansell v. Commonwealth, 219 Va. 759, 761, 250 S.E.2d 760, 761 (1979)).

Framer's Intent Bad

Framer's intent is arbitrary and should be considered secondary to the best interpretation

Weaver 7 (Aaron, Ph.D. Candidate in Politics and Society – Baylor University, "An Introduction to Original Intent", Fall, http://www.thebigdaddyweave.com/BDWFiles/originalism.pdf)

Discovering the "original intent" behind the religion clauses of the First Amendment is much more difficult than Edwin Meese, Antonin Scalia or any other 21 Ibid, originalist wants to admit. Contrary to the revisionist history being pushed by originalists who desire extensive government accommodation of religion, the founders did not always agree with one another. We simply **can not determine** with **sufficient accuracy** the collective intent of the Founding Fathers and the Framers of the Free Exercise Clause and the Establishment Clause of the First Amendment. Those scholars in search of "original intent" have returned with strikingly inconsistent accounts of original intent. Thus, the originalism of Scalia, Meese, and Rehnquist is ambiguous at best and downright dishonest at worst. We do not know nor can we be expected to accurately determine the intent or understanding of what the First Amendment meant to each person who cast their vote. After all, delegates to the Constitutional Convention were voting on the text of the First Amendment, not Madison's writings or the private correspondence of the Framers. The text of the First Amendment reigns supreme. Authorial intent **must take a backseat** to the actual text. Justices should examine the text first and scour it for as much meaning as it will generate before turning to extrinsic evidence of intent. However, original intent is hardly irrelevant but simply subordinate to the text. Extrinsic evidence does not control the text. The text controls the text.

No impact to "intent". The framer's knowledge was far more limited than the community's after months of research. Their standard is outdated and prevents informed and progressive understanding.

Moore 85 (Michael, Professor of Law – University of Southern California Law Center, "Interpretation Symposium: Philosophy of Language and Legal Interpretation: Article: A Natural Law Theory of Interpretation", University of Southern California, 58 S. Cal. L. Rev. 279, January, Lexis)

My conclusion is that the text has a better claim to being called the "choice of the legislature" than do any legislative materials. The political ideals of democracy and of institutional competence are thus better served by a court working from the text alone and not from some "second text" unofficially adopted by some supposed, silent consensus of legislators. That being so, and liberty and fairness also being better served by looking to the other ingredients in the theory of interpretation, I conclude that legislative intent has no role to play in interpretation. This conclusion has been defended solely by using the rule of law virtues as our normative guidelines. This conclusion is supported by the other set of considerations relevant here, namely, the kinds of effects an intent-oriented theory of interpretation produces. Such a theory produces worse effects than its competitors because it imposes old ideals upon us. In constitutional law this consideration is so compelling that it swamps all the others in importance. Better that we fill out the grand clauses of the Constitution by our notions of meaning (evolving, as we have seen, in light of our developing theories about the world), by our notions of morals, and by two hundred years of precedent. What the founders intended by their language should be of relevance to us only as a heuristic device to enable us to think more clearly about our own ideals. The dead hand of the past ought not to govern, for example, our treatment of the liberty of free speech, and any theory of interpretation that demands that it does is a bad theory. This argument applies to statutory interpretation as well, although with somewhat diminished force. For guiding one's statutory interpretations by legislative materials will be to judge by ideals as old as those [*358] materials. In the Keeler case, for example, a 1970 decision was predicated on an 1850 statute, recodified in 1872. Using nineteenth-century ideas of personhood to decide whether a fetus is a person is not a good idea in the twentieth century. We have **thought more** about the problem, and we **know more factually and morally** than those who drafted the commission report concluding that fetuses were not human beings. And even if we do not know more than they, we are as entitled to live under our ideals of personhood as we are to live under our ideals of free speech. For old statutes, thus, the consequentialist arguments against looking to framers' intent are as strong as they are for the Constitution. The meanings of words, the direction of precedent, and the nature of goodness are all items about which we can have developing theories. Our admittedly imperfect knowledge of each of

these things can get better. A theory of interpretation built out of these materials thus can accommodate change and development in our law by court interpretation. A theory emphasizing the enacting body's intention, on the other hand, is **glued to the past**. Change can only come by constitutional or legislative amendment. Even apart from the rule of law virtues, an intentionalist theory should be disfavored on this ground alone.

Grammar

Grammar outweighs --- it determines meaning, making it a pre-requisite to predictable ground and limits – and, without it, debate is impossible

Allen 93 (Robert, Editor and Director – The Chambers Dictionary, Does Grammar Matter?)

Grammar matters, then, because it is the accepted way of using language, whatever one's exact interpretation of the term. Incorrect grammar hampers communication, which is the whole purpose of language. The grammar of standard English matters because it is a codification of the way using English that most people will find acceptable.

Limits – Rowland

Limits outweigh – they're the vital access point for any theory impact --- it's key to fairness --- huge research burdens mean we can't prepare to compete – and its key to education --- big topics cause hyper-generics, lack of clash, and shallow debate --- and it destroys participation

Rowland 84 (Robert C., Debate Coach – Baylor University, "Topic Selection in Debate", American Forensics in Perspective, Ed. Parson, p. 53-54)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called "NDT" programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience "negophobia,"7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: "Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament."8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that "broad topics discourage participation because of insufficient time to do requisite research."10 The final effect may be that **entire programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: "It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate."11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

Precision

Precision is vital to meaningful debates about "engagement"

Resnick 1 – Dr. Evan Resnick, Ph.D. in Political Science from Columbia University, Assistant Professor of Political Science at Yeshiva University, "Defining Engagement", Journal of International Affairs, Spring, 54(2), Ebsco

CONCLUSION

In matters of national security, establishing a clear definition of terms is a **precondition for effective policymaking**. Decisionmakers who invoke critical terms in an **erratic, ad hoc fashion** risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error **undercut their ability to conduct valuable empirical research**. Hence, if scholars and policymakers fail rigorously to define "engagement," they **undermine the ability to build an effective foreign policy**.

Legal precisions outweighs limits and ground --- it's a prerequisite to effective policy education

Shannon 2 – Bradley Shannon, law at University of Idaho, January 2002 (Washington Law Review, 77 Wash. L. Rev. 65, Lexis

The first answer to this question is, why should we not care? If proper terminology (of whatever type) is readily available and comprehendible, why should one not want to use it? Does one really need a reason for not misusing any word, technical or otherwise? In other words, though many misuses of Rules terminology might not seem to cause serious problems, surely that is not an argument in favor of a disregard of proper Rules terminology, particularly where the cost of using proper terminology is negligible. 79

The second answer to the question why we should care about the use of proper Rules terminology goes to the cost of using improper terminology **even in** seemingly **trivial contexts**. Understanding legal concepts is difficult enough without the **confusion** created when an inappropriate term is used to represent those concepts. And this is true **regardless of how minor** the misuse. In some sense, every misuse of legal language impedes the understanding - and, consequently, the progress - of the law.

A2: Aff Flexibility

Strict limits *enable* creativity. Beauty emerges from identifying constraints and working within them.

Flood 10 (Scott, BS in Communication and Theatre Arts – St. Joseph's College, School Board Member – Plainfield Community School Corporation, and Advertising Agent, "Business Innovation – Real Creativity Happens Inside the Box", http://ezinearticles.com/?Business-Innovation---Real-Creativity-Happens-Inside-the-Box&id=4793692)

It seems that we can accomplish anything if we're brave enough to step out of that bad, bad box, and thinking "creatively" has come to be synonymous with ignoring rules and constraints or pretending they just don't exist. **Nonsense**. Real creativity is put to the test within the box. In fact, that's where it really shines. It might surprise you, but it's actually easier to think outside the box than within its confines. How can that be? It's simple. When you're working outside the box, you don't face rules, or boundaries, or assumptions. You create your own as you go along. If you want to throw convention aside, you can do it. If you want to throw proven practices out the window, have at it. You have the freedom to create your own world. Now, I'm not saying there's anything wrong with thinking outside the box. At times, it's absolutely essential - such as when you're facing the biggest oil spill in history in an environment in which all the known approaches are failing. But most of us don't have the luxury of being able to operate outside the box. We've been shoved into reality, facing a variety of limitations, from budgets, to supervisors' opinions and prejudices, to the nature of the marketplace. Even though the box may have been given a bad name, it's where most of us have to spend our time. And no matter how much we may fret about those limits, inside that box is where we need to prove ourselves. If you'll pardon the inevitable sports analogy, consider a baseball player who belts ball after ball over 450 feet. Unfortunately, he has a wee problem: he can't place those hits between the foul lines, so they're harmful strikes instead of game-winning home runs. To the out-of-the-box advocates, he's a mighty slugger who deserves admiration, but to his teammates and the fans, he's a loser who just can't get on base. He may not like the fact that he has to limit his hits to between the foul poles, but that's one of the realities of the game he chose to play. The same is true of ideas and approaches. The most dazzling and impressive tactic is essentially useless if it doesn't offer a practical, realistic way to address the need or application. Like the baseball player, we may not like the realities, but we have to operate within their limits. Often, I've seen people blame the box for their inability or unwillingness to create something workable. For example, back in my ad agency days, I remember fellow writers and designers complaining about the limitations of projects. If it was a half-page ad, they didn't feel they could truly be creative unless the space was expanded to a full page. If they were given a full page, they demanded a spread. Handed a spread, they'd fret because it wasn't a TV commercial. If the project became a TV commercial with a $25,000 budget, they'd grouse about not having a $50,000 budget. Yet the **greatest artists** of all time didn't complain about what they didn't have; they worked their magic using what they did. Monet captured the grace and beauty of France astonishingly well within the bounds of a canvas. Donatello exposed the breathtaking emotion that lurked within ordinary chunks of marble. And I doubt that Beethoven ever whined because there were only 88 keys on the piano. Similarly, I've watched the best of my peers do amazing things in less-than-favorable circumstances. There were brilliant commercials developed with minimal budgets and hand-held cameras. Black-and-white ads that outperformed their colorful competitors. Simple postcards that grabbed the attention of (and business from) jaded consumers. You see, real creativity isn't hampered or blocked by limits. It actually flowers in response to challenges. Even though it may be forced to remain inside the box, it leverages everything it can find in that box and makes the most of every bit of it. **Real creativity** is driven by a **need** to create. When Monet approached a blank canvas, it's safe to say that he didn't agonize over its size. He wanted to capture something he'd seen and share how it looked through his eyes. The size of the canvas was incidental to his talent and desire. Think about the Apollo 13 mission. NASA didn't have the luxury of flying supplies or extra tools to the crew. They couldn't rewrite the laws of physics. Plus, they faced a rapidly shrinking timeline, so their box kept getting smaller and less forgiving. And yet they arrived upon a solution that was creative; more important, that was successful. The next time someone tells you that the real solution involves stepping outside the box, **challenge him or her to think and work harder**. After all, the **best solution** may very well be lurking in a corner of that familiar box.

A2: Breadth Good

Depth is more educational than breadth --- studies prove

WP 9 (Washington Post, "Will Depth Replace Breadth in Schools?" http://voices.washingtonpost.com/class-struggle/2009/02/will_depth_replace_breadth_in.html)

The truth, of course, is that students need both. Teachers try to mix the two in ways that make sense to them and their students. But a surprising study — certain to be a hot topic in teacher lounges and education schools — is providing new data that suggest educators should spend much more time on a **few issues** and **let some topics slide**. Based on a sample of 8,310 undergraduates, the national study says that students who spend at least a month on just one topic in a high school science course get better grades in a freshman college course in that subject than students whose high school courses were more balanced. The study, appearing in the July issue of the journal Science Education, is "Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework." The authors are Marc S. Schwartz of the University of Texas at Arlington, Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics and Robert H. Tai of the University of Virginia. This is more rich ore from a goldmine of a survey Sadler and Tai helped organize called "Factors Influencing College Science Success." It involved 18,000 undergraduates, plus their professors, in 67 colleges in 31 states. The study weighs in on one side of a contentious issue that will be getting national attention this September when the College Board's Advanced Placement program unveils its major overhaul of its college-level science exams for high school students. AP is following a direction taken by its smaller counterpart, the International Baccalaureate program. IB teachers already are allowed to focus on topics of their choice. Their students can deal with just a few topics on exams, because they have a wide choice of questions. AP's exact approach is not clear yet, but College Board officials said they too will embrace depth. They have been getting much praise for this from the National Science Foundation, which funded the new study. Sadler and Tai have previously hinted at where this was going. In 2001 they reported that students who did not use a textbook in high school physics—an indication that their teachers disdained hitting every topic — achieved higher college grades than those who used a textbook. Some educators, pundits, parents and students will object, I suspect, to sidelining their favorite subjects and spending more time on what they consider trivial or dangerous topics. Some will fret over the possibility that teachers might abandon breadth altogether and wallow in their specialties. Even non-science courses could be affected. Imagine a U.S. history course that is nothing but lives of generals, or a required English course that assigns only Jane Austen. "Depth Versus Breadth" analyzes undergraduate answers to detailed questions about their high school study of physics, chemistry and biology, and the grades they received in freshman college science courses. The college grades of students who had studied at least one topic for at least a month in a high school science course were compared to those of students who did not experience such depth. The study acknowledges that the pro-breadth forces have been in retreat. Several national commissions have called for more depth in science teaching and other subjects. A 2005 study of 46 countries found that those whose schools had the best science test scores covered far fewer topics than U.S. schools.

Especially for high school students

SD 9 (Science Daily, "Students Benefit From Depth, Rather Than Breadth, In High School Science Courses", http://www.sciencedaily.com/releases/2009/03/090305131814.htm)

A recent study reports that **high school** students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. The study relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic. The study explored differences between science disciplines, teacher decisions about classroom activities, and out-of-class projects and homework. The researchers carefully controlled for differences in student backgrounds. The study also points out that standardized testing, which seeks to measure overall knowledge in an entire discipline, may not capture a student's high level of mastery in a few key science topics. Teachers who "teach to the test" may not be optimizing their students' chance of success in college science courses, Tai noted. "President Obama has challenged the nation to become the most educated in the world by having the largest proportion of college graduates among its citizens in the coming decade," Tai said. "To meet this challenge, it is imperative that we use the research to inform our educational practice." The study was part of the Factors Influencing College Science Success study, funded by the National Science Foundation.

Topicality– GDI 2015

United States

Definitions

"United States" means United States of North America

Webster's 61 (Third New International Dictionary, p. 2501)

Of or from the United States of North America

"United States" means the federal government

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the federal government

"United States" means the sovereign state called the "United States"

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

a sovereign nation or sovereign state called the "United States"

"United States" means the territory over which the sovereign nation of the "United States" exercises sovereign power

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the territory over which this sovereign nation called the "United States" exercises sovereign power

"United States" is the USA

Encarta 7 (Dictionary Online, "United States", http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861708119)

U·nit·ed States [yˑ nĭtəd stáyts] country in central North America, consisting of 50 states.
Languages: English.
Currency: dollar.
Capital: Washington, D.C..
Population: 290,342,550 (2001).
Area: 9,629,047 sq km (3,717,796 sq mi.)
Official name United States of America

Federal Government

Definitions

"Federal Government" means the United States government

Black's Law 99 (Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

"Federal Government" means the national government, not the states or localities

Black's Law 99 (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

"Federal Government" means the government of the United States of America

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

"Federal" means the political unit created by the states, not the states themselves:

OED 89 (Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

"Federal" is the central government not the states:

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

"Federal" refers to a government in which states form a central government:

AHD 92 (American Heritage Dictionary of the English Language, p. 647)

federal—1. Of, relating to, or being a form of government in which a union of states recognizes the sovereignty of a central authority while retaining certain residual powers of government.

Government" is all three branches

Black's Law 90 (Dictionary, p. 695)

"[*Government*] In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments."

Should

Definitions

Should refers to what should be NOT what should have been
OED, Oxford English Dictionary, **1989** (2ed. XIX), pg. 344

Should An utterance of the word *should*. Also, what 'should be'.

Should means an obligation or duty
AHD, American Heritage Dictionary of the English Language, **1992** (4ed); Pg. 1612

Should—1. Used to express obligation or duty: *You should send her a note*.

Should expresses an expectation of something
AHD, American Heritage Dictionary of the English Language, **1992** (4ed); Pg. 1612

Should—2. Used to express probability or expectation: *They should arrive at noon*.

Should expresses conditionality or contingency
AHD, American Heritage Dictionary of the English Language, **1992** (4ed); Pg. 1612

Should—3. Used to express conditionality or contingency: *If she should fall, then so would I*.

"should" expresses duty, obligation, or necessity
Webster's Third New International Dictionary **1961** p. 2104

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

Means Desirable/Not Certainty

"Should" means desirable --- this does not have to be a mandate

AC 99 (Atlas Collaboration, "Use of Shall, Should, May Can," http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement _will_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

"Should" doesn't require certainty

Black's Law 79 (Black's Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word "would," it **does not ordinarily express certainty** as "will" sometimes does.

Means Mandatory

"Should" is mandatory

Nieto 9 – Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as **synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

"Should" means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is **not used in an advisory sense** but has the force or meaning of 'must', or 'ought to' and carries [***8] with it the sense of [*313] obligation and duty equivalent to **compulsion**. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

Should means must

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.D.Cal. 2005. "Should," as used in the Social Security Administration's ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means "must."—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

Means Immediate

“Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13] in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14] The answer to this query is not to be divined from rules of grammar;[15] it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16]

[CONTINUES – TO FOOTNOTE]

13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

A2 Means Mandatory

Should isn't mandatory

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.A.6 (Tenn.) 2001. Word "should," in most contexts, is precatory, **not mandatory**. –U.S. v. Rogers, 14 Fed.Appx. 303. –Statut 227.

Strong admonition --- not mandatory

Taylor and Howard 5 (Michael, Resources for the Future and Julie, Partnership to Cut Hunger and Poverty in Africa, "Investing in Africa's future: U.S. Agricultural development assistance for Sub-Saharan Africa", 9-12, http://www.sarpn.org.za/documents/d0001784/5-US-agric_Sept2005_Chap2.pdf)

Other legislated DA earmarks in the FY2005 appropriations bill are smaller and more targeted: plant biotechnology research and development ($25 million), the American Schools and Hospitals Abroad program ($20 million), women's leadership capacity ($15 million), the International Fertilizer Development Center ($2.3 million), and clean water treatment ($2 million). Interestingly, in the wording of the bill, Congress uses the term *shall* in connection with only two of these eight earmarks; the others say that USAID *should* make the prescribed amount available. The **difference** between *shall* and *should* may have **legal significance**—one is clearly **mandatory** while the other is a **strong admonition**—but it makes little practical difference in USAID's need to comply with the congressional directive to the best of its ability.

Permissive

Words and Phrases 2 (Vol. 39, p. 370)

Cal.App. 5 Dist. 1976. Term "should," as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as **recommendation**, and is thus **not mandatory** but **permissive**. West's Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191.

Desirable or recommended

Words and Phrases 2 (Vol. 39, p. 372-373)

Or. 1952. Where safety regulation for sawmill industry providing that a two by two inch guard rail should be installed at extreme outer edge of walkways adjacent to sorting tables was immediately preceded by other regulations in which word "shall" instead of "should" was used, and word "should" did not appear to be result of inadvertent use in particular regulation, use of word "should" was intended to convey idea that particular precaution involved was desirable and recommended, but not mandatory. ORS 654.005 et seq.----Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556.---Labor & Emp. 2857

A2 Means Immediate

Should doesn't mean immediate

Dictionary.com – Copyright © **2010** – http://dictionary.reference.com/browse/should

should /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc (e) olde; see shall —Can be confused: could, should, would (see usage note at this entry). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. (You should get your flu shot before winter comes), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would) have called immediately. I should (American would) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or (Archaic) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or (Archaic) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

A2 Should = Cheating CPs Compete

acceptably within the range of "should"

GAO 8 (Government Accounting Office, "Exposure Draft of Proposed Changes to the International Standards for the Professional Practice of Internal Auditing," 3-31-8, http://www.gao.gov/govaud/cl_iia080331.pdf)

The second sentence of the "must" definition used in the exposure draft instructions is more aligned with the definition of "should" as used by other standards setters, including GAO. The definition of "should" as used by GAO, which is intended to be consistent with the definition used by the AICPA and the PCAOB, indicates a presumptively mandatory requirement and contains the following language: "…in rare circumstances, auditors and audit **organizations may depart from a presumptively mandatory requirement** provided they document their justification for the departure and how the alternative procedures performed in the circumstances **were sufficient to achieve the objectives of the** presumptively mandatory **requirement**." We suggest that the IIA move the second sentence of the "must" definition to the "should" definition. The definition of "must" needs to be clear that "**must" indicates an unconditional requirement** and that another procedure cannot substitute for a "must." Also, we suggest adding language to the definition of "should" to indicate that substituting another procedure for a "should" requirement is allowed only if the auditors document their justification for the departure from the "should" and how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the "should" requirement. The IIA should review every "must" requirement in the Standards to determine whether there are acceptable alternatives to the procedure; if so, "**should" is the appropriate word**.

-- Strong admonition – not mandatory

Taylor and Howard 5 (Michael, Resources for the Future and Julie, Partnership to Cut Hunger and Poverty in Africa, "Investing in Africa's future: U.S. Agricultural development assistance for Sub-Saharan Africa", 9-12, http://www.sarpn.org.za/documents/d0001784/5-US-agric_Sept2005_Chap2.pdf)

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"Should" allows deviation from the plan

IIA 10 (The Institute of Internal Auditors, "International Standards for the Professional Practice of Internal Auditing (Standards)," 2010, http://www.theiia.org/guidance/standards-and-guidance/ippf/standards/)

Should The Standards use the word "should" where conformance is expected unless, when applying professional judgment, circumstances justify deviation.

A2 Should = Past Tense of Shall

-- We meet – plan says 'should'. This just changes the meaning of the plan – doesn't prove it isn't topical.

-- Ungrammatical – their interpretation assumes "should" is followed by 'have' – but its not. Grammar is key: it defines ground.

-- Kills neg ground – hindsight is 20/20, Aff's would always pick unbeatable cases

-- "Should" means future action
American Heritage 00

should (P) Pronunciation Key (shd)
aux.v. Past tense of shall

Used to express obligation or duty: You should send her a note.

-- Prefer our interpretation – theirs is outdated
American Heritage 00

Usage Note: Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are **largely ignored** in modern American practice. Either should or would can now be used in the first person to express **conditional futurity**: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause: if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or he) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. ·Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should've. See Usage Note at if. See Usage Note at rather. See Usage Note at shall.

-- Key to Aff ground –best literature supports prescriptive future action

-- Neg ground – all disads assume future action, otherwise they're non-unique.

-- No offense – future-oriented genealogical Affs can explore history.

-- Potential abuse isn't a voter – don't punish for what we didn't do

Substantially

Means Considerable

"substantial" means of real worth or considerable value—this is the USUAL and CUSTOMARY meaning of the term

Words and Phrases 2 (Volume 40A, p. 458)

D.S.C. 1966. The word "substantial" within Civil Rights Act providing that a place is a public accommodation if a "substantial" portion of food which is served has moved in commerce must be construed in light of its **usual and customary meaning**, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

"substantial" means considerable or to a large degree – this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, "Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources", Harvard Civil Rights-Civil Liberties Law Review, Winter,
37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. 99 It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, 100 and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). 101

Substantial means "of considerable amount" – not some contrived percentage

Prost 4 (Judge – United States Court of Appeals for the Federal Circuit, "Committee For Fairly Traded Venezuelan Cement v. United States", 6-18,
http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C). In fact, they merely suggest, without disqualifying other alternatives, a "clearly higher/substantial proportion" approach. Indeed, the SAA specifically mentions that no "precise mathematical formula" or "'benchmark' proportion" is to be used for a dumping concentration analysis. SAA at 860

(citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30. Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a "case-by-case basis." SAA at 860. Finally, the definition of the word "substantial" undercuts the CFTVC's argument. The word "substantial" generally means "considerable in amount, value or worth." Webster's Third New International Dictionary 2280 (1993). **It does not imply a specific number or cut-off**. What may be substantial in one situation may not be in another situation. The very breadth of the term "substantial" undercuts the CFTVC's argument that Congress spoke clearly in establishing a standard for the Commission's regional antidumping and countervailing duty analyses. It therefore supports the conclusion that the Commission is owed deference in its interpretation of "substantial proportion." The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

"substantial" means considerable in amount or value

Words and Phrases 2 (Volume 40A) p. 453

N.D.Ala. 1957. The word "substantial" means considerable in amount, value, or the like, large, as a substantial gain

"substantial" means having worth or value

Ballentine's 95 (Legal Dictionary and Thesaurus**,** p. 644)

having worth or value

Means Real

"substantial" means actually existing, real, or belonging to substance

Words and Phrases 2 (Volume 40A) p. 460

Ala. 1909. "Substantial" means "belonging to substance; actually existing; real; *** not seeming or imaginary; not elusive; real; solid; true; veritable

"substantial" means having substance or considerable

Ballentine's 95 (Legal Dictionary and Thesaurus**,** p. 644)

having substance; considerable

Means In the Main

"substantial" means in the main

Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 "Substantial" means in substance, in the main, essential, including material or essential parts

Means Without Material Qualification

Substantially is without material qualification

Black's Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

Means Not Covert

-- Interpretation – substantially means exposed to view, free from concealment

Words & Phrases 64 (40 W&P 759)

The words "outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean **not concealed**; **not hidden**; **exposed to view**; **free from concealment**, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

Means Durable

-- "Substantial" means durable

Ballantine's 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful ("a substantial supply"); actual, concrete, existent, physical, righteous, sensible, tangible ("substantial problem"); affluent, comfortable, easy, opulent, prosperous, solvent.

A2 Means Considerable

Arbitrary – there's no objective determination of what is 'considerable'

Stark 97 (Stephen J., "Key Words And Tricky Phrases: An Analysis Of Patent Drafter's Attempts To Circumvent The Language Of 35 U.S.C.", Journal of Intellectual Property Law, Fall, 5 J. Intell. Prop. L. 365, Lexis)

1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. 30 However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. 31 Additionally, there are another two definitions specifically provided for the adverb "substantially." 32 Thus, the "ordinary meaning" is not clear. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." 33 Supposing that this is the precise definition that the drafter had in mind when drafting the patent, the meaning of "ample or considerable amount" appears **amorphous**. This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a **very ambiguous** meaning, makes the scope of protection **particularly hard to determine**.

A2 Reasonability

reverting to reasonability to assess the meaning of 'substantial' is intellectually lazy and amplifies ambiguity

Brennan 88 (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!27%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the **legislative history** and **other tools of interpretation** to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" **means more** than merely reasonable, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, 817 F.2d 1238 (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to **creep the standard** towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is **no excuse** to **abandon the test** Congress enacted. n2

Curtail

Curtail = Reduce/Restrict

Curtail is to cut off – consistent court and law decisions

Black's Law 90 [6th edition; BLACK'S ¶ LAW DICTIONARY ¶ Definitions of the Terms and Phrases of ¶ American and English Jurisprudence, ¶ Ancient and Modern ¶ By ¶ HENRY CAMPBELL BLACK, M. A. ¶ SIXTH EDITION ¶ BY ¶ THE PUBLISHER'S EDITORIAL STAFF ¶ Coauthors ¶ JOSEPH R. NOLAN ; http://archive.org/stream/BlacksLaw6th/Blacks%20Law%206th_djvu.txt]

Curtail. To cut off the end or any part of**; hence to ¶ shorten, abridge, diminish, lessen, or reduce;** and term ¶ has no such meaning as abolish. State v. Edwards, 207 ¶ La. 506, 21 So.2d 624, 625.

Curtail requires restrictions

Oxford 15 [Oxford Dictionaries, cited May 2015; http://www.oxforddictionaries.com/us/definition/american_english/curtail]

curtail¶ See definition in Oxford Advanced Learner's Dictionary¶ Syllabification: **cur·tail**¶ Pronunciation: /kərˈtāl/ ¶ Definition of curtail in English:¶ verb¶ ¶ [WITH OBJECT]¶ 1¶ Reduce in extent or quantity; **impose a restriction on**:¶ civil liberties were further curtailed

Curtail

Webster's 15 [: to reduce or limit (something)]

curtail¶ verb cur·tail \(ˌ)kər-ˈtāl\¶ : to reduce or limit (something)

Curtail = Shorten/Limit

To shorten in extent or amount

Court of Appeals 10 [Public Water Supply District No. 3 of Laclede County, Missouri, Appellant, v. City of Lebanon, Missouri, Appellee.¶No. 09-2006¶UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT¶605 F.3d 511; 2010 U.S. App. LEXIS 9861; 40 ELR 20141¶January 12, 2010, Submitted; Lexis]

7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being taken from the current holder, rather than something being retained by the holder to the exclusion of another. "**Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict**. The available cases and fragments of legislative history all seem to have in mind curtailment resulting from substitution of some third party as a water-supplier for the rural district.

Small Changes Don't Curtail

Curtail isn't just modification of programs – has to be more limiting.

Straw 14 [BY JOSEPH STRAW NEW YORK DAILY NEWS; "Obama calls for modest constraints on NSA surveillance programs"; January 18, 2014, 1:01 AM; http://www.nydailynews.com/news/politics/obama-calls-constraints-nsa-surveillance-article-1.1582758]

WASHINGTON — The **U.S. will modestly constrain but not curtail** post-9/11 surveillance programs that sparked a global uproar when they were exposed by a rogue contractor, President Obama announced Friday.¶ "Regardless of how we got here," Obama said, "the task before us now is greater than simply repairing the damage done to our operations or preventing more disclosures from taking place in the future."¶ National Security Agency leaker Edward Snowden revealed last year that the government legally — but secretly — forces phone companies to turn over billions of records on Americans' calls and stores them.¶ Obama said the NSA will continue to vacuum up billions of U.S. phone call logs, but the government will set up a new, outside entity to store the data.¶ "We have to make some important decisions about how to protect ourselves and sustain our leadership in the world while upholding the civil liberties and privacy protections our ideals and our Constitution require," he said in a speech at Justice Department headquarters.

Metadata Restrictions = Curtail

Recent items in Congress were looking for curtailing the area

NYT 6-1 [New York Times; "Presidential Hopefuls on the N.S.A."; 6/1/2015; http://www.nytimes.com/interactive/2015/06/01/us/elections/presidential-candidates-on-nsa-and-patriot-act.html]

The Senate is expected to approve as early as Tuesday a bill that would **curtail** the government's vast surveillance authority after opponents allowed the law governing it to lapse over concerns about civil liberties. Here is where some of the 2016 presidential hopefuls stand on the issue.

Curtail bill looked at that information

DG 5-31 [Senate returns to spy-act talks¶ Surveillance powers expire tonight if no deal reached¶ By Compiled by Democrat-Gazette staff from wire reports¶ Posted: May 31, 2015 at 4:05 a.m.¶ Updated: May 31, 2015 at 4:05 a.m.; http://www.nwaonline.com/news/2015/may/31/senate-returns-to-spy-act-talks-2015053/]

The bill would overhaul the USAPATRIOT Act and **curtail the metadata surveillance exposed by Edward Snowden**, the former contractor for the NSA.¶ If the USA Freedom Act were to become law, the business records provision and the roving wiretap authority would return immediately. Changes would also be made to the USAPATRIOT Act to prohibit bulk collection, and sweeps that had operated under the guise of so-called national security letters issued by the FBI would end. The data would instead be stored by the phone companies and could be retrieved by intelligence agencies only after approval of the Foreign Intelligence Surveillance Act court.¶ That has been strongly opposed by Senator Majority Leader Mitch McConnell and more than two dozen other senators who fear ending the program would endanger national security.

Domestic

Domestic = Only US

Domestic means inside a country – it's distinct from foreign or international

Oxford Dictionaries 15 ("domestic," http://www.oxforddictionaries.com/us/definition/american_english/domestic)

Existing or occurring inside a particular country; not foreign or international: the current state of US domestic affairs

Domestic programs have to be related to only the United States

Webster's 15 ["Domestic"; Accessed May 2015; http://www.merriam-webster.com/dictionary/domestic]

domestic¶ adjective do·mes·tic \də-ˈmes-tik\¶ : of, relating to, or made in your own country

Domestic Includes US States

Domestic includes states (i.e. fedz can ban Florida surveillance)

US Code 3 (found in "Income Tax is Voluntary," Moses G Washington, 4/1, http://www.truthsetsusfree.com/IncomeTaxVoluntary.pdf)

But to understand what "domestic" means, we have to see how it is defined. "When used in this title [the entire IRC], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof - …The term 'domestic' when applied to a corporation or partnership means **created or organized in the United States or under the law of the United States or of any State** unless, in the case of a partnership, the Secretary provides otherwise by regulations." [26 USC § 7701(a)(4), comments added]

Domestic Distinct from Foreign

It's not foreign organizations

Seamon 8 [by RICHARD HENRY SEAMON, Professor, University of Idaho College of Law.; 'Domestic Surveillance for International¶ Terrorists: Presidential Power and¶ Fourth Amendment Limits"; Spring 2008; HASTINGS CONSTITUTIONAL LAW QUARTERLY [Vol. 35:3http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf]

Precedent establishes that Congress has some regulatory power in this¶ matter, but the precedent leaves the scope of that power unclear. The¶ relevant precedent includes FISA itself, which was supported by Presidents¶ Carter and Ford as a legitimate regulation of the President's power. 84¶ Unfortunately, this legislative precedent has no direct analog in Supreme¶ Court precedent. The Supreme Court has said that Congress can regulate¶ electronic surveillance in the United States to investigate national security¶ threats posed by **domestic organizations**. 85 **The Court has not addressed¶ congressional regulation of surveillance of threats to national security¶ posed by foreign agents and powers.**8 6 Though not addressing that specific¶ issue, the Court has recognized that Congress has significant power over¶ foreign relations-power that stems from, among other places, its power¶ over foreign commerce and certain national defense matters.87 On the other¶ hand, the Court has recognized that the President, too, has significant¶ power over foreign affairs, including matters of foreign intelligence, which¶ exists independently of Congress's power.88 Precedent does not establish¶ to what extent the President's power is not only independent but also¶ "plenary"--meaning not reducible by Congress.

Domestic is distinct from foreign – means under the laws of a nation

The Law Dictionary 15 ("What is Domestic and Foreign?" http://thelawdictionary.org/domestic-and-foreign/)

What is DOMESTIC AND FOREIGN? With reference to the laws and the courts of any given state, a "**domestic**" corporation **is** one created by, or **organized under, the laws of that state;** a **"foreign"** corporation **is** one created by or **under the laws of another state, government, or country**. In re Grand Lodge, 110 Pa. 613, 1 Atl. 582; Boley v. Trust Co., 12 Ohio St. 143; Bowen v. Bank, 34 How. Prac. (N. Y.) 411.

A2 Domestic Distinct from Foreign

No clear distinction between domestic and foreign surveillance

Olbermann 6 (Keith, syndicated political and social commentator, "White House defines 'domestic' spying," http://webcache.googleusercontent.com/search?q=cache:_zdW3H_P0kAJ:www.nbcnews.com/id/11048359/ns/msnbc-countdown_with_keith_olbermann/t/white-house-defines-domestic-spying/+&cd=3&hl=en&ct=clnk&gl=us#.VXHmNc9Vikp)

The White House is trying to sell this so hard that it actually issued an official press release titled, "Setting the Record Straight, Charges of Domestic Spying." Look, your tax dollars in action. Word wealth, SAT training class. As a public service, COUNTDOWN will now review, and, where applicable, provide translations of the White House take on what "domestic" means versus what "international" means, and then we'll add a few bonus examples of our own. Quoting, "Deputy Director Of National Intelligence General Michael Hayden," semicolon; "One End Of Any Call Targeted Under This Program Is Always Outside The United States." This is the glass-is-half-full view of warrantless eavesdropping, much as if a U.S. soldier, who, like the average human male, has about 12 pints of blood in his body, would lose six of those pints. Critics of the NSA terrorist surveillance program would say, That soldier is half empty. The White House would remind you that that soldier is half full. Anyway, the press release actually gives several examples of the differences between the meanings of these two words. "Definition, Domestic Versus International. Domestic Calls are calls inside the United States. International Calls are calls either to or from the United States." And don't forget to deposit $2 for the first five minutes, and an extra $2 to cover the cost of the guy listening in at the NSA. "Domestic Flights," the White House reminds us, "are flights from one American city to another. International Flights are flights to or from the United States." So what happens if I call a domestic airline about a flight to Europe, but they've outsourced their reservation agents to India? Is that a domestic call about an international flight, or an international call about a domestic flight? Wait, there's more. "Domestic Mail consists of letters and packages sent within the United States," the press release reads. "International Mail consists of letters and packages sent to or from the United States." And don't forget, we can not only open either kind, kind if we damn well feel like it, but if you're using an international stamp and we need it for our collection, we're keeping it. One more item from the press release, "Domestic Commerce involves business within the United States. International Commerce involves business between the United States and other countries." International commerce. You know, the kind of stuff Jack Abramoff did for the -- Huh, leave Abramoff out of it? Gotcha, sorry. Well, anyway, if **you're still not clear on this domestic-versus-international stuff**, as promised, a couple of more definitions to help pull you through. Domestic is an adjective describing your dog or cat or any other animal you have as a pet, like a tiger or a boa constrictor. "The Internationale," meanwhile, is the worldwide anthem of those socialists and communists. Internationals are soccer players who play in countries in which they were not born. Domestics is an old-timey kind of term for people who cleaned your house. International is the kind of law that lets us take terror suspects to old Soviet-era gulags in Eastern Europe and beat the crap out of them, while domestic is the kind of wine they bottle in California.

Surveillance

General Surveillance Definitions

Surveillance as info-gathering

Black's Law 15 [Accessed 2015, published as online edition; The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.¶ Law Dictionary: What is SURVEILLANCE? definition of SURVEILLANCE (Black's Law Dictionary)]

What is SURVEILLANCE?¶ Observation and collection of data to provide evidence for a purpose.¶ Law Dictionary: What is SURVEILLANCE? definition of SURVEILLANCE (Black's Law Dictionary)

Surveillance can be covert or overt

Nolo 15 [Nolo's Plain-English Law Dictionary; "Surveillance"; Accessed 2015; http://www.nolo.com/dictionary/surveillance-term.html]

The act of observing persons or groups either with notice or their knowledge (**overt surveillance**) or without their knowledge (**covert surveillance**). Intrusive surveillance by private citizens may give rise to claims of invasion of privacy. Police officers, as long as they are in a place they have a right to be, can use virtually any type of surveillance device to observe property. Police cannot use specialized heat-scanning surveillance devices to obtain evidence of criminal activity inside a home. Law enforcement officials acquired additional surveillance capability following enactment of The Patriot Act.

Surveillance is a two-way process that results in identifying information

Wang and Tucker 14 [Tucker is 2 BA (Warwick) MSc, PhD (Bristol), FBCS, CEng, FLSW, Member of Academia Europaea; Published through Cornell University Library; Victoria Wang & John V. Tucker; "On the Role of Identity in Surveillance"; 14-08-2014; http://arxiv.org/pdf/1408.3438.pdf]

Definition. A **surveillance system** is a method of observing the behaviour of entities in a¶ certain context. The context is specified by:¶ (i) a collection of attributes of the behaviours;¶ (ii) an identity management system that provides identifiers for the entities.¶ **Surveillance is then a process** that, on recognising that the behaviour of an entity has an¶ attribute, **returns some identifier for that entity**.¶ The concept of social sorting can be formulated in two ways. At first sight, we might say that¶ it is simply the process of putting entities into groups or categories defined by some¶ properties of their behaviour that they have in common. This means that the categories are¶ defined by attributes of behaviour that are specific to the context of surveillance system¶ (rather than any intrinsic nature of the entity). The intention that the different categories of¶ entities are to be treated differently is not part of the abstract definition.¶ The social sorting is output of the surveillance. However, in our conception of surveillance,¶ the process outputs not entities but identifiers for entities. Thus, we propose the following:¶ Definition. A surveillance system is called a social sorting if it is a method of classifying the¶ behaviour of entities in a certain context. The context is specified by¶ (i) a collection of attributes of the behaviours;¶ (ii) an identity management system that provides identifiers for the entities.¶ Then the surveillance system provides a process that builds a collection of categories of¶ identifiers. On recognising that the behaviour of an entity has a particular set of attributes the¶ system places some identifier for that entity in the category defined by those attributes.

Prefer specific applications – research and background are key to precision

Wang and Tucker 14 [Tucker is 2 BA (Warwick) MSc, PhD (Bristol), FBCS, CEng, FLSW, Member of Academia Europaea; Published through Cornell University Library; Victoria Wang & John V. Tucker; "On the Role of Identity in Surveillance"; 14-08-2014; http://arxiv.org/pdf/1408.3438.pdf]

Identifiers are simply data and belong at the heart of any analysis of surveillance. Our research on surveillance, with its emphasis on identity**, is intended to develop an abstract framework** that is both a rigorous conceptual analysis of surveillance and a tool for answering questions about applications. We have isolated a general structure or architecture that can be found in a large number of apparently disparate surveillance situations **– certainly including three general typologies of surveillance: controlling, sorting and monitoring (**Lyon, 2007a). A primary feature of our framework is the combination of systems for observing and categorising behaviour, and managing identity. In particular, the abstract notion of identifier enables us to make explicit the complexities of establishing personal identity. Identifiers seem always to be dependent on other identifiers: verifying identity involves following paths through a network of inter-related identifiers. There are several more basic topics that need to be analysed and added to this framework. Although we have accommodated social sorting in our framework, its abstract analysis is clearly a necessary and complex next step. Another example is to formulate general concepts and principles for comparing identity management systems: in particular to structure the process of reducing or translating one identity management system into another.

Surveillance requires systematic activity

Kalhan 14 [Anil Kalhan, Immigration Surveillance, 74 Md. L. Rev. 1 (2014) Available at: http://digitalcommons.law.umaryland.edu/mlr/vol74/iss1/2]

As conceptualized by John Gilliom and Torin Monahan, surveillance involves "the systematic monitoring, gathering, and analysis of information in order to make decisions, minimize risk, sort populations, and exercise power."112 In this Section, I identify and analyze a series of specific surveillance practices and technologies that have become increasingly important components of immigration enforcement strategies. The processes and technologies that comprise the information infrastructure of immigration enforcement enable new approaches to four distinct sets of surveillance activities: identification, screening and authorization, mobility tracking and control, and information sharing.

Surveillance = Visual 1nc

Domestic surveillance means IMAGES collected by satellite or other airborne platforms

Sladick 12 (Kelli, Contributor @ Tenth Amendment Center, "Battlefield USA: The Drones are Coming," http://webcache.googleusercontent.com/search?q=cache:KOE2mLgJFuIJ:blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/+&cd=1&hl=en&ct=clnk&gl=us)

In a US leaked document, "Airforce Instruction 14-104", on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, "**any imagery collected by satellite (national or commercial) and airborne platforms** that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas." In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises. In the 14-104 document, it acknowledges that drones may be used to spy on US citizens: "This instruction applies to all Air Force active duty, Air Force Reserve Command, and Air National Guard (when performing a federal function) intelligence units, staff organizations, and non-intelligence organizations that perform intelligence-related activities (e.g., Eagle Vision units) that could collect, analyze, process, retain, or disseminate information on US persons and it also applies to those who exercise command over these units and organizations."

Definining surveillance to include NON-visual information explodes limits

Small 8 (Matthew, US Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis," http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf)

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). **With this definition domestic surveillance remains an overly broad concept.**

Surveillance = Visual Extensions

Surveillance means VISUAL observation

Merriam-Webster's 15 ("surveillance," http://www.merriam-webster.com/dictionary/surveillance)

Dictionary surveillance noun sur·veil·lance \sər-ˈvā-lən(t)s also -ˈvāl-yən(t)s or -ˈvā-ən(t)s\ : the act of **carefully watching** someone or something especially in order to prevent or detect a crime The piratical history of "filibuster" » Full Definition of SURVEILLANCE : **close watch** kept over someone or something (as by a detective); also : **supervision**

Surveillance = People 1nc

Domestic surveillance means the acquisition of nonpublic information concerning US citizens

IT Law Wiki 15 ("domestic surveillance," http://itlaw.wikia.com/wiki/Domestic_surveillance)

Domestic surveillance 30,050PAGES ON THIS WIKI Edit Talk0 Definition Edit **Domestic surveillance is the acquisition of nonpublic information concerning U**nited **S**tates **persons**.

Surveillance = People Extensions

Surveillance means the observation or monitoring of people

Wu et al 8 (Tony, Justin Chung, James Yamat, Jessica Richman, Computer Scientists @ Stanford, "The Ethics of Surveillance." http://cs.stanford.edu/people/eroberts/cs181/projects/ethics-of-surveillance/ethics.html)

Surveillance is, simply put, the observation and/or monitoring of a person. Coming from the French word for "looking upon," the term encompasses not only visual observation but also the scrutiny of all behavior, speech, and actions. Prominent examples of surveillance include surveillance cameras, wiretaps, GPS tracking, and internet surveillance. One-way observation is in some ways an expression of control. Just as having a stranger stare at you for an extended period of time can be uncomfortable and hostile, it is no different from being under constant surveillance, except that surveillance is often done surreptitiously and at the behest of some authority. Todays technological capabilities take surveillance to new levels; no longer are spyglasses and "dropping" from the eaves of a roof necessary to observe individuals - the government can and does utilize methods to observe all the behavior and actions of people without the need for a spy to be physically present. Clearly, these advances in technology have a profound impact with regards to the ethics of placing individual under surveillance&emdash;in our modern society, where so many of our actions are observable, recorded, searchable, and traceable, close surveillance is much more intrusive than it has been in the past.

Surveillance means close observation of a suspected person

Oxford Dictionaries 15 ("surveillance," http://www.oxforddictionaries.com/us/definition/american_english/surveillance)

surveillance See definition in Oxford Advanced Learner's Dictionary Syllabification: sur·veil·lance Pronunciation: /sərˈvāləns/ Definition of surveillance in English: noun Close observation, **especially of a suspected spy or criminal**: he found himself put under surveillance by military intelligence

Surveillance = Criminal Activity 1nc

Surveillance is observation tied to criminal activity

Black's Law 90 [6th edition; BLACK'S ¶ LAW DICTIONARY ¶ Definitions of the Terms and Phrases of ¶ American and English Jurisprudence, ¶ Ancient and Modern ¶ By ¶ HENRY CAMPBELL BLACK, M. A. ¶ SIXTH EDITION ¶ BY ¶ THE PUBLISHER'S EDITORIAL STAFF ¶ Coauthors ¶ JOSEPH R. NOLAN ; http://archive.org/stream/BlacksLaw6th/Blacks%20Law%206th_djvu.txt]

Surveillance /sarveyCDsns/. Oversight, superinten- ¶ dence, supervision. Police investigative technique in- ¶ volving visual or electronic observation or listening di- ¶ rected at a person or place (e.g., stakeout, tailing of ¶ suspects, wiretapping). **Its objective is to gather evi- ¶ dence of a crime or merely to accumulate intelligence ¶ about suspected criminal activity**. See also Eaves- ¶ dropping; Pen register; Wiretapping.

Surveillance = Criminal Activity Extensions

Oversight of criminal activities

Ballentine's Legal Dictionary 10 ["Surveillance"; Lexis]

TERM: **surveillance**.¶ser-val'ans¶ TEXT: Oversight. Observation, **especially of a person suspected of criminal activities**.

Surveillance is tied to preventing or detecting crime

Webster's 15 [http://www.merriam-webster.com/dictionary/surveillance]

Surveillance noun sur·veil·lance \sər-ˈvā-lən(t)s also -ˈvāl-yən(t)s or -ˈvā-ən(t)s\¶ : the act of carefully watching someone or something **especially in order to prevent or detect a crime**

Surveillance = Personal Data

Surveillance means the collection and monitoring of personal data

Ficthner and Lyon 14 (Laura, MA in Science, Technology and Society @ University of Twente + directs the Surveillance Studies Centre, is a Professor of Sociology, holds a Queen's Research Chair and is cross-appointed as a Professor in the Faculty of Law at Queen's University in Kingston, Ontario, "Scientia est Potentia: Techno-Politics as Network(ed) Struggles," http://essay.utwente.nl/66530/1/Fichtner,%20Laura%20-%20S1346946%20-%20MasterThesis.pdf)

For me, surveillance is defined as the collecting and monitoring of people's data in order to control their behavior. David Lyon (2001) has suggested a similar {definition}: "any collection and processing of personal data, whether identifiable or not, for the purposes of influences or managing those whose data have been garnered"

Surveillance is the attention to personal data for specific purposes

Wang and Tucker 14 [Tucker is 2 BA (Warwick) MSc, PhD (Bristol), FBCS, CEng, FLSW, Member of Academia Europaea; Published through Cornell University Library; Victoria Wang & John V. Tucker; "On the Role of Identity in Surveillance"; 14-08-2014; http://arxiv.org/pdf/1408.3438.pdf]

¶ David Lyon has emphasised a general conception of **surveillance**, which he has characterised¶ as "the focused, systematic and routine attention to **personal details** for purposes of influence,¶ management, protection or detection" (2007a: 14). Furthermore, "this attention to personal¶ details is not random, occasional or spontaneous; it is deliberate and depends on certain¶ protocol and techniques" (ibid.). Lyon (2003, 2007b) has emphasised the significance of¶ considering contemporary surveillance as social sorting. He defined the term to mean the¶ "focus on the social and economic categories and the computer codes by which personal data¶ is organized with a view to influencing and managing people and populations" (Lyon, 2003:¶ 2). Social sorting has become the main purpose of surveillance, since surveillance today is¶ overwhelmingly about personal data.

Surveillance = Technical Means

Surveillance is scrutiny through the use of technical means to extract or create personal data

Marx 5 (Gary T, Prof Emeritus @ MIT, "Surveillance and Society," Encyclopedia of Social Theory, http://web.mit.edu/gtmarx/www/surandsoc.html)

The traditional forms of surveillance noted in the opening paragraph contrast in important ways with what can be called the new surveillance, a form that became increasingly prominent toward the end of the 20th century. The new social surveillance can be defined as, "**scrutiny through the use of technical means to extract or create personal or group data, whether from individuals or contexts**". Examples include: video cameras; computer matching, profiling and data mining; work, computer and electronic location monitoring; DNA analysis; drug tests; brain scans for lie detection; various self-administered tests and thermal and other forms of imaging to reveal what is behind walls and enclosures. The use of "technical means" to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Much new surveillance involves an automated process and extends the senses and cognitive abilities through using material artifacts or software. Using the broader verb "scrutinize" rather than "observe" in the definition, calls attention to the fact that contemporary forms often go beyond the visual image to involve sound, smell, motion, numbers and words. The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (e.g., saying "I see" for understanding). Yet the eye as the major means of direct surveillance is increasingly joined or replaced by other means. The use of multiple senses and sources of data is an important characteristic of much of the new surveillance. Traditionally surveillance involved close observation by a person not a machine. But with contemporary practices surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and work. Nor need it be close as in detailed, --much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail. Surveillance has become both farther away and closer than previously. It occurs with sponge-like absorbency and laser-like specificity. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular time periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand. For example police may focus on "hot spots" where street crimes most commonly occur or seek to follow a money trail across borders to identify drug smuggling and related criminal networks. The new surveillance technologies are often applied categorically (e.g., all employees are drug tested or travelers are searched, rather than those whom there is some reason to suspect). Traditional surveillance often implied a non-cooperative relationship and a clear distinction between the object of surveillance and the person carrying it out. In an age of servants listening behind closed doors, binoculars and telegraph interceptions that separation made sense. It was easy to distinguish the watcher from the person watched. Yet for the new surveillance with its expanded forms of self-surveillance and cooperative surveillance, the easy distinction between agent and subject of surveillance can be blurred.

Surveillance means the use of technical means to extract or create personal data

Marx 2 (Gary, Prof Emeritus @ MIT, "What's New About the "New Surveillance"? Classifying for Change and Continuity*," http://www.surveillance-and-society.org/articles1/whatsnew.pdf)

The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in "observation". The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (e.g., saying "I see" for understanding or being able to "see through people").4 Indeed "seeing through" is a convenient short hand for the new surveillance. To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (e.g., written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to "observe" a text or a printout is in many ways different from a detective or supervisor directly observing behavior. The eye as the major means of direct surveillance is increasingly joined or replaced by hearing, touching and smelling.5 The use of multiple senses and sources of data is an important characteristic of much of the new surveillance. **A better definition of** the new **surveillance is the use of technical means to extract or create personal data**. This may be taken

from individuals or contexts. In this definition the use of "technical means" to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples extend the senses by using material artifacts or software of some kind, but the technical means for rooting out can also be deception, as with informers and undercover police. The use of "contexts" along with "individuals" recognizes that much modern surveillance also looks at settings and patterns of rela tionships. Meaning may reside in cross classifying discrete sources of data (as with computer matching and profiling) that in and of themselves are not of revealing. Systems as well as persons are of interest. This definition of the new surveillance excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a cooperative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.6 I do not include a verb such as "observe" in the definition because the nature of the means (or the senses involved) suggests subtypes and issues for analysis and ought not to be foreclosed by a definition, (e.g.: how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity?). If such a verb is needed I prefer "attend to" or "to regard" rather than observe with its tilt toward the visual.

Surveillance = Active Technology

Surveillance means the use of active technology

Dunlap 12 (Justine, Prof of Law @ Univ. of Massachusetts-Dartmouth, "Intimate Terrorism and Technology: There's an App for That," http://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1001&context=umlr)

Under Arkansas's Family Law Code, a defendant charged with violating either an ex parte or final order of protection may be released provided he is placed under electronic surveillance.92 The statute specifically defines the type of electronic monitoring, which may lead to problems as technology changes.93 **Surveillance is defined as "active**"94 **technology** that is a "single-piece device that immediately notifies law enforcement . . . of a violation of the distance requirements."95 The technology can be tracked by "satellite or cellular phone tower triangulation."96

A2 Surveillance = Visual Data

Surveillance doesn't mean ONLY visual information

Marx 2 (Gary, Prof Emeritus @ MIT, "What's New About the "New Surveillance"? Classifying for Change and Continuity*," http://www.surveillance-and-society.org/articles1/whatsnew.pdf)

The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in "observation". The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (e.g., saying "I see" for understanding or being able to "see through people").4 Indeed "seeing through" is a convenient short hand for the new surveillance. To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (e.g., written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to "observe" a text or a printout is in many ways different from a detective or supervisor directly observing behavior. The eye as the major means of direct surveillance is **increasingly joined or replaced by hearing, touching and smelling**.5 The use of multiple senses and sources of data is an important characteristic of much of the new surveillance. A better definition of the new surveillance is the use of technical means to extract or create personal data. This may be taken from individuals or contexts. In this definition the use of "technical means" to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples extend the senses by using material artifacts or software of some kind, but the technical means for rooting out can also be deception, as with informers and undercover police. The use of "contexts" along with "individuals" recognizes that much modern surveillance also looks at settings and patterns of rela tionships. Meaning may reside in cross classifying discrete sources of data (as with computer matching and profiling) that in and of themselves are not of revealing. Systems as well as persons are of interest. This definition of the new surveillance excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a cooperative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.6 I do not include a verb such as "observe" in the definition because the nature of the means (or the senses involved) suggests subtypes and issues for analysis and ought not to be foreclosed by a definition, (e.g.: how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity?). If such a verb is needed **I prefer "attend to" or "to regard" rather than observe with its tilt toward the visual**.

A2 Surveillance = Monitoring People

Surveillance involves MORE than just people - includes areas, places, networks, etc.

Marx 2 (Gary, Prof Emeritus @ MIT, "What's New About the "New Surveillance"? Classifying for Change and Continuity*," http://www.surveillance-and-society.org/articles1/whatsnew.pdf)

A critique of the dictionary definition of surveillance as "close observation, especially of a suspected person" is offered. **Much surveillance is applied categorically and beyond persons to places, spaces, networks and categories of person and the distinction between self and other surveillance can be blurred**. Drawing from characteristics of the technology, the data collection process and the nature of the data, this article identifies 28 dimensions that are useful in characterizing means of surveillance. These dimensions highlight the differences between the new and traditional surveillance and offer a way to capture major sources of variation relevant to contemporary social, ethical and policy considerations. There can be little doubt that major changes have occurred. However the normative implications of this are mixed and dependent on the technology in question and evaluative framework. The concept of surveillance slack is introduced. This involves the extent to which a technology is applied, rather than the absolute amount of surveillance. A historical review of the jagged development of telecommunications for Western democratic conceptions of individualism is offered. This suggests the difficulty of reaching simple conclusions about whether the protection of personal information is decreasing or increasing.

A2 Surveillance = Relating to Crime/Security

Surveillance doesn't have to be linked to crime or national security

Marx 5 (Gary T, Prof Emeritus @ MIT, "Surveillance and Society," Encyclopedia of Social Theory, http://web.mit.edu/gtmarx/www/surandsoc.html)

An organized crime figure is sentenced to prison based on telephone wiretaps. A member of a protest group is discovered to be a police informer. These are instances of traditional surveillance --defined by the dictionary as, "close observation, especially of a suspected person". **Yet surveillance goes far beyond its' popular association with crime and national security**. To varying degrees it is a property of any social system --from two friends to a workplace to government. Consider for example a supervisor monitoring an employee's productivity; a doctor assessing the health of a patient; a parent observing his child at play in the park; or the driver of a speeding car asked to show her driver's license. Each of these also involves surveillance. Information boundaries and contests are found in all societies and beyond that in all living systems. Humans are curious and also seek to protect their informational borders. To survive, individuals and groups engage in, and guard against, surveillance. Seeking information about others (whether within, or beyond one's group) is characteristic of all societies. **However the form, content and rules of surveillance vary considerably** --from relying on informers, to intercepting smoke signals, to taking satellite photographs.

A2 Surveillance = Direct Observation

Surveillance can be indirect

Sanchez 12 (Julian, research fellow at the Cato Institute, "Our Dishonest Debate over NSA Spying," http://webcache.googleusercontent.com/search?q=cache:dY6NHBLLmCwJ:www.cato.org/publications/commentary/our-dishonest-debate-over-nsa-spying+&cd=11&hl=en&ct=clnk&gl=us)

The other reason is less obvious: Under FISA, as former Assistant Attorney General David Kris explains in his definitive treatise on the law, the "target" of surveillance is defined as the "entity about whom or from whom information is sought," **which is not necessarily the person against whom surveillance is "physically directed**." Moreover, a FISA "target" can be a group or organization — like Al Qaeda or, for that matter, Wikileaks — rather than an individual human being. Under these technical definitions, Kris writes, the requirement that surveillance have a "foreign target" wouldn't necessarily prevent the NSA from vacuuming up the contents of American citizens' e-mail accounts in search of information about a foreign group.

Examples of Surveillance

Electronic surveillance definition

US Code 15 [UNITED STATES CODE SERVICE¶ Copyright © 2015 Matthew Bender & Company, Inc.¶ a member of the LexisNexis Group (TM)¶ All rights reserved.¶ *** Current through PL 114-13, approved 5/19/15 ***¶ TITLE 50. WAR AND NATIONAL DEFENSE ¶ CHAPTER 36. FOREIGN INTELLIGENCE SURVEILLANCE ¶ ELECTRONIC SURVEILLANCE; § 1801. Definitions [Caution: See prospective amendment note below.]]

(f) **"Electronic surveillance**" means--¶ (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;¶ (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18, United States Code;¶ (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or¶ (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Directed surveillance definition

Norton-Taylor 9 [National: Councils still breaking surveillance laws: Total of 10,000 snooping missions carried out: Commissioner expresses 'significant concern'¶ BYLINE: Richard Norton-Taylor and Tom Roberts¶ SECTION: GUARDIAN HOME PAGES; Pg. 12¶ LENGTH: 633 words; Lexis]

"Directed surveillance" is defined as "covert surveillance of individuals while in a public place for the purposes of a specific investigation". Such surveillance can be used only for the "protection or detection of crime or of preventing disorder".

Health surveillance definition

Mason 8 [Occupational Health¶ October 10, 2008¶ Uncovering dementia¶ BYLINE: Jenny Mason; Jenny Mason RGN BSc (Hons)Dip(OH) is an occupational health nurse¶ ; Lexis]

Routine medical assessments for employees exposed to specific hazards in the workplace for either statutory requirements or when clinically indicated are relatively common in OH. Health surveillance is defined by the Health and Safety Executive (HSE) as being about implementing systematic, regular and appropriate procedures to detect early signs of work-related ill health among staff exposed to certain risks2.

Immigration surveillance

Kalhan 14 [Anil Kalhan, Immigration Surveillance, 74 Md. L. Rev. 1 (2014)¶ Available at: http://digitalcommons.law.umaryland.edu/mlr/vol74/iss1/2]

These four sets of migration and mobility surveillance functions—¶ identification, screening and authorization, mobility tracking and control,¶ and information sharing—play crucial but underappreciated roles in¶ immigration control processes across the entire spectrum of migration and¶ travel. In

the growing number of contexts in which immigration control¶ activities now take place, enforcement actors engage in extensive¶ collection, storage, analysis, and dissemination of personal information, in¶ order to identify individuals, screen them and authorize their activities,¶ enable monitoring and control over their travel, and share information with¶ other actors who bear immigration control responsibilities. Initially¶ deployed for traditional immigration enforcement purposes, and expanded¶ largely in the name of security, these **surveillance technologies** and¶ processes are qualitatively remaking the nature of immigration governance,¶ as a number of examples illustrate.

Racial profiling is surveillance

Khalek 13 (Rania, Independent journalist + columnist @ Truthout + "Activists of Color Lead Charge Against Surveillance, NSA," http://webcache.googleusercontent.com/search?q=cache:-gFmSQAgmNQJ:www.truth-out.org/news/item/19695-activists-of-color-at-forefront-of-anti-nsa-movement+&cd=1&hl=en&ct=clnk&gl=us)

"We been exposed to this type of surveillance since we got here," declared Kymone Freeman, director of the National Black LUV Fest as he emceed the historic rally against NSA surveillance in Washington, DC. He continued, "Drones is a form of surveillance. **Racial profiling is a form of surveillance. Stop-and-frisk is a form of surveillance**. We all black today!"

Examples of NOT Surveillance

Monitoring is not surveillance – here's a list of things they allow

Fuchs 11 [Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media¶ Studies; "How to Define Surveillance"; July/Dec 2011; http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347]

Here are some examples of monitoring that are not forms of surveillance:¶ *consensual online video sex chat of adults;¶ * parents observing their sleeping sick baby with a camera or babyphone in order to see if it needs¶ their help;¶ * the permanent electrocardiogram of a cardiac infarction patient;¶ * the seismographic early detection of earthquakes;¶ * the employment of the DART system (Deep-ocean Assessment and Reporting of Tsunamis) in¶ the Pacific Ocean, the Atlantic Ocean, and the Caribbean Sea for detecting tsunamis;¶ * the usage of a GPS-based car navigation system for driving to an unknown destination;¶ * the usage of a fire detector and alarm system and a fire sprinkling system in a public school;¶ * drinking water quality measurement systems;¶ * the usage of smog and air pollution warning systems;¶ * the activities of radioactivity measuring stations for detecting nuclear power plant disasters;¶ * systems for detecting and measuring temperature, humidity, and smoke in forest areas that are¶ prone to wildfires;¶ * measurement of meteorological data for weather forecasts.

Random Helpful Cards

Limits Impacts

Limits outweigh – they're the vital access point for any theory impact – its key to fairness – huge research burdens mean we can't prepare to compete – and its key to education – big topics cause hyper-generics, lack of clash, and shallow debate – and it destroys participation

Rowland 84 (Robert C., Prof of Comm @ Kansas and former Debate Coach – Baylor University, "Topic Selection in Debate", American Forensics in Perspective, Ed. Parson, p. 53-54)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called "NDT" programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience "negophobia,"7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: "Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament."8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that "broad topics discourage participation because of insufficient time to do requisite research."10 The final effect may be that **entire programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: "It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate."11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

Precision Impacts

Imprecise definitions tank aff solvency

Dunlap 12 (Justine, Prof of Law @ Univ. of Massachusetts-Dartmouth, "Intimate Terrorism and Technology: There's an App for That," http://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1001&context=umlr)

Although these terms are capable of definition, they are inherently inexact. The vast fluidity in the definitions has **created problems crafting legal responses such as appropriate legislation, where the clear definition** of terms is **critical to proper application of the law** to cover its intended purpose.47 Also, technology can transform common items, such as a telephone, with new uses that stretch the law. In one case, an appellate court refused to sustain a conviction for harassing telephone calls because, although a telephone was used, the messages came via text. Texting was beyond the meaning of the statute.48 Thus, harassing telephone calls were illegal, but the same texted content via the same device (a telephone) was not.

Precisely defining surveillance is key to topic education

Fuchs 11 [Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media¶ Studies; "How to Define Surveillance"; July/Dec 2011; http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347]

Given the circumstance that there is much public talk about surveillance and surveillance¶ society, **it is an important task for academia to discuss and clarify the meaning of these terms**¶ because academic debates to a certain extent inform and influence public and political¶ discourses. The **task of this paper is to explore compare ways of defining surveillance**. In order¶ to give meaning to concepts that describe the realities of society, social theory is needed.¶ Therefore social theory is employed in this paper for discussing ways of defining surveillance.¶ "Living in 'surveillance societies' may throw up challenges of a fundamental – ontological –¶ kind" (Lyon, 1994, p. 19). Social philosophy is a way of clarifying such ontological questions that¶ concern the basic nature and reality of surveillance.

Blacks Law Good

Prefer Black's – the premier legal dictionary

Casell and Hiremath 11 (Kay Ann and Uma, Director, Master of Library and Information Science Program/Assistant Teaching Professor @ Rutgers and Executive Director at the Ames Free Library--Massachusetts/PhD in PoliSci @ Pitt, , Reference and Information Services: An Introduction, p. 187)

Currently in its ninth edition, the invaluable Black's Law Dictionary was first published in 1891 under the stewardship of English legalist Henry Campbell Black. **It is reportedly the most cited law dictionary in the country** and covers more than 45,000 definitions. A large number of the entries are cross-referenced to cases in the Corpus Juris Secundum to aid further research. The last edition also provides a useful appendix of more than 4,000 legal abbreviations and another on legal maxims. Pronunciations of arcane legalese such as the feudal "feoffee" are provided, as well as equivalent terms and alternate spellings for more than 5,300 terms and senses. A pocket, an abridged, and a deluxe edition of the dictionary are also available. The dictionary is available as a digital dictionary that can be integrated with individual word processors and web browsers and is searchable on Westlaw. It is also available as an app for iPhones, iPads, and iPods, and Androids.

Prefer Black's – it's the definitive legal authority on terms

Spector 6 (Jessica, PhD Philosophy @ Univ. of Chicago, Prostitution and Pornography: Philosophical Debate about the Sex Industry, p. 420)

In addition to being a **definitive source** for Anglo-American legal terminology and phrasing, Black's is sometimes itself cited as **legal authority** [Originally published as Dictionary of Law, Containing Definitions of Terms and Phrases of American and English Jurisprudence, Ancient and Modern, 1891, by Henry Campbell Black (1st edition).]

Ballentines Good

Prefer Ballentine's – key to legal precision

Casell and Hiremath 11 (Kay Ann and Uma, Director, Master of Library and Information Science Program/Assistant Teaching Professor @ Rutgers and Executive Director at the Ames Free Library--Massachusetts/PhD in PoliSci @ Pitt, , Reference and Information Services: An Introduction, p. 187)

With more than 10,000 definitions of over 5,000 legal terms defined with phonetic pronunciations, Ballentine's Law Dictionary has been a popular alternative to Black's. An all-important case citation, from which a particular definition derives authority, is also supplied, thereby providing a starting point of research for many users. It is particularly useful in its coverage of old Saxon, French, and Latin phrases. The Ballentine's Legal Dictionary and Thesaurus combines the dictionary with a thesaurus for legal research and writing so that synonyms, antonyms, and parts of speech are also attached to each definition, **making for a more exact understanding of each legal term**. The appendix includes The Chicago Manual of Legal Citation and a guide to doing research.

Words and Phrases Good

Prefer Words and Phrases - it's the most detailed legal dictionary

University of Minnesota Law Library 5 ("Sources for Finding General Explanations of the Law - Legal Encyclopedias, Dictionaries & Restatements of the Law," https://library.law.umn.edu/researchguides/dictionaries-encyclopedias-restatements.html)

Another source that has some features of a legal dictionary is West's Words and Phrases (Law Library Reference KF 156 .W6712). This is a multiple volume set which reprints parts of court opinions that define legal terms. It is arranged alphabetically by the terms being defined. **It is much more detailed than either Black's or Ballentine's** and should be used for locating definitions only if more detailed information is necessary.

Merriam-Websters Good

Our definition is best – Merriam Webster's is the most well-respected dictionary

Mandl 87 (Dave, Freelance writer/journalist + Editor at large @ Semiotext(e)/Autonomedia, "Putting the Dick in Dictionary," http://wfmu.org/~davem/docs/dictionary.html)

While eight bits may not seem like much to pay for "a comprehensive guide to the English language," a lexicon that promises to "improve the language skills of homemakers, students, and professionals," the slim paperback known as the New Concise Webster's (and published by Modern Publishing, NYC) is as likely to meet your dictionary needs as a plate of ravioli. The name, undoubtedly used in an attempt to dupe the inexperienced dictionary buyer, is of course meaningless: "Webster's," like "Roget's," is in the public domain, and ironically, when used on anything but the **well-respected Merriam-Webster** and Webster's New World dictionaries, is a **virtual guarantee of an inferior product**. Not that you need any extra clues in the case of the NCW: unidentified mystery symbols, ultra-minimalist definitions that give new meaning to the word concise (just as well, since it isn't defined in the dictionary), and an entry-count barely into five figures make this a reference book you'll want to hide well when company comes over. Although the editors of the NCW shun all unnecessary frills--like syllabifications and etymologies of any kind--to focus all their energy on definitions, the dictionary will probably not have rival definers flying into a jealous rage. Terseness is valued by all lexicographers, but the NCW takes the idea perhaps one step too far. For example, flute is defined, somewhat ambiguously, as "a musical instrument which you blow." This doesn't cause any real conflicts, since the editors omit piccolo, oboe, and flugelhorn, and thus save themselves some fancy explaining. But the pithy definition of food--"what you eat"--is more troublesome. Given such vague guidelines, a well-meaning boy scout putting together a CARE package for Iranian earthquake victims, for example, might be fooled into including anything from a tab of acid to--well, use your imagination. And how will devotees of Ultra Slim-Fast and Carnation Instant Breakfast feel about having their favorite foods implicitly excluded? Other definitions are so misleadingly simple as to be alarmist ("a small animal that flies at night" = bat) or downright dangerous ("red spots on the skin" = rash). In an apparent effort not to offend or intimidate any potential customers, the editors of the NCW scrupulously avoid dealing with some of the more controversial issues and concepts of our time. Existence is defined simply as "being"; the definition of time is given as "minutes, hours, days, weeks, months, years"; and zero is "the number 0." The complexities of capital, even in the nerve center of world finance that is apparently the dictionary's primary market, are easily evaded: it's either "the chief city of a country" or "a large letter." Entries for sex (except in the harmless "gender" sense) and abortion are conspicuously absent. And while god is spelled with a lower-case g, this can (very plausibly) be attributed to sloppy typesetting. Those with exotic tastes may not be able to resist skipping directly to the "X" section, but they're sure to be disappointed: the lone entry for the letter is x-ray--no xenon, xenophobia, xanthoma, or even Xmas. Missing too is xylophone, though this is easily explained: its definition ("a musical instrument which you hit"?) would have conflicted with that of drum. Also of interest to curiosity-seekers is the word set: well known for having the longest entry in the massive Oxford English Dictionary, it towers over most entries in the NCW as well, filling no less than half of one its large-print, two-inch-wide columns (though this does include the accompanying line drawings). And in a quaint Anglophilic touch, the word queue (noun and verb) is included, an extravagant move for a dictionary that omits gel, compact, and tuna. The pronunciations in the NCW are generally accurate, though with so few words of more than two syllables there isn't much of a challenge. The occasional foray into polysyllabic territory sometimes proves to be more than the dictionary can handle: overnight is listed as rhyming with knit, for example; environment's r is stuck in the wrong place and its n is omitted altogether. (The inclusion of the shwa--a valuable symbol neglected even by some of the best dictionaries--is a pleasant surprise, however.) And just what do the little circles next to about half the entries mean? There's not a clue in the Guide on pages 4 and 5. The NCW, in short, is a staggeringly bad dictionary. Its main strength, of course, is its $1 street price (its official cover price is actually $3.95), but if you want a dictionary that doesn't underestimate the intelligence of even first-graders (as this one does) you're better off--much better off--doing without breakfast for a week and **picking up Merriam-Webster**, the American Heritage, or Webster's New World. Those for whom money is no object may prefer Webster's Third New International ($89) or the awesome twenty-volume OED ($2500), and that's their right--the important thing is to leave the mountains of the New Concise Webster's for degenerate Wall Street professionals and those foolish enough to buy books from street vendors with licenses.

Lyon Prodict

Prefer Lyon – deep in the surveillance lit

Queens University 15 ["David Lyon"; no date but Accessed May 2015; http://www.queensu.ca/sociology/people/faculty/david-lyon]

David Lyon's research, writing, and teaching interests revolve around major social transformations in the modern world. Questions of the information society, globalization, secularization, surveillance, and postmodernity all feature prominently in his work.¶ **Surveillance Studies has been Lyon's major research area for the past 20 years**. He brings a sociological perspective to bear on the issues raised by personal data processing in a database-dependent world. His surveillance interests include border and airport controls, social media, organizational routines, video camera surveillance and, especially, citizen registration and identification systems. His concerns include, prominently, the social sorting capacities of contemporary surveillance, along with an exploration of their ethics and politics.¶ While he is best known for his work in Surveillance Studies, David Lyon's research and writing span several other areas as well. Starting in Historical Sociology in the 1970s, his early work was on secularization processes – and the critique of some key theories -- in the modern world. Today, he tries to keep abreast of debates over the "post-secular" with an emphasis on the work of Charles Taylor. Following this, his main research directions explore other forms of social transformation that are both characteristic and constitutive of modernity.

NSA = Heart of Topic

NSA surveillance restrictions are the core of the topic – context proves

ProPublica 13 [by Jonathan Stray, Special to ProPublica, Aug. 5, 2013, 3:20 p.m.; "FAQ: What You Need to Know About the NSA's Surveillance Programs"; http://www.propublica.org/article/nsa-data-collection-faq]

Is all of this legal?¶ Yes, assuming the NSA adheres to the restrictions set out in recently leaked court orders. By definition, the Foreign Intelligence Surveillance Court decides what it is legal for the NSA to do. But this level **of domestic surveillance wasn't always legal**, and the NSA's domestic surveillance program has been found to violate legal standards on more than one occasion.¶ The NSA was gradually granted the authority to collect domestic information on a massive scale through a series of legislative changes and court decisions over the decade following September 11, 2001. See this timeline of loosening laws. The Director of National Intelligence says that authority for PRISM programs comes from section 702 of the Foreign Intelligence Surveillance Act and the Verizon metadata collection order cites section 215 of the Patriot Act. The author of the Patriot Act disagrees that the act justifies the Verizon metadata collection program.¶ The NSA's broad data collection programs were originally authorized by President Bush on October 4, 2001. The program operated that way for several years, but in March 2004 a Justice Department review declared the bulk Internet metadata program was illegal. President Bush signed an order re-authorizing it anyway. In response, several top Justice Department officials threatened to resign, including acting Attorney General James Comey and FBI director Robert Mueller. Bush backed down, and the Internet metadata program was suspended for several months. By 2007, all aspects of the program were re-authorized by court orders from the Foreign Intelligence Surveillance Court.¶ In 2009, the Justice Department acknowledged that the NSA had collected emails and phone calls of Americans in a way that exceeded legal limitations.¶ In October 2011, the Foreign Intelligence Surveillance Court ruled that the NSA violated the Fourth Amendment at least once. The Justice Department has said that this ruling must remain secret, but we know it concerned some aspect of the "minimization" rules the govern what the NSA can do with domestic communications. The Foreign Intelligence Surveillance Court recently decided that this ruling can be released, but Justice Department has not yet done so.¶ Civil liberties groups including the EFF and the ACLU dispute the constitutionality of these programs and have filed lawsuits to challenge them.

Depth O/W Breadth

Depth is more educational than breadth --- studies prove

WP 9 (Washington Post, "Will Depth Replace Breadth in Schools?" http://voices.washingtonpost.com/class-struggle/2009/02/will_depth_replace_breadth_in.html)

The truth, of course, is that students need both. Teachers try to mix the two in ways that make sense to them and their students. But a surprising study — certain to be a hot topic in teacher lounges and education schools — is providing new data that suggest educators should spend much more time on a **few issues** and **let some topics slide**. Based on a sample of 8,310 undergraduates, the national study says that students who spend at least a month on just one topic in a high school science course get better grades in a freshman college course in that subject than students whose high school courses were more balanced. The study, appearing in the July issue of the journal Science Education, is "Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework." The authors are Marc S. Schwartz of the University of Texas at Arlington, Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics and Robert H. Tai of the University of Virginia. This is more rich ore from a goldmine of a survey Sadler and Tai helped organize called "Factors Influencing College Science Success." It involved 18,000 undergraduates, plus their professors, in 67 colleges in 31 states. The study weighs in on one side of a contentious issue that will be getting national attention this September when the College Board's Advanced Placement program unveils its major overhaul of its college-level science exams for high school students. AP is following a direction taken by its smaller counterpart, the International Baccalaureate program. IB teachers already are allowed to focus on topics of their choice. Their students can deal with just a few topics on exams, because they have a wide choice of questions. AP's exact approach is not clear yet, but College Board officials said they too will embrace depth. They have been getting much praise for this from the National Science Foundation, which funded the new study. Sadler and Tai have previously hinted at where this was going. In 2001 they reported that students who did not use a textbook in high school physics—an indication that their teachers disdained hitting every topic — achieved higher college grades than those who used a textbook. Some educators, pundits, parents and students will object, I suspect, to sidelining their favorite subjects and spending more time on what they consider trivial or dangerous topics. Some will fret over the possibility that teachers might abandon breadth altogether and wallow in their specialties. Even non-science courses could be affected. Imagine a U.S. history course that is nothing but lives of generals, or a required English course that assigns only Jane Austen. "Depth Versus Breadth" analyzes undergraduate answers to detailed questions about their high school study of physics, chemistry and biology, and the grades they received in freshman college science courses. The college grades of students who had studied at least one topic for at least a month in a high school science course were compared to those of students who did not experience such depth. The study acknowledges that the pro-breadth forces have been in retreat. Several national commissions have called for more depth in science teaching and other subjects. A 2005 study of 46 countries found that those whose schools had the best science test scores covered far fewer topics than U.S. schools.

Especially for high school students

SD 9 (Science Daily, "Students Benefit From Depth, Rather Than Breadth, In High School Science Courses", http://www.sciencedaily.com/releases/2009/03/090305131814.htm)

A recent study reports that **high school** students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. The study relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic. The study explored differences between science disciplines, teacher decisions about classroom activities, and out-of-class projects and homework. The researchers carefully controlled for differences in student backgrounds. The study also points out that standardized testing, which seeks to measure overall knowledge in an entire discipline, may not capture a student's high level of mastery in a few key science topics. Teachers who "teach to the test" may not be optimizing their students' chance of success in college science courses, Tai noted. "President Obama has challenged the nation to become the most educated in the world by having the largest proportion of college graduates among its citizens in the coming decade," Tai said. "To meet this challenge, it is imperative that we use the research to inform our educational practice." The study was part of the Factors Influencing College Science Success study, funded by the National Science Foundation.

A2 Aff Flexibility Good

Strict limits *enable* creativity. Beauty emerges from identifying constraints and working within them.

Flood 10 (Scott, BS in Communication and Theatre Arts – St. Joseph's College, School Board Member – Plainfield Community School Corporation, and Advertising Agent, "Business Innovation – Real Creativity Happens Inside the Box", http://ezinearticles.com/?Business-Innovation---Real-Creativity-Happens-Inside-the-Box&id=4793692)

It seems that we can accomplish anything if we're brave enough to step out of that bad, bad box, and thinking "creatively" has come to be synonymous with ignoring rules and constraints or pretending they just don't exist. **Nonsense.** Real creativity is put to the test within the box. In fact, that's where it really shines. It might surprise you, but it's actually easier to think outside the box than within its confines. How can that be? It's simple. When you're working outside the box, you don't face rules, or boundaries, or assumptions. You create your own as you go along. If you want to throw convention aside, you can do it. If you want to throw proven practices out the window, have at it. You have the freedom to create your own world. Now, I'm not saying there's anything wrong with thinking outside the box. At times, it's absolutely essential - such as when you're facing the biggest oil spill in history in an environment in which all the known approaches are failing. But most of us don't have the luxury of being able to operate outside the box. We've been shoved into reality, facing a variety of limitations, from budgets, to supervisors' opinions and prejudices, to the nature of the marketplace. Even though the box may have been given a bad name, it's where most of us have to spend our time. And no matter how much we may fret about those limits, inside that box is where we need to prove ourselves. If you'll pardon the inevitable sports analogy, consider a baseball player who belts ball after ball over 450 feet. Unfortunately, he has a wee problem: he can't place those hits between the foul lines, so they're harmful strikes instead of game-winning home runs. To the out-of-the-box advocates, he's a mighty slugger who deserves admiration, but to his teammates and the fans, he's a loser who just can't get on base. He may not like the fact that he has to limit his hits to between the foul poles, but that's one of the realities of the game he chose to play. The same is true of ideas and approaches. The most dazzling and impressive tactic is essentially useless if it doesn't offer a practical, realistic way to address the need or application. Like the baseball player, we may not like the realities, but we have to operate within their limits. Often, I've seen people blame the box for their inability or unwillingness to create something workable. For example, back in my ad agency days, I remember fellow writers and designers complaining about the limitations of projects. If it was a half-page ad, they didn't feel they could truly be creative unless the space was expanded to a full page. If they were given a full page, they demanded a spread. Handed a spread, they'd fret because it wasn't a TV commercial. If the project became a TV commercial with a $25,000 budget, they'd grouse about not having a $50,000 budget. Yet the **greatest artists** of all time didn't complain about what they didn't have; they worked their magic using what they did. Monet captured the grace and beauty of France astonishingly well within the bounds of a canvas. Donatello exposed the breathtaking emotion that lurked within ordinary chunks of marble. And I doubt that Beethoven ever whined because there were only 88 keys on the piano. Similarly, I've watched the best of my peers do amazing things in less-than-favorable circumstances. There were brilliant commercials developed with minimal budgets and hand-held cameras. Black-and-white ads that outperformed their colorful competitors. Simple postcards that grabbed the attention of (and business from) jaded consumers. You see, real creativity isn't hampered or blocked by limits. It actually flowers in response to challenges. Even though it may be forced to remain inside the box, it leverages everything it can find in that box and makes the most of every bit of it. **Real creativity** is driven by a **need** to create. When Monet approached a blank canvas, it's safe to say that he didn't agonize over its size. He wanted to capture something he'd seen and share how it looked through his eyes. The size of the canvas was incidental to his talent and desire. Think about the Apollo 13 mission. NASA didn't have the luxury of flying supplies or extra tools to the crew. They couldn't rewrite the laws of physics. Plus, they faced a rapidly shrinking timeline, so their box kept getting smaller and less forgiving. And yet they arrived upon a solution that was creative; more important, that was successful. The next time someone tells you that the real solution involves stepping outside the box, **challenge him or her to think and work harder**. After all, the **best solution** may very well be lurking in a corner of that familiar box.

Random Card for K Aff

This card is also good vs. untopical K affs as a topical version of the Aff…

Fuchs 11 [Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media¶ Studies; "How to Define Surveillance"; July/Dec 2011; http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347]

Surveillance or the panopticon secretly prepares "a knowledge of man" (Foucault, 1977, p.¶ 171), knowledge about "whether an individual" is "behaving as he should, in accordance with¶ the rule or not" (Foucault, 1994, p. 59). It is "permanent, exhaustive, omnipresent" (Foucault,¶ 1977, p. 214). Surveillance is based on "a principle of compulsory visibility" that is exercised¶ through the invisibility of disciplinary power (p. 187), it "must see without being seen" (p. 171),¶ is "capable of making all visible, as long as it could itself remain invisible" (p. 214), it is a¶ "system of permanent registration" (p. 196) in which "all events are recorded" (p. 197), a¶ "machine for dissociating the see/being seen dyad" (p. 202). "One is totally seen, without ever¶ seeing" (p. 202). "He is seen, but he does not see; he is the object of information, never a subject¶ in communication" (p. 200). "We live in a society where panopticism reigns" (Foucault 1994, p.¶ 58). For Foucault, **surveillance is inherently coercive and dominative – negativity is¶ surveillance's pure immanence.**

Topicality– MSDI

Resolved:

The word "resolved" means the ballot is a reflection of the governments firm decision to take action

Mac Millian Dictionary 2015 ,

http://www.macmillandictionary.com/us/dictionary/american/resolve_1

Resolve: [INTRANSITIVE] to make a formal decision, usually after a discussion and a vote at a meeting, to resolve to do something: To make a decision: to make a firm decision to do something [TRANSITIVE] to solve a problem, or to find a satisfactory way of dealing with a disagreement.

"Resolved" means the government will take action – best definition for the role playing of debate

Oxford English dictionary 2015 ,

http://www.oxforddictionaries.com/us/definition/american_english/resolved

Resolved: Firmly determined to do something:

"Resolved" means a decision is made and action is taken

Meriam Webster Dictionary 2015, http://www.merriam-webster.com/dictionary/resolved

5 : to reach a firm decision about <resolve to get more sleep> <resolve disputed points in a text> 6a : to declare or decide by a formal resolution and vote; b : to change by resolution or formal vote <the house resolved itself into a committee>

"Resolved" doesn't require certainty

Webster's 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

"Resolved" doesn't require immediacy

Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: "To form a purpose; to make a decision; especially, **to determine after reflection**; as, to resolve on a better course of life."

In policy-related contexts, 'resolved' denotes a proposal to be enacted by law

Words and Phrases 1964 Permanent Edition

> Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

The

"The" is a function word before nouns:

.com. **Merriam-Webster**, n.d. Web. **12 Aug. 2014**. <http://www.merriam-webster.com/dictionary/the>

-used as a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance -used as a function word before the name of a branch of human endeavor or proficiency -used as a function word before a proper name -used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

"The" is used to indicate uniqueness or generalness

Collins COBUILD English Usage.

(1992, 2011, **2012).** Retrieved August 12 2014 from http://www.thefreedictionary.com/the

-Used to indicate uniqueness -Used before a singular noun indicating that the noun is generic - used preceding titles and certain uniquely specific or proper nouns, such as place names

"The" indicates prior knowledge

Oxford English Dictionary 2015,

http://www.oxforddictionaries.com/us/definition/american_english/the

Denoting one or more people or things already mentioned or assumed to be common knowledge:

United States Federal Government

In order to be constitutional, "United States Federal Government" action requires all 3 branches

The US Government's Official Web Portal, May 11th, 2015,
http://www.usa.gov/Agencies/federal.shtml

The Constitution of the United States divides the federal government into three branches to ensure a central government in which no individual or group gains too much control: Legislative – Makes laws (Congress) Executive – Carries out laws (President, Vice President, Cabinet) Judicial – Evaluates laws (Supreme Court and Other Courts) Each branch of government can change acts of the other branches as follows: The president can veto laws passed by Congress. Congress confirms or rejects the president's appointments and can remove the president from office in exceptional circumstances. The justices of the Supreme Court, who can overturn unconstitutional laws, are appointed by the president and confirmed by the Senate. The U.S. federal government seeks to act in the best interests of its citizens through this system of checks and balances.

"United States Federal Government" Refers to the 3 branches of the government of the United States of America

Oxford English dictionaries 2015,
http://www.oxfordlearnersdictionaries.com/us/definition/english/federal-government

(in the US) the system of government as defined in the Constitution which is based on the separation of powers among three branches: the executive, the legislative and the judicial.

National gov't, not the states

Black's Law 99 (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

The "US Federal Government" is the government as set forth in the constitution of the United States Federal Government – if the aff violates the constitution, it is not being the United States Federal Government.
US Legal Definition, 2015, http://definitions.uslegal.com/u/united-states-federal-government/

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and 'checks and balances' for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

"Federal Government" includes agencies

Words and Phrases, 200**4**, Cummulative Supplementary Pamphlet, v. 16A, p. 42

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the "Federal Government" for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government's consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

United States

“United States” applies to the country that occupies most of the southern half of North America.

Oxford English Dictionary (No Date)

-A country that occupies most of the southern half of North America as well as Alaska and the Hawaiian Islands; population 304,059,724 (est. 2008); capital, Washington, DC. Full name United States of America.

"United States." Refers a nation that is a collection of states

Merriam-Webster.com.

Merriam-Webster, n.d. Web. **13 Aug. 2014**. <http://www.merriam-webster.com/dictionary/United States>.

-a federation of states especially when forming a nation in a usually specified territory

“United States” Legal Definition, includes all territory under US control, land or otherwise.

U.S. Code › Title 18 › Part I › Chapter 1 › § 5

-The term “United States”, as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

Should

"Should." Requires an obligation
Merriam-Webster.com.

Merriam-Webster, n.d. Web. **13 Aug. 2014**. http://www.merriam-webster.com/dictionary/should

—used in auxiliary function to express obligation, propriety, or expediency —used in auxiliary function to express what is probable or expected

"Should", indicates a desirable state
Oxford English Dictionary (No Date)

-Used to indicate obligation, duty, or correctness -Indicating a desirable or expected state"

"Should" means ought to
The American Heritage® Dictionary of the English Language

, Fourth Edition. **(2003)**

-used with a similar meaning to 'ought to' and sometimes with a similar meaning to 'would'

"Should" implies mandatory action
Words and Phrases, 19**53**, Vol. 39, p. 312.

Command implied. The word "should," as used in Laws 1901, p. 387, c 106, 3, providing that, on proof of certain facts to the county court, it shall be determined whether territory should be disconnected from a city, does not authorize the court to do as it pleases; the statute is mandatory.

"Should" is unconditional- it requires an obligation of action
Collins Essential English Dictionary, 200**6**

[Second edition, "should," http://www.thefreedictionary.com/should,]

the past tense of shall: used to indicate that an action is considered by the speaker to be obligatory (you should go) or to form the subjunctive mood (I should like to see you; if I should die; should I be late, start without me) [Old English sceolde]

Substantially

"substantial" action means significant and essential action
Oxford English Dictionaries 2015,
http://www.oxforddictionaries.com/us/definition/american_english/substantially

To a great or significant extent: For the most part; essentially:

"Substantially" means great in size and number – means topical affs must repeal whole legislation, not just individual sections.
Meriam Webster Dictionary 2015, http://www.merriam-webster.com/dictionary/substantial

Substantially: large in amount, size, or number

"Substantially" means to change the fundamental purpose of the domestic surveillance, not just attributes of it.
Collins Dictionary 2015, http://www.collinsdictionary.com/dictionary/english/substantial

Adjective: of a considerable size or value ⇒ substantial funds worthwhile; important ⇒ a substantial reform having wealth or importance (of food or a meal) sufficient and nourishing solid or strong in construction, quality, or character ⇒ a substantial door real; actual; true ⇒ the evidence is substantial of or relating to the basic or fundamental substance or aspects of a thing (philosophy) of or relating to substance rather than to attributes, accidents, or modifications

"Substantially"
Random House, 2009

[Dictionary.com Unabridged Based on the Random House Dictionary, "Substantially," http://dictionary.reference.com/browse/substantially,]

sub·stan·tial [suhb-stan-shuhl]

–adjective 1. of ample or considerable amount, quantity, size, etc.: a substantial sum of money. 2. of a corporeal or material nature; tangible; real. 3. of solid character or quality; firm, stout, or strong: a substantial physique. 4. basic or essential; fundamental: two stories in substantial agreement. 5. wealthy or influential: one of the substantial men of the town. 6. of real worth, value, or effect: substantial reasons. 7. pertaining to the substance, matter, or material of a thing. 8. of or pertaining to the essence of a thing; essential, material, or important. 9. being a substance; having independent existence. 10. Philosophy. pertaining to or of the nature of substance rather than an accident or attribute. –noun 11. something substantial.

"Substantially"
American Heritage, 2009

[American Heritage Dictionary of the English Language, Fourth Edition, "Substantially," http://dictionary.reference.com/browse/substantially,]

sub·stan·tial (səb-stān'shəl) adj. 1. Of, relating to, or having substance; material. 2. True or real; not imaginary. 3. Solidly built; strong. 4. Ample; sustaining: a substantial breakfast. 5. Considerable in importance, value, degree, amount, or extent: won by a substantial margin. 6. Possessing wealth or property; well-to-do. n. 1. An essential. Often used in the plural. 2. A solid thing. Often used in the plural.

"Substantially" is at least 90%
Words and Phrases, 2005 (v. 40B, p. 329)

> N.H. 1949. The word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may be transferred to an employing unit which acquires the organization, trade, or business, or "substantially" all of the assets thereof, is an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but cannot be less than 90 per cent in the ordinary situation. R.L. c 218, § 6, subd. F, as added by Laws 1945, c.138, § 16.

Substantial is 50%- two examples
Smythe 10(Tom, engineer, http://www.co.lake.ca.us/Government/Directory/Water_Resources/Department_Programs/Flood_Management/Substantial_Damage_Improvement.htm, 6/15/2010, DA 6/21/11, OST)

> "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. "Substantial improvement" means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term

includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

Curtail

"Curtail" means putting restrictions on the actor (USFG)
Oxford English Dictionaries 2015,
http://www.oxforddictionaries.com/us/definition/american_english/curtail

Reduce in extent or quantity; impose a restriction on: 1.1 (curtail someone of) archaic Deprive someone of (something): I that am curtailed of this fair proportion

"curtail" in the resolution means to get rid of parts of domestic surveillance.
Meriam Webster Dictionary 2015, http://www.merriam-webster.com/dictionary/curtail

to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

"Curtail" means to make something last for a shorter period of time
Oxford Learner's Dictionary 2015,
http://www.oxfordlearnersdictionaries.com/us/definition/english/curtail

curtail something (formal) to limit something or make it last for a shorter time

"Curtail" means to reduce or limit
Collins Dictionary 2015, http://www.collinsdictionary.com/dictionary/english/curtail

English: curtail If you curtail something, you reduce or limit it. VERBThere are plans to curtail the number of troops being sent to the region.

"Curtail" means to END something
Hyper Dictionary 2015, http://www.hyperdictionary.com/dictionary/curtail

Terminate or abbreviate before its intended or proper end or its full extent; "My speech was cut short"; "Personal freedom is curtailed in many countries" To cut off the end or tail, or any part, of; to shorten; to abridge; to diminish; to reduce.

"Curtailing Domestic Surveillance" means legislation to reduce it
Ivan Eland, Huffington Post, Posted: 10/14/**2013** 3:13 pm EDT, We Don't Need More 'Spin' About NSA's Unconstitutional Domestic Snooping, We Need It Stopped, http://www.huffingtonpost.com/ivan-eland/nsa-domestic-spying_b_4097878.html

Jim Sensenbrenner (R-WI) and Senator Pat Leahy (D-VT) are making at least some effort to push back on empire, in favor of the republic, by attempting to curtail unconstitutional snooping on Americans. Sensenbrenner -- a co-author of the USA PATRIOT Act, which unfortunately originally authorized some of the unconstitutional spying -- has now had second thoughts and is drafting legislation to reduce domestic surveillance. Leahy, chairman of the Senate Judiciary Committee, has already drafted a bill to terminate NSA's ability to systematically suck in Americans' phone records. Such domestic surveillance should be eliminated, unless it falls strictly within the Constitution's requirement of obtaining a search warrant only if "probable cause" exists that a suspect has committed a crime. The republic's national security will hardly be compromised if the Constitution is followed, but the republic itself will be undermined if it is not.

Its

"Its", in the legal context of surveillance, must mean the US as the actor and the US's surveillance, this includes the Agencies of the Government.

Tim Cushing, June 9th, 2015, tech dirt, Surveillance Tech Company Sues US Government For Patent Infringement, https://www.techdirt.com/articles/20150603/09341831204/surveillance-tech-company-sues-us-government-patent-infringement.shtml, web.

[A] Small business that designs, installs and services digital video surveillance systems, 3rd Eye Surveillance, [has] sued the United States federal government for alleged patent infringement. The lawsuit, filed in the U.S. Court of Federal Claims, seeking damages exceeding $1 billion for unlawful use of the company's three video and image surveillance system patents – U.S. Patent Nos. 6,778,085, 6,798,344, and 7,323,980. The surveillance system patents are owned by Discovery Patents, LLC of Baltimore Maryland, who is also a Plaintiff in the case, and exclusively licensed by 3rd Eye Surveillance. In addition to contract work and direct sales, 3rd Eye also makes a bit of money litigating. This trio of patents, which have been successfully used against more than 10 municipalities and private businesses, allows for the provision of real-time surveillance video, audio recognition, facial recognition and infrared images to emergency responders and defense agencies. 3rd Eye is claiming the US government's wide-ranging "exploitation" of its unlicensed patents is worth $1 billion. The suit names several agencies directly, while holding the option to name others as needed. The Defendant is the United States of America, acting through its various agencies, including by way of example, and not limitation, the Department of Justice, the Department Of Homeland Security, USSTRATCOM, the Department of Defense, the United States Customs and Border Protection, the United States Army, the United States Navy, and the Defense Logistics Agency.

When it comes to surveillance, "its" means the US's surveillance

by **Anup Shah,** Monday, October 07, **2013**, Global Issues, Surveillance State: NSA Spying and more, http://www.globalissues.org/article/802/surveillance-state, web.

In addition, as the journal Foreign Policy revealed, the US spied on its own citizens as far back as the Vietnam War, including spying on two of its own sitting senior senators and prominent figures such as Martin Luther King, boxer Muhammad Ali, and others. This wasn't with congressional oversight, but at the White House's behest; an abuse of power, as the journal also noted.

"Its" indicates possession

Random House, 2009

[Dictionary.com Unabridged Based on the Random House Dictionary, "Its," http://dictionary.reference.com/browse/its]

Its –pronoun the possessive form of it (used as an attributive adjective): The book has lost its jacket. I'm sorry about its being so late.

"Its" indicates possession

American Heritage, 200**9**

[The American Heritage Dictionary of the English Language, Fourth Edition, "Its," http://dictionary.reference.com/browse/its]

its (ĭts) adj. The possessive form of it. Used as a modifier before a noun: The airline canceled its early flight to New York.

"Its"- its refers to the United States federal government, not a different actor

The **American Heritage** Dictionary of the English Language, Fourth Edition, **06**, http://dictionary.reference.com/browse/it, last visited 8-8-07

It- pron. 1. **Used to refer to that one previously mentioned.**

"Its" means the actor of the resolution must be singular

Modeleski, Account for Better Citizenship founder, 5-28-19**92**

[Mitch, memo to John Alden, "Sovereignty and the Matrix," http://www.supremelaw.org/copyrite/deoxy.org/fz/p.htm,]

There are three official definitions of "United States", only two of which are singular nouns (the nation and the federal zone). Using grammatical rules, the term "its jurisdiction" can only apply to the nation or to the federal zone, but not to the 50 States (because the 50 States are plural).

Its is in the resolution debaters from being the agent of the resolution

Michael **Maffie and** Steve **Mancuso**, Middle East topic authors, 3-1-0**7**, "Engaging the Middle East," http://www.cedatopic.com/Middle_East_07.pdf, 102,

A second function of "its" would be to limit the affirmative engagement to being directed from the United States government, not American businesses, individual persons (**debaters**) or NGO's.

Domestic

"Domestic" refers to one's own country – in the context of the resolution, the US is specified.

Cambridge Dictionary, 2015, http://dictionary.cambridge.org/us/dictionary/american-english/domestic

relating to a person's own country:

The president's domestic policy has been more successful than his foreign policy.

"domestic" in the resolution specifically outlaws international or foreign surveillance

Oxford English Dictionary 2015,

http://www.oxforddictionaries.com/us/definition/american_english/domestic

Existing or occurring inside a particular country; not foreign or international:

the current state of US domestic affairs

"Domestic"

Meriam Webster Dictionary, 2015, http://www.merriam-webster.com/dictionary/domestic

Full Definition of DOMESTIC 1 a : living near or about human habitations b : tame, domesticated <the domestic cat> 2 : of, relating to, or originating within a country and especially one's own country <domestic politics> <domestic wines> 3 : of or relating to the household or the family <domestic chores> <domestic happiness> 4 : devoted to home duties and pleasures <leading a quietly domestic life

"Domestic" in the resolution refers to The US not other Actors or other types of Surveillance

Mac Millan Dictionary 2015,

http://www.macmillandictionary.com/us/dictionary/american/domestic_1

Relating to the country being talked about, and **not** other countries.

“Domestic” Refers to what is at home
Collins Dictionary 2015, http://www.collinsdictionary.com/dictionary/english/domestic,

of or involving the home or family enjoying or accustomed to home or family life (of an animal) bred or kept by man as a pet or for purposes such as the supply of food of, produced in, or involving one's own country or a specific country

In the policy making sense, “domestic” refers to policy changes within the country of context – for the resolution, that’s the USA.
Cambridge Business Dictionary 2015,
http://dictionary.cambridge.org/us/dictionary/business-english/domestic-policy

the set of decisions that a government makes relating to things that directly affect the people in its own country: There's a focus on domestic policy, dealing with issues such as health care and education. Alternative energy sources are at the center of the domestic policy agenda. The debate focused mainly on domestic policies.

“Domestic” refers to internal affairs NOT international policies
US legal definition, 2015, http://definitions.uslegal.com/d/domestic-policy%20/

Domestic policy means a government’s policy decisions, programs, and actions that principally deal with internal matters, as opposed to relations with other nation-states. Domestic policy covers areas such as tax, social security, and welfare programs, environmental laws, and regulations on businesses and their practices.

“Domestic” policy this year should refer to issues of Homeland Security and the Patriot Act
The Miller Center, 2015, University of Virginia, http://millercenter.org/president/policy

Domestic policy is an umbrella term for a massive, unwieldy set of policy areas comprised of issues ranging from poverty, to environmental protection, to law enforcement, to labor-management relations. In recent years, the field has witnessed high-profile battles over health care insurance, prescription drug coverage, AIDS and stem cell research and development, educational accountability and testing, welfare reform, logging, drilling for oil, affirmative action, gay marriage, transportation safety, homeland security, and the USA Patriot Act.

Surveillance

"Surveillance" is the acts used to prevent crimes

Meriam Webster Dictionary 2015, http://www.merriam-webster.com/dictionary/surveillance

: the act of carefully watching someone or something especially in order to prevent or detect a crime

There are 5 types of surveillance to choose from – most open definition [no limits issue]

by **Ralph Heibutzki**, Demand Media, Chron **2015**, Types of Surveillance in Criminal Investigations, http://work.chron.com/types-surveillance-criminal-investigations-9434.html, web.

Electronic Monitoring Electronic monitoring, or wiretapping, refers to the surveillance of email, fax, Internet and telephone communications. Fixed Surveillance The fixed surveillance, or "stakeout," requires officers to surreptitiously observe people and places from a distance. Stationary Technical Surveillance In stationary technical surveillance, the investigator installs a hidden camera and recording equipment in a parked car. Three-Person Surveillance Three-person surveillance methods are more complex to run, but provide two bonuses, according to Palmiotto's book, "Criminal Investigation." Undercover Operations Undercover operations amount to another form of surveillance, but in this method the officer plays an active role in revealing criminal activities.

"Surveillance" is the observation of a group of people for the purpose of protection – 13 types.

World Systems Inc, 2010, Surveillance. Types of surveillance: cameras, telephones etc. - See more at: http://www.wsystems.com/news/surveillance-cameras-types.html#sthash.F7C0O1AZ.dpuf,

Surveillance is another word for monitoring of the behavior and activities of people, normally aimed at influencing, managing or protecting. In other words, surveillance is an ambiguous practice, which may create either positive or negative effects. Surveillance is sometimes done in a surreptitious manner. While it normally refers to observation of people or groups by government organizations, there are other types of surveillance like disease surveillance, which is monitoring the progress of a disease in a community. Types Include: 1. Postal services. 2. Computer surveillance. 3. Surveillance cameras. 4. Telephones. 5. Social network analysis. 6. Aerial surveillance. 7. Biometric surveillance. 8/ Data mining & profiling. 9. Human operatives. 10. Corporate surveillance. 11. Satellite imagery. 12. Identification and credentials. 13. Radio frequency identification and geolocation devices.

"Surveillance" is the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction.

Neil M. Richards, Prof Law @ Washington Univ; May **2013** (Harvard Law Review; 126 Harv. L. Rev. 1934; "Privacy and technology: The dangers of surveillance")

Reviewing the vast surveillance studies literature, Professor David Lyon concludes that surveillance is primarily about power, but it is also about personhood. n8 Lyon offers a definition of surveillance as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction." n9 Four aspects of this definition are noteworthy, as they expand our understanding of what surveillance is and what its purposes are. First, it is focused on learning information about individuals. Second, surveillance is systematic; it is intentional rather than random or arbitrary. Third, surveillance is routine - a part of the ordinary administrative apparatus that characterizes modern societies. n10 Fourth, surveillance can have a wide variety of purposes - rarely totalitarian domination, but more typically subtler forms of influence or control.

"Surveillance" in the legal sense is mainly electronic - and must be of US persons

Cornell University Law School, 50 U.S. Code § 1801 – Definitions, NO DATE, https://www.law.cornell.edu/uscode/text/50/1801

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511 (2)(i) of title 18; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

"Surveillance" refers to groups not individuals

US Legal Definition, 2015, http://definitions.uslegal.com/m/mass-surveillance/

Mass surveillance is the distributive close observation of an entire population, or a substantial fraction of the entire population. Nowadays governments perform mass surveillance of their citizens so as to protect citizens from dangerous groups such as terrorists, criminals, or political subversives and to maintain social control. The disadvantages of mass surveillance are that it often violates right to privacy and political and social freedoms of individuals. It is also argued that mass surveillance will result in the creation of a totalitarian state or Electronic Police State.

More types of "surveillance"

Gary T. Marx, 2002, Professor Emeritus, Massachusetts Institute of Technology,, What's New About the "New Surveillance"? Classifying for Change and Continuity*, http://www.surveillance-and-society.org/articles1/whatsnew.pdf

The last half of the 20th century has seen a significant increase in the use of technology for the discovery of personal information. Examples include video and audio surveillance, heat, light, motion, sound and olfactory sensors, night vision goggles, electronic tagging, biometric access devices, drug testing, DNA analysis, computer monitoring including email and web usage and the use of computer techniques such as expert systems, matching and profiling, data mining, mapping, network analysis and simulation. Control technologies have become available that previously existed only in the dystopic imaginations of science fiction writers. We are a surveillance society. As Yiannis Gabriel (forthcoming) suggests Weber's iron cage is being displaced by a flexible glass cage.

"Surveillance" has 4 catagories to fall under

Electronic Freedom Foundation, No date, Analysis of the Patriot Act, http://www.civilrights.ghazali.net/html/body_analysis.html

Expanded Surveillance With Reduced Checks and Balances. USAPA expands all four traditional tools of surveillance -- wiretaps, search warrants, pen/trap orders and subpoenas. Their counterparts under the Foreign Intelligence Surveillance Act (FISA) that allow spying in the U.S. by foreign intelligence agencies have similarly been expanded. This means:

"Surveillance" is broad – not targeted

Gary T. Marx, 2002, Professor Emeritus, Massachusetts Institute of Technology,, What's New About the "New Surveillance"? Classifying for Change and Continuity*, http://www.surveillance-and-society.org/articles1/whatsnew.pdf

One indicator of rapid change is the failure of dictionary definitions to capture current understandings of surveillance. For example in the Concise Oxford Dictionary surveillance is defined as "close observation, especially of a suspected person". Yet today many of the new surveillance technologies are not "especially" applied to "a suspected person". They are commonly applied categorically. In broadening the range of suspects the term "a suspected person" takes on a different meaning. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular time periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand.

Domestic Surveillance

"Domestic Surveillance" is of domestic citizens

ItLaw Wiki, 2015, http://itlaw.wikia.com/wiki/Domestic_surveillance

Domestic surveillance is the acquisition of nonpublic information concerning United States persons.

THE NSA is not "Domestic Surveillance"

Friends Committee on National Legislation, June 2006, Spying on Americans, http://fcnl.org/resources/newsletter/jun06/spying_on_americans/,

To bring intelligence collection in line with the Fourth Amendment's prohibition against unreasonable searches and seizures, the 1978 statute created a secret FISA court through which the government could obtain warrants for domestic surveillance. Under FISA, the government must present to this court evidence that it has probable cause to believe the person to be surveilled is an agent of a foreign power or is involved with an international terrorism organization. Congress defined the FISA procedure for procuring foreign intelligence as "the exclusive means by which electronic [domestic] surveillance … may be conducted." No one disputes that there are people within the United States who are suspected of ties with violent groups intent on attacking people in this country or who are agents of foreign powers. The NSA can electronically surveil such individuals by getting a warrant from the FISA court, thus abiding by the Fourth Amendment. Outside of the FISA process, **the NSA has no authority for domestic surveillance.**

"Domestic Surveillance" means electronic surveillance

Small 2008, http://everydaydebate.blogspot.com/2013/10/pf-november-2013-nsa-introduction-and.html,

Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has

been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as: [T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; by the NSA.

Due to FISA – Domestic Surveillance includes surveillance for foreign intelligence

RICHARD HENRY SEAMON. Professor, University of Idaho College of Law, spring **2008,** Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf, pages 454-456.

FISA prescribes "the exclusive means by which electronic surveillance [for foreign intelligence purposes]... may be conducted" in the United States.21 FISA's legislative history confirms that Congress intended FISA to govern all domestic electronic surveillance for foreign intelligence purposes.2 By enacting FISA in 1978, Congress intended to "prohibit the President, notwithstanding any inherent powers," from conducting domestic electronic surveillance for foreign intelligence purposes without complying with FISA. 6

"Domestic Surveillance" includes the following acts of the USFG

Mark Lerner, American Policy Center, **August 05, 2014**, The Chilling Effect of Domestic Spying, http://americanpolicy.org/2014/08/05/the-chilling-effect-of-domestic-spying/

The good news is now that the Snowden revelations have revealed to a large degree the domestic surveillance taking place, the public knows more about what OUR government is doing. The bad news is the chilling effect creating a surveillance state has on a representative form of government. The chilling effect can be simply defined as the way in which people alter or modify their behavior to conform to political and social norms as a result of knowing or believing they are being observed. The observation can be from physical surveillance, telephone meta data being collected, emails being intercepted and read, search engine requests being maintained, text messages being read and stored, financial transactions being monitored and much more. This

paper will examine the chilling effect and provide some empirical data (links within this article) to show the chilling effect is real.

"Domestic Surveillance" includes the actions of more than the NSA

Mark Lerner, American Policy Center, **August 05, 2014**, The Chilling Effect of Domestic Spying, http://americanpolicy.org/2014/08/05/the-chilling-effect-of-domestic-spying/

Too many in the government, the media, and the public dismissed the allegations of these men because it was "easy" to do so rather than believe the worst about our government, or actually having to do something about domestic spying. To be fair the NSA has not been the only ones accused of domestic spying. The FBI, DHS, and the CIA have also been proven to having done their own domestic spying; in the case of the FBI going back over seventy years.

"Domestic Surveillance" means finding Domestic Terrorists

Mark Lerner, American Policy Center, **August 05, 2014**, The Chilling Effect of Domestic Spying, http://americanpolicy.org/2014/08/05/the-chilling-effect-of-domestic-spying/

In addition to the surveillance state we must not forget that state and federal government has said domestic terrorism is the biggest threat to our country. Veterans, anti-abortion advocates, anti-war activists, third party supporters, environmentalists, 2nd Amendment supporters, states' rights proponents, and many other groups of people have all been named as "potential domestic terrorists" by state and federal government agencies and departments. Once again it is not a "Left/Right" issue. People and groups on both sides of the political spectrum are "suspects." The presumption of innocence is no longer a consideration. This broad profiling of people and groups only exasperates the "Chilling Effect" domestic spying has.

"Domestic Surveillance" excludes the Military – the NSA is Foreign Intelligence

Friends Committee on National Legislation, June 2006, Spying on Americans, http://fcnl.org/resources/newsletter/jun06/spying_on_americans/,

The NSA, with an annual budget of at least $26.7 billion (the 1998 budget is the most recent public figure), was created in 1952 from existing Pentagon intelligence programs. The agency is charged with gathering foreign intelligence information; it listens in on electronic communications around the world. Unlike the CIA and the FBI, the NSA is a military operation, headed by a commissioned officer and responsible to the Secretary of Defense.

Affirmative Specific Definitions

"Domestic Surveillance" Includes Drones

By **Evan Ackerman**, Posted 19 Dec **2011** | 12:55 GMT, IEEE Spectrum, Could Domestic Surveillance Drones Spur Tougher Privacy Laws?, http://spectrum.ieee.org/automaton/robotics/military-robots/could-domestic-surveillance-drones-spur-tougher-privacy-laws,

In a recent article in the Stanford Law Review, Ryan Calo discusses how domestic surveillance drones would fit into the current legal definitions of privacy (and violations thereof), and how these issues could inform the future of privacy policy. The nutshell? Surveillance robots have the potential to fundamentally degrade privacy to such an extent that they could serve as a catalyst for reform. Domestic surveillance robots aren't as much of an issue now as they could be, thanks mostly to the stick-in-the-muddedness of the FAA that keeps unmanned aircraft from doing anything exciting. But eventually, that's going to change, and there are already precedents (legal ones) for how domestic agencies might (read: will) start using robots. Basically, there seems to be essentially no legal restrictions which would prevent the police from having drones flying around all the time, watching people.

Affirmatives involving Metadata do not "Substantially Curtail Domestic Surveillance" because they ignore the largest programs

By **Shahid Buttar**, Truthout ,Wednesday, 14 August **2013** 00:00, USA vs. NSA: Legislative Efforts to Curtail Spying, http://www.truth-out.org/news/item/18122-the-nsa-vs-usa#,

The Lynch bill, however, is underinclusive: It regards only telephony metadata and does nothing to curtail internet spying under the PRISM or XKeyScore programs, for instance. It apparently was drafted in response to the particular problems revealed in the first of the now several memos disclosed by journalist Glenn Greenwald and whistleblower Edward Snowden but fails to address the vast remainder of other NSA's domestic spying activities.

"Domestic Surveillance" Not Included in FISA – Any aff changing FISA is not Topical

Nick Harper, University of Chicago Law Review, BA 2009, University of Notre Dame; JD Candidate 2015, The University of Chicago Law School, **NO DATE**, FISA's Fuzzy Line between Domestic and International Terrorism,

https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf,

Consistent with FISA's foreign focus, the government may use the statute to investigate members of international terrorist groups within the United States.4 However, the activities of purely domestic terrorist groups do not fall under FISA and must therefore be investigated using standard criminal investigative tools.5 Often, terrorists will easily be identified as international; members of designated "foreign terrorist organizations" operating within the United States are clearly international terrorists. But the proliferation of modern communication technologies has caused increasing slippage between the definitions of domestic and international terrorism. For example, many homegrown terrorists are inspired by international groups to commit attacks in the United States.6 In many cases, the government seems to classify these actors as international terrorists based on Internet activity that ranges from viewing and posting jihadist YouTube videos to planning attacks with suspected foreign terrorists in chat rooms, thus using FISA's formidable investigatory weapons against them.7 The government is aided in this task by FISA's definition of international terrorism, which has an extremely vague and potentially loose internationality requirement.8 An expansive interpretation of this requirement could be used to subject what might properly be considered domestic terrorist groups to FISA surveillance.

T SHELLS

For affs who focus on International terrorism

A. Interpretation

"Domestic Surveillance" means finding Domestic Terrorists

Mark Lerner, American Policy Center, **August 05, 2014**, The Chilling Effect of Domestic Spying, http://americanpolicy.org/2014/08/05/the-chilling-effect-of-domestic-spying/

In addition to the surveillance state we must not forget that state and federal government has said domestic terrorism is the biggest threat to our country. Veterans, anti-abortion advocates, anti-war activists, third party supporters, environmentalists, 2nd Amendment supporters, states' rights proponents, and many other groups of people have all been named as "potential domestic terrorists" by state and federal government agencies and departments. Once again it is not a "Left/Right" issue. People and groups on both sides of the political spectrum are "suspects." The presumption of innocence is no longer a consideration. This broad profiling of people and groups only exasperates the "Chilling Effect" domestic spying has.

B. Violation

The Affirmative is focused on finding international terrorists.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For metadata Affs

A. Interpretation

Affirmatives involving Metadata do not "Substantially Curtail Domestic Surveillance" because they ignore the largest programs

By **Shahid Buttar**, Truthout ,Wednesday, 14 August **2013** 00:00, USA vs. NSA: Legislative Efforts to Curtail Spying, http://www.truth-out.org/news/item/18122-the-nsa-vs-usa#,

The Lynch bill, however, is underinclusive: It regards only telephony metadata and does nothing to curtail internet spying under the PRISM or XKeyScore programs, for instance. It apparently was drafted in response to the particular problems revealed in the first of the now several memos disclosed by journalist Glenn Greenwald and whistleblower Edward Snowden but fails to address the vast remainder of other NSA's domestic spying activities.

B. Violation

The affirmative action is to curtail metadata – which is not substantial as it is not the main acts of NSA Domestic Surveilance.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For Affs that amend or repeal FISA

A. Interpretation

"Domestic Surveillance" is Not Included in FISA – Any aff changing FISA is not topical

Nick Harper, University of Chicago Law Review, BA 2009, University of Notre Dame; JD Candidate 2015, The University of Chicago Law School, **NO DATE**, FISA's Fuzzy Line between Domestic and International Terrorism, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf,

Consistent with FISA's foreign focus, the government may use the statute to investigate members of international terrorist groups within the United States.4 However, the activities of purely domestic terrorist groups do not fall under FISA and must therefore be investigated using standard criminal investigative tools.5 Often, terrorists will easily be identified as international; members of designated "foreign terrorist organizations" operating within the United States are clearly international terrorists. But the proliferation of modern communication technologies has caused increasing slippage between the definitions of domestic and international terrorism. For example, many homegrown terrorists are inspired by international groups to commit attacks in the United States.6 In many cases, the government seems to classify these actors as international terrorists based on Internet activity that ranges from viewing and posting jihadist YouTube videos to planning attacks with suspected foreign terrorists in chat rooms, thus using FISA's formidable investigatory weapons against them.7 The government is aided in this task by FISA's definition of international terrorism, which has an extremely vague and potentially loose internationality requirement.8 An expansive interpretation of this requirement could be used to subject what might properly be considered domestic terrorist groups to FISA surveillance.

B. Violation

The affirmative action is to curtail FOREIGN or INTERNATIONAL surveillance not DOMESTIC.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affs that repeal a section of an act

A. Interpretation

"Substantially" means great in size and number – means topical affs must repeal whole legislation, not just individual sections.

Meriam Webster Dictionary 2015, http://www.merriam-webster.com/dictionary/substantial

Substantially: large in amount, size, or number

B. Violation

The affirmative repeals section _____ and not the entire legislation, this is not a substantial curtailment.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For Affs that are Performance/of Critical Nature

A. Interpretation – how the resolution is defined.

In policy-related contexts, 'resolved' denotes a proposal to be enacted by law

Words and Phrases 1964 Permanent Edition

> Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

B. Violation –How the Affirmative does not meet the burden of the resolution. The Plan focuses on Social Change not on Legislative Change.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affs that change the surveillance of other countries

A. Interpretation – how the resolution is defined.

"Its", in the legal context of surveillance, must mean the US as the actor and the US's surveillance, this includes the Agencies of the Government.

Tim Cushing, June 9th, 2015, tech dirt, Surveillance Tech Company Sues US Government For Patent Infringement, https://www.techdirt.com/articles/20150603/09341831204/surveillance-tech-company-sues-us-government-patent-infringement.shtml, web.

[A] Small business that designs, installs and services digital video surveillance systems, 3rd Eye Surveillance, [has] sued the United States federal government for alleged patent infringement. The lawsuit, filed in the U.S. Court of Federal Claims, seeking damages exceeding $1 billion for unlawful use of the company's three video and image surveillance system patents – U.S. Patent Nos. 6,778,085, 6,798,344, and 7,323,980. The surveillance system patents are owned by Discovery Patents, LLC of Baltimore Maryland, who is also a Plaintiff in the case, and exclusively licensed by 3rd Eye Surveillance. In addition to contract work and direct sales, 3rd Eye also makes a bit of money litigating. This trio of patents, which have been successfully used against more than 10 municipalities and private businesses, allows for the provision of real-time surveillance video, audio recognition, facial recognition and infrared images to emergency responders and defense agencies. 3rd Eye is claiming the US government's wide-ranging "exploitation" of its unlicensed patents is worth $1 billion. The suit names several agencies directly, while holding the option to name others as needed. The Defendant is the United States of America, acting through its various agencies, including by way of example, and not limitation, the Department of Justice, the Department Of Homeland Security, USSTRATCOM, the Department of Defense, the United States Customs and Border Protection, the United States Army, the United States Navy, and the Defense Logistics Agency.

B. Violation –How the Affirmative does not meet the burden of the resolution.

The Affirmative curtails INTERNATIONAL or FOREIGN surveillance, not domestic.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

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D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affs that do unconventional surveillance

A. Interpretation

"Domestic Surveillance" means electronic surveillance

Small 2008, http://everydaydebate.blogspot.com/2013/10/pf-november-2013-nsa-introduction-and.html,

Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as: [T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; by the NSA.

B. Violation –How the Affirmative does not meet the burden of the resolution.

The Affirmative does _____ which is not what the government considers "domestic surveillance"

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For Affs that are temporarily curtailing domestic surveillance

A. Interpretation – of how the resolution is defined.

"Curtail" means to END something

Hyper Dictionary 2015, http://www.hyperdictionary.com/dictionary/curtail

Terminate or abbreviate before its intended or proper end or its full extent; "My speech was cut short"; "Personal freedom is curtailed in many countries" To cut off the end or tail, or any part, of; to shorten; to abridge; to diminish; to reduce.

B. Violation –How the Affirmative does not meet the burden of the resolution.

The Affirmative only temporarily reduces Surveillance, therefore not curtailing.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

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1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affirmatives that use the Courts

A. Interpretation – of how the resolution is defined.

In policy-related contexts, 'resolved' denotes a proposal to be enacted by law

Words and Phrases 1964 Permanent Edition

> Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

"Curtailing Domestic Surveillance" means legislation to reduce it

Ivan Eland, Huffington Post, Posted: 10/14/**2013** 3:13 pm EDT, We Don't Need More 'Spin' About NSA's Unconstitutional Domestic Snooping, We Need It Stopped, http://www.huffingtonpost.com/ivan-eland/nsa-domestic-spying_b_4097878.html

Jim Sensenbrenner (R-WI) and Senator Pat Leahy (D-VT) are making at least some effort to push back on empire, in favor of the republic, by attempting to curtail unconstitutional snooping on Americans. Sensenbrenner -- a co-author of the USA PATRIOT Act, which unfortunately originally authorized some of the unconstitutional spying -- has now had second thoughts and is drafting legislation to reduce domestic surveillance. Leahy, chairman of the Senate Judiciary Committee, has already drafted a bill to terminate NSA's ability to systematically suck in Americans' phone records. Such domestic surveillance should be eliminated, unless it falls strictly within the Constitution's requirement of obtaining a search warrant only if "probable cause" exists that a suspect has committed a crime. The republic's national security will hardly be compromised if the Constitution is followed, but the republic itself will be undermined if it is not.

B. Violation –How the Affirmative does not meet the burden of the resolution.

The Affirmative only has the courts rule _____ unconstitutional instead of making legislative change to curtail surveillance.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affs that focus on Military Surveillance

A. Interpretation

"Domestic Surveillance" excludes the Military – the NSA is Foreign Intelligence

Friends Committee on National Legislation, June 2006, Spying on Americans, http://fcnl.org/resources/newsletter/jun06/spying_on_americans/,

The NSA, with an annual budget of at least $26.7 billion (the 1998 budget is the most recent public figure), was created in 1952 from existing Pentagon intelligence programs. The agency is charged with gathering foreign intelligence information; it listens in on electronic communications around the world. Unlike the CIA and the FBI, the NSA is a military operation, headed by a commissioned officer and responsible to the Secretary of Defense.

B. Violation

The Affirmative is focused on curtailing military surveillance – which is not domestic surveillance.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

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4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

For affirmatives who change FISA's acts housed in the USA

A. Interpretation

THE NSA and FISA are not "Domestic Surveillance"

Friends Committee on National Legislation, June 2006, Spying on Americans, http://fcnl.org/resources/newsletter/jun06/spying_on_americans/,

To bring intelligence collection in line with the Fourth Amendment's prohibition against unreasonable searches and seizures, the 1978 statute created a secret FISA court through which the government could obtain warrants for domestic surveillance. Under FISA, the government must present to this court evidence that it has probable cause to believe the person to be surveilled is an agent of a foreign power or is involved with an international terrorism organization. Congress defined the FISA procedure for procuring foreign intelligence as "the exclusive means by which electronic [domestic] surveillance … may be conducted." No one disputes that there are people within the United States who are suspected of ties with violent groups intent on attacking people in this country or who are agents of foreign powers. The NSA can electronically surveil such individuals by getting a warrant from the FISA court, thus abiding by the Fourth Amendment. Outside of the FISA process, **the NSA has no authority for domestic surveillance.**

B. Violation –How the affirmative does not meet the burden of the resolution.

The Affirmative may claim that they are domestic surveillance because the companies doing surveillance are in the US – but that is a stretch. The NSA has no domestic surveillance power and FISA is designed for INTERNATIONAL and FOREIGN surveillance.

C. Standards – these are the reasons you, as the judge, should prefer our interpretation.

1. Predictability – reading a case outside of the resolution, means the negative was unable to prepare for this debate, and thus the clash in this debate is hurt as a result.

2. Ground – Reading cases outside of the topic hurts the quality of debate as the negative can only read generic disadvantages rather than talking about the case in a more detailed manor.

3. Framer's Intent – The topic committee wrote, and the country voted on, a resolution for a reason, and with a specific purpose for our education and discussions – violating this hurts the activity of debate as a whole.

4. Bright line – our interpretation provides a clear distinction between what is topical and what is not.

D. Voters – these are the reasons for which you are signing your ballot for the negative today.

1. Apriori – This issue comes first when evaluating the round – if the affirmative is not topical, this round never should have happened.

2. Stock Issues – Topicality is one of the 5 stock issues to provide a foundation of an affirmative case. If the negative wins won, the affirmative should lose.

3. Fairness and Education – Reading a non-topical case is unfair both to the negative as debaters and to the judge to sit through a round that isn't productive and not letting us learn as we were supposed to.

Topicality – NSA – Michigan 7

Substantially

We meet – 80%

The covers 80 percent of global internet traffic

Kaplan 15 - covers international relations and U.S. foreign policy for Slate Magazine, American author and Pulitzer Prize-winning journalist (Fred "The NSA Debate We Should Be Having", Slate, 06/08/15, http://www.slate.com/articles/news_and_politics/war_stories/2015/06/the_national_security_agency_s_surveillance_and_the_usa_freedom_act_the.html)//GK

A separate program called PRISM—authorized under Section 702 of the Foreign Intelligence Surveillance Act—lets the NSA track foreign terrorists and adversaries by intercepting their Internet traffic as it zips through **U.S.–based servers**. (Because of the nature of the technology, about **80 percent** of the world's Internet traffic passes through U.S. servers at some point.) PRISM was another highly classified NSA program that Snowden uncovered. The Washington Post and the Guardian made it the subject of their Day 2 Snowden stories (right after the revelations about telephone metadata). Yet PRISM isn't touched at all by the USA Freedom Act, nor does any serious politician propose overhauling it. This is the case, even though PRISM data-mining is a much bigger program than telephone metadata ever was, and it's potentially more intrusive, since it's hard to know whether, at first glance, an IP address belongs to an American or a foreigner.

We meet – XO 12333

XO 12333 substantially undermines US person privacy

Granick 13 - Director of Civil Liberties at the Stanford Center for Internet and Society (Jennifer Granick, "We All Go Down Together: NSA Programs Overseas Violate Americans' Privacy, Yet Escape FISC, Congressional Oversight", Just Security, 10/17/2013, http://justsecurity.org/2125/together-nsa-programs-overseas-violate-americans-privacy-escape-fisc-congressional-oversight/)

Congressional oversight of these kinds of programs is even more anemic than usual, and may be non-existent. The President amends E.O. 12333 without input from Congress. The NSA was not reporting to the Intelligence Committees abuses that take place under E.O. 12333 authorized programs. For example, in the October 2, 2013 FISA oversight hearing chaired by Sen. Patrick Leahy (D-VT), Director of National Intelligence James Clapper told Senator Amy Klobuchar that the Administration's false assurances there had been no abuses of the Section 215 phone records collection were not false because the abuses identified in an internal audit had occurred under E.O. 12333 and need not be reported. (after 1:25, hat tip to Marcy Wheeler). In late September, Intel Committee Chair Feinstein acknowledged that, E.O. 12333 programs receive far less congressional oversight, and less protections for U.S. person privacy. The Senator ordered that the NSA report further on its intelligence collection outside of FISA. Specifically regarding the contact list collection, the Washington Post quotes a senior Intelligence Committee staffer:

"In general, the committee is far less aware of operations conducted under 12333," said a senior committee staff member, referring to Executive Order 12333, which defines the basic powers and responsibilities of the intelligence agencies. "I believe the NSA would answer questions if we asked them, and if we knew to ask them, but it would not routinely report these things, and in general they would not fall within the focus of the committee."

One major revelation of the Washington Post piece is that there isn't even Intel Committee oversight of 12333 overseas activities, even though Americans data is collected via that authority, and our privacy **substantially** effected.

Curtail

Negative

AT: No advocates for budget interp

Defund section 702

Vitka 15 *Federal Policy Manager at the Sunlight Foundation (Sean, "Ban on secret backdoor searches of American's data passes the House (again)", Sunlight Foundation, 6/12/15, http://sunlightfoundation.com/blog/2015/06/12/ban-on-secret-backdoor-searches-of-americans-data-passes-the-house-again//)//GK

Recently, Sunlight and a bipartisan group of 26 other organizations — including the ACLU, Demand Progress and FreedomWorks — called on the House of Representatives to support an amendment to the Defense Appropriations bill that would end secret, warrantless surveillance on Americans' information. I'm happy to announce that our allies on the Hill — in particular Reps. Thomas Massie, R-Ky., Zoe Lofgren, D-Calif., and the other lawmakers who supported ambitious reforms like this when people thought they were impossible — have succeeded so far: The amendment passed the House, just as it did last year. As we explain in the letter: First, the amendment would **defund** warrantless government searches of the database of information collected under Section 702 of the Foreign Intelligence Surveillance Act of 1978 using U.S. person identifiers, absent certain circumstances. Although Section 702 prohibits the government from intentionally targeting the communications of U.S. persons, it does not explicitly restrict deliberately querying communications of Americans that were "inadvertently" or "incidentally" collected under Section 702. Moreover, following an apparent change in the NSA's internal practices in 2011, the NSA now is explicitly permitted under certain circumstances to conduct searches using U.S. person names and identifiers without a warrant. In March, James Clapper, the Director of the Office of National Intelligence, confirmed in a letter to Senator Wyden that such warrantless queries of U.S. person communications are being conducted. Second, the amendment would **prohibit the use of appropriated funds** to require or request that United States persons and entities build security vulnerabilities into their products or services in order to facilitate government surveillance, except as provided for by the Communications Assistance for Law Enforcement Act. The letter also specifically called for the House, in particular leadership, to ensure that this amendment stays in the bill. This amendment is the same as one that passed last year with an overwhelming 293 votes. But that doesn't mean this is a sure bet; it's incumbent on anyone who cares about this issue to reach out to their lawmakers and make their voices heard as soon as possible. Indeed, after passing last year with 293 votes, it was stripped out of the omnibus that ultimately became law. This is a step in the right direction for meaningful surveillance reform — let's make sure this bipartisan effort doesn't fail again.

Defund the NSA

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 13)//AK

I have just proposed that the NSA's espionage mission be separated from its surveillance mission, and that the military's role in cyberspace be restricted to actions against foreign military targets. To accomplish this, I advocate **breaking up the NSA** and restoring and strengthening the various agencies' responsibilities that existed prior to 9/11:

• As part of the Department of Defense, the NSA should focus on espionage against foreign governments.

• The Department of Justice should be responsible for law enforcement and terrorism investigations. To that end, it should conduct only targeted and legally permissible surveillance

activities, domestic and foreign, and should pursue leads based on the expertise of FBI agents and not NSA databases.

• The NSA's defensive capabilities in cryptography, computer security, and network defense should be spun off and become much more prominent and public. The National Institute of Standards and Technology (NIST), a civilian agency outside the Department of Defense, should reassert control over the development of technical standards for network security. The Computer Security Act of 1987 attempted to keep the NSA out of domestic security by making it clear that NIST—then called the National Bureau of Standards—had the lead in establishing technical security standards. We need to strengthen that law and ensure it's obeyed.

• The US's offensive cyber capabilities should remain with US Cyber Command. That organization should subsume the NSA's hacking capabilities (that's TAO). The general in charge of US Cyber Command should not also be the director of the NSA.

This is a long-range plan, but it's the right one. In the meantime, we should **reduce the NSA's funding to pre-9/11 levels**. That in itself would do an enormous amount of good.

End programmatic surveillance recommendation

Goitein and Patel 15 - Elizabeth (Liza) Goitein co-directs the Brennan Center for Justice's Liberty and National Security Program. Served as counsel to Sen. Russell Feingold with a particular focus on government secrecy and privacy rights. Was a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. Graduated from the Yale Law School and clerked for the Honorable Michael Daly Hawkins on the U.S. Court of Appeals for the Ninth Circuit. Faiza Patel serves as co-director of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015 //DM)

A. End Programmatic Surveillance

The most effective reform would be for Congress to **end programmatic surveillance**. This would entail expressly prohibiting bulk collection under Section 215 and similar provisions, as well as repealing Section 702 and replacing it with a regime **requiring an individualized court order for the interception of communications involving U.S. persons**, regardless of whether they are the identified target of the surveillance.

Ending programmatic surveillance would return the FISA Court to its traditional role of applying the law to the facts of a particular case.271 This would mitigate many of the Article III concerns relating to the absence of a case or controversy. If the standard for issuing a surveillance order were sufficiently strict (discussed below), ending programmatic surveillance could address Fourth Amendment objections as well.

But these changes would not fully cement the constitutional status of the FISA Court's activities. FISA orders will never look entirely like criminal warrants because they rarely culminate in criminal prosecutions, thus removing the primary vehicle for challenging their legitimacy. Concerns about the lack of adversarial process thus would remain even if programmatic surveillance were replaced with an individualized regime. To address them, the reforms listed in the next section would be needed.

Defund SIGINT Enabling Project

Obmres 1/22/15 – J.D. from Stetson University College of Law, L.L.M. from American University Washington College of Law (Devon, NSA DOMESTIC SURVEILLANCE FROM THE PATRIOT ACT TO THE FREEDOM ACT: THE UNDERLYING HISTORY, CONSTITUTIONAL BASIS, AND THE EFFORTS AT REFORM, 39 Seton Hall Legislation Journal p. 28)//JJ

None of the proposed legislation addresses the issue of NSA/NIST collaboration in creating backdoors to encryption systems. Additional congressional oversight could address the issue, but to address it at the outset and staunch the financial harm befalling the United States tech industry, the most readily available way to address the issue, would be the budgetary mechanism of defunding the SIGINT Enabling Project. This would limit the NSA's ability to strong-arm NIST and major telecoms and reinstill public trust in the tech industry.143

Affirmative

702 curtails

XO12333 collects vastly more domestic data than section 702 – the plan's a substantial curtailment

Bedoya, 14 - Alvaro Bedoya is Executive Director of the Georgetown Center on Privacy and Technology ("Executive Order 12333 and the Golden Number" Just Security, 10/9,

http://justsecurity.org/16157/executive-order-12333-golden-number/

We need to know approximately how many Americans' communications are collected under 12333. That's the golden number. But we don't know it. Apparently, neither does the NSA. In a December 2013 Washington Post article on the use of 12333 to collect cellphone location records, the NSA demurred an attempt to estimate how many Americans were swept up in that program:

"It's awkward for us to try to provide any specific numbers," one intelligence official said in a telephone interview. An NSA spokeswoman who took part in the call cut in to say the agency has no way to calculate such a figure.

Yet in that same story, a "senior collection manager, speaking on the condition of anonymity but with permission from the NSA," appears to have told the Post that "data are often collected from the tens of millions of Americans who travel abroad with their cellphones every year."

In a separate Post story in October 2013 on the use of 12333 to collect address books globally, two U.S. senior intelligence officials told Bart Gellman and Ashkan Soltani that that program sweeps in the contacts of many Americans. "They declined to offer an estimate but did not dispute that the number is likely to be in the millions or tens of millions," wrote Gellman and Soltani.

Behind closed doors, the intelligence community seems to acknowledge a scale of 12333 collection on Americans that far outstrips the collection that Judge Bates found unconstitutional under section 702.

In the recent Georgetown Law debate, I asked Bob Litt whether it was acceptable that the intelligence community did not know how many Americans' communications were caught up in 12333 – since some scale of such collection would render 12333 collection unreasonable and violate the Fourth Amendment. He answered:

We can't give numbers but there is a data point you can use and that is that 702 collection by definition is going to be collection that's passing through the United States. 12333 collection is not. One can assume that you're more likely to collect a U.S. person communication under 702 than under 12333 as a result of that. And the courts have found that 702 collection is reasonable in this regard. So while you may not have the exact number, you can extrapolate from that and it suggests that the 12333 collection would be reasonable as well.

There are significant gaps in this reasoning. First, while electronic surveillance under 12333 cannot be conducted within the U.S., 12333 has been used to collect bulk records from American

companies, many of which store or "mirror" **purely domestic** communications on international servers.

More importantly, Litt's explanation overlooks the fact that 12333 is a bulk collection authority – while section 702 is not. Yes, 702 data pass through the United States. But at the end of the day, while section 702 collection may seem "bulky," it is nonetheless an **exclusively targeted** collection authority. Section 702 can be used only to collect on communications to, from or (controversially) about a specific target. There aren't an infinite number of targets. In 2013, there were 89,138 of them.

Executive Order 12333, by contrast, allows for pure bulk collection of overseas electronic communications. There is no requirement that electronic surveillance under 12333 be targeted at a particular individual, organization or facility. A recent directive from the President (PPD-28) explains:

References to signals intelligence collected in "bulk" mean the authorized collection of large quantities of signals intelligence data which, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.).

(Emphasis mine.) Indeed, 12333 lets the government conduct any electronic surveillance, so long as it does so from a location abroad, so long as it does not affirmatively target a U.S. person, and so long as it is done for a "foreign intelligence or counterintelligence purpose."

The resultant difference in scale of collection is significant. In his 2011 opinion, Judge Bates stated that NSA acquired over 250 million Internet communications annually under section 702; the Washington Post revealed that a **single program under 12333 collected nearly 5 billion cellphone location records every day**. This may be a bit of an apples-to-oranges comparison, but it's an instructive one nonetheless. The untargeted nature and massive scope of 12333 collection strongly suggest that it may be used to collect far more U.S. person communications than are collected under section 702.

Moreover, because 12333 allows for bulk collection, it would seem to stand a high chance of capturing Americans' communications that are, in fact, entirely unrelated to foreign intelligence – precisely the category of protected communications that Judge Bates found so problematic. Curiously, the new report on 12333 from the NSA's Civil Liberties and Privacy Office explicitly excludes bulk collection from its analysis.

It would be great if Judge Bates could ask these questions. But he can't. The FISC lacks jurisdiction over 12333 collection. And so it is on Congress – and on us – to fill in the gap. For section 702, the sponsors of the USA FREEDOM Act succeeded in adding a modest but nonetheless incrementally positive provision that would require the Director of National Intelligence to either annually disclose an estimate of the number of Americans affected by section 702 programs, or to provide a detailed, public explanation of why he or she cannot provide that figure (see subsection "(e)(4)" of section 603 of the bill).

XO 12333 is the vast majority of all NSA collection

Tye, 14 - John Napier Tye served as section chief for Internet freedom in the State Department's Bureau of Democracy, Human Rights and Labor from January 2011 to April 2014. He is now a legal director of Avaaz, a global advocacy organization (John, "Meet Executive Order 12333:

The Reagan rule that lets the NSA spy on Americans" Washington Post, 7/18, http://www.washingtonpost.com/opinions/meet-executive-order-12333-the-reagan-rule-that-lets-the-nsa-spy-on-americans/2014/07/18/93d2ac22-0b93-11e4-b8e5-d0de80767fc2_story.html)

Public debate about the bulk collection of U.S. citizens' data by the NSA has focused largely on Section 215 of the Patriot Act, through which the government obtains court orders to compel American telecommunications companies to turn over phone data. But Section 215 is a small part of the picture and does not include the **universe of collection** and storage of communications by U.S. persons authorized under Executive Order 12333.

From 2011 until April of this year, I worked on global Internet freedom policy as a civil servant at the State Department. In that capacity, I was cleared to receive top-secret and "sensitive compartmented" information. Based in part on classified facts that I am prohibited by law from publishing, I believe that Americans should be even more concerned about the collection and storage of their communications under Executive Order 12333 than under Section 215.

Bulk data collection that occurs inside the United States contains built-in protections for U.S. persons, defined as U.S. citizens, permanent residents and companies. Such collection must be authorized by statute and is subject to oversight from Congress and the Foreign Intelligence Surveillance Court. The statutes set a high bar for collecting the content of communications by U.S. persons. For example, Section 215 permits the bulk collection only of U.S. telephone metadata — lists of incoming and outgoing phone numbers — but not audio of the calls.

Executive Order 12333 contains no such protections for U.S. persons if the collection occurs outside U.S. borders. Issued by President Ronald Reagan in 1981 to authorize foreign intelligence investigations, 12333 is not a statute and has never been subject to meaningful oversight from Congress or any court. Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Select Committee on Intelligence, has said that the committee has not been able to "sufficiently" oversee activities conducted under 12333.

Unlike Section 215, the executive order authorizes collection of the content of communications, not just metadata, even for U.S. persons. Such persons cannot be individually targeted under 12333 without a court order. However, if the contents of a U.S. person's communications are "incidentally" collected (an NSA term of art) in the course of a lawful overseas foreign intelligence investigation, then Section 2.3(c) of the executive order explicitly authorizes their retention. It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained.

"Incidental" collection may sound insignificant, but it is a legal loophole that can be stretched very wide. Remember that the NSA is building a data center in Utah five times the size of the U.S. Capitol building, with its own power plant that will reportedly burn $40 million a year in electricity.

"Incidental collection" might need its own power plant.

A legal regime in which U.S. citizens' data receives different levels of privacy and oversight, depending on whether it is collected inside or outside U.S. borders, may have made sense when most communications by U.S. persons stayed inside the United States. But today, U.S.

communications increasingly travel across U.S. borders — or are stored beyond them. For example, the Google and Yahoo e-mail systems rely on networks of "mirror" servers located throughout the world. An e-mail from New York to New Jersey is likely to wind up on servers in Brazil, Japan and Britain. The same is true for **most** purely domestic communications.

Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all such communications — content as well as metadata — provided that such collection occurs outside the United States in the course of a lawful foreign intelligence investigation. No warrant or court approval is required, and such collection never need be reported to Congress. None of the reforms that Obama announced earlier this year will affect such collection.

Oversight is 'curtail'

Oversight is the mechanism of curtailment

Stockham 11 – Marquette University, dissertation in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy (Aaron, "LACK OF OVERSIGHT: THE RELATIONSHIP BETWEEN CONGRESS AND THE FBI, 1907-1975", May 2011, http://epublications.marquette.edu/cgi/viewcontent.cgi?article=1110&context=dissertations_mu)// DBI

Tawney cited the Attorney General's testimony in support of continuing to limit the use of Secret Service agents to investigations of counterfeiting and protecting the President. Tawney further pointed out that —the Attorney-General...told [the House Appropriations] committee in substance that under this provision, or that under the existing conditions, he was administering this branch of the service more satisfactorily than heretofore. And why? He has established a secret service in his department, known as 'special agents.'" In his testimony, the Attorney General had explained why this arrangement was more satisfactory since Secret Service agents transferred to his department never reported to him, but to the Chief of the Secret Service, who also fixed their compensation. In the end, Bonaparte never knew what these men were doing. With his own force, however, the Attorney General would be more aware of ongoing investigations and fully understood where money was expended.98 To these members of Congress, this was preferable to a centralized Secret Service bureau that worked throughout the government. Not only would investigations occur in that department which controlled prosecutions, but also the Attorney General would have direct **oversight** of the agents and could **curtail** any possible abuses.

Curtailing is impossible without an oversight mechanism

Alvarado 1 – dissertation in partial fulfillment of the requirements for the degree of Doctor o f Philosophy in Government (Luis, Cops, Soldiers, and Diplomats: Bureaucratic Politics and Organizational Culture in the War on Drugs, 4/26/01, p. 64-65)//DBI

The most obvious way for an agency to survive and prosper is to achieve increasingly favorable positions in terms of resources and organizational autonomy within the policy space it inhabits. Resources are desirable because increased resources result in an overall betterment of its members, including salary, perquisites, reputation, power, patronage, output, ease o f making changes, and ease of managing bureaucrats. As Niskanen would have it. "all o f these variables, except the last two . . . are a positive monotonic function of the total budget of the bureau during the bureaucrat's tenure in office.""4 Moreover, resources put an agency "in a more favorable position from which to compete for.. .[more] resources."95Autonomy is desirable because competition and confused jurisdictions undermine and vex the health of the organization before the public, the media, and its political bosses. Although any agency recognizes that mechanisms of bureaucratic control and accountability are necessary, agencies prefer as little **oversight** as possible and as much autonomy from agents that might **curtail** their ability to make decisions not only in terms of their policy mandate but also in terms o f the fundamental interests of the organization. A bureaucratic organization dislikes overlapping jurisdictions because sharing the space with other agencies truncates the bureau's discretion on how to view the policy problem and how to solve it.96Discretion is a desirable good within bureaucratic organizations.

Domestic

Negative

1nc violation – XO 12333

XO 12333 exclusively governs foreign surveillance – incidental US information isn't used

Schlanger 15 [Margo, Professor of Law at the University of Michigan Law School, and the founder and director of the Civil Rights Litigation Clearinghouse., Intelligence Legalism and the National Security Agency's Civil Liberties Gap, file:///C:/Users/Jonah/Downloads/Intelligence%20Legalism%20and%20the%20National%20Security%20Agency-s%20Civil%20Li%20(2).pdf] Schloss3

Executive Order 12,333 (invariably referred to orally as, simply, "twelve triple three") is the "foundational" federal surveillance authority, applicable to all activities not otherwise regulated that touch or might touch U.S. person information.64 Executive Order 12,333 has been amended three times since President Reagan issued it first in 1981, most recently and significantly in 2008, but it has retained its basic character. 65 As the organizing document for the nation's intelligence operations, it applies to the entire Intelligence Community (IC). 66 Individual IC elements then implement it via more focused guidelines, which are required to be signed by the Attorney General. 67 For the wide swathes of foreign intelligence surveillance that are not covered by FISA, regulation under Executive Order 12,333 occurs without judicial involvement. That is, where FISA does not apply, it is 12,333 that limits the collection, retention, use, and dissemination of U.S. person information, no matter what the method of surveillance— even if, for example, the communications are acquired from some foreign partner agency. The Executive Order explains that its "general principles . . . in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests."68 For surveillance, its basic approach is two-fold: it insists on in-advance fully vetted written procedures, and it authorizes specific surveillance without court approval only if the Attorney General approves.

2nc – XO 12333 not domestic

Curtailing Executive Order 12333 has no effect on surveillance of US citizens

Executive Order 12333 ("Executive Order 12333 United States Intelligence Activities", an amended version from 2003, 2004, and 2008, http://fas.org/irp/offdocs/eo/eo-12333-2008.pdf)//GK

Collection of information. Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director. Those procedures shall permit collection, retention, and dissemination of the following types of information: (a) Information that is publicly available or collected with the consent of the person concerned; (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the Federal Bureau of Investigation (FBI) or, when significant foreign intelligence is sought, by other authorized elements of the Intelligence Community, provided that no foreign intelligence collection by such elements may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

Curtailing XO 12333 isn't topical—it surveils non-US persons

Arnbak and Goldberg 14- cybersecurity and information law research at the Institute for Information Law, LL.M degree from Leiden University, A Competitive Strategy and Game Theory degree from London School of Economics University of Amsterdam; Associate professor in the Computer Science Department at Boston University, phD from Princeton University, B.A.S.c from University of Toronto (Axel and Sharon, "Loopholes for Circumventing the Constitution: Warrantless Bulk Surveillance on Americans by Collecting the Network Traffic Abroad", Working Paper, June 27, 2014)//TT

2.3.1 Scope of the Third Regulatory Regime under EO 12333: Electronic Surveillance Conducted Abroad.

As discussed in the Section 2.2, electronic surveillance falls within the EO 12333 regime when it is conducted on foreign soil, and when it does not fall within the 1978 FISA definition of 'electronic surveillance'. Or as the N.S.A. recently put it, when surveillance is "conducted through various means around the globe, largely from outside the United States, which is not otherwise regulated by FISA." [5, p. 2-3]. 4

While FISA surveillance is conducted from U.S. soil, EO 12333 surveillance is mostly conducted abroad. EO 12333 presumes that network traffic intercepted on foreign soil belongs to non-U.S. persons (cf. s. 9.8 & 9.18.e.2 of USSID 18 defining 'foreign communications' and 'U.S. person'). Companies and associations are also considered in the EO 12333 definition of U.S. persons. These entities may be assumed to be non-U.S. persons if they have their headquarters outside the U.S. Even when it is known to the N.S.A. that a company is legally controlled by a U.S. company, it may be assumed a non-U.S. person. Taken together, the rules for presuming a non-U.S. person under this regime are permissive on the individual-, group- and organizational levels.

2nc limits impact – XO 12333 explodes limits

Allowing XO 12333 explodes the number of NSA affs alone

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM)

The following is a **small subset** of publicly-known activities operated under the purported authority of EO 12333:

MYSTIC

• Under this operation, the NSA has built a surveillance system capable of recording "100 percent" of a foreign country's telephone calls, enabling the agency to rewind and review conversations as long as a month after they take place,.14 MYSTIC has been used against one nation, according recent leaks, and may have been subsequently used in other countries ..

MUSCULAR

• This operation, which began in 2009, infiltrates links between global data centers of technology companies, such as Google and Yahoo!, not on US soil. These two companies responded to the revelation of MUSCULAR by encrypting those exchanges.

XKEYSCORE

• XKEYSCORE appears to be the name of the software interface through which NSA analysts search vast databases of information—collected under various other operations—containing emails, online chats, and the browsing histories of millions of individuals anywhere in the world. The XKEYSCORE data has been shared with other secret services including Australia's Defence Signals Directorate and New Zealand's Government Communications Security Bureau.

BULLRUN

• Not in and of itself a surveillance program, BULLRUN is an operation by which the NSA undermines the security tools relied upon by users, targets and non-targets, and US persons and non-US persons alike. The specific activities include dramatic and unprecedented efforts to attack security tools, including:

• Inserting vulnerabilities into commercial encryption systems, IT systems, networks, and endpoint communications devices used by targets;

• Actively engaging US and foreign IT industries to covertly influence and/or overtly leverage their commercial products' designs;

• Shaping the worldwide commercial cryptography marketplace to make it more vulnerable to the NSA's surveillance capabilities;

• Secretly inserting design changes in systems to make them more vulnerable to NSA surveillance, and

• Influencing policies, international standards, and specifications for commercial public key technologies. 14

DISHFIRE

• The Dishfire operation is the worldwide mass collection of records including location data, contact retrievals, credit card details, missed call alerts, roaming alerts (which indicate border crossings), electronic business cards, credit card payment notifications, travel itinerary alerts, meeting information, text messages, and more. Communications from US phones were allegedly minimized, although not necessarily purged, from this database. The messages and associated data from non-US persons were retained and analyzed.

CO-TRAVELER

• Under this operation, the US collects location information from global cell tower, Wi- Fi, and GPS hubs. This information is collected and analyzed over time, in part, in order to determine the traveling companions of targets.

In addition to these programs, the NSA also surveilled messaging conducted through "leaky" mobile applications, monitored the mobile phone communications of 35 world leaders, and monitored, for example, approximately 70 million phone calls per month originating in France and 60 million per month originating in Spain. Also, the NSA collected financial records—180 million in 2011—from SWIFT, the network used by worldwide financial institutions to securely transmit interbank messages and transactions.

1nc violation – section 702

Violation – section 702 is strictly over foreign citizens

Mukasey 14 – former U.S. Attorney General, judge for the Southern District of New York, B.A. from Columbia, LL.B. from Yale (Michael, SAFE AND SURVEILLED: FORMER U.S. ATTORNEY GENERAL MICHAEL B. MUKASEY ON THE NSA, WIRETAPPING, AND PRISM, National Security Law Journal, 3/25/14, https://www.nslj.org/wp-content/uploads/3_NatlSecLJ_196-209_Mukasey.pdf)//JJ

The other program that's been the subject of debate is administered under Section 702 of the Foreign Intelligence Surveillance Act (FISA**). That program allows the Attorney General and the Director of National Intelligence to authorize jointly, for up to a year, surveillance that's targeted at foreign persons reasonably believed to be located outside this country, provided that the FISA court approves the targeting procedures under which the surveillance occurs and the minimization procedures that govern the use of the information once it's gathered. Under this program, NSA can operate within the United States to gather the content of telephone calls and Internet traffic of people outside the United States.**

How's that possible? Well, it's possible because the Internet and telephone messages that flow overseas pass through servers in the United States, so though telephone conversation or an exchange of e-mail may be between parties located entirely outside this country, the NSA can monitor cables passing through the United States to get that information. The NSA generates specific identifiers that may include, for example, telephone numbers or e-mail addresses of foreign persons outside this country, and then use[s] those identifiers to pick out communications that it is entitled to get from the general flow. The surveillance by law may not target anyone of any nationality known to be in this country or intentionally target a U.S. person anywhere in the world. In other words, they can't do reverse targeting on U.S. persons by listening in on foreign conversations. In order to get the content of communications involving anyone in the United States or any U.S. person located anywhere in the world, it's necessary to get a warrant supported by a showing of probable cause, just as one would in an ordinary criminal case.

2nc – section 702 not domestic

Section 702 is purely for international surveillance

Logiurato, politics editor, 13 [Brett, Business Insider's politics editor. He graduated from Syracuse University in 2011 with degrees in newspaper and online journalism and political science., Here's The Law The Obama Administration Is Using As Legal Justification For Broad Surveillance, http://www.businessinsider.com/fisa-amendments-act-how-prism-nsa-phone-collection-is-it-legal-2013-6] Schloss

"Section 702 is a provision of FISA that is designed to facilitate the acquisition of foreign intelligence information concerning non-U.S. persons located outside the United States," Clapper said. "It cannot be used to intentionally target any U.S. citizen, any other U.S. person, or anyone located within the United States.

AT: We meet – servers

Servers are located in different geographical locations

Arnbak and Goldberg 14- cybersecurity and information law research at the Institute for Information Law, LL.M degree from Leiden University, A Competitive Strategy and Game Theory degree from London School of Economics University of Amsterdam; Associate professor in the Computer Science Department at Boston University, phD from Princeton University, B.A.S.c from University of Toronto (Axel and Sharon, "Loopholes for Circumventing the Constitution: Warrantless Bulk Surveillance on Americans by Collecting the Network Traffic Abroad", Working Paper, June 27, 2014)//TT

3.1 Why US Traffic can Naturally be Routed Abroad.

The Internet was not designed around geopolitical borders; instead, its design reflects a focus on providing robust and reliable communications while, at the same time, minimizing cost. For this reason, network traffic between two endpoints located on US soil can sometimes be routed outside the US.

3.1.1 Interception in the Intradomain.

A network owned by a single organization (even an organization that is nominally "based" in the U.S. such as Yahoo! or Google) can be physically located in multiple jurisdictions. The revealed MUSCULAR/TURMOIL program illustrates how the N.S.A. exploited this by presuming authority under EO 12333 to acquire traffic between Google and Yahoo! servers located on foreign territory, collecting up to 180 million user records per month, regardless of nationality [17].5 Yahoo! and Google replicate data across multiple servers that periodically send data to each other, likely for the purpose of backup and synchronization. These servers are located in geographically diverse locations, likely to prevent valuable data from being lost in case of failures or errors in one location. The MUSCULAR/TURMOIL program collects the traffic sent between these servers: while this traffic can traverse multiple jurisdictions, it remains with the logical boundaries of the internal networks of Yahoo! and Google. Thus, we already have one example where loopholes under the legal regime of EO 12333 were exploited in the intradomain, i.e., within the logical boundaries of a network owned by a single organization.

AT: Extra-topicality – non-US companies

The plan doesn't effect non-US companies

Eoyang, 14 - Mieke Eoyang is the Director of the National Security Program at Third Way, a center-left think tank. She previously served as Defense Policy Advisor to Senator Edward M. Kennedy, and a subcommittee staff director on the House Permanent Select Committee on Intelligence, as well as as Chief of Staff to Rep. Anna Eshoo (D-Palo Alto) ("A Modest Proposal: FAA Exclusivity for Collection Involving U.S. Technology Companies" Lawfare, 11/24, http://www.lawfareblog.com/modest-proposal-faa-exclusivity-collection-involving-us-technology-companies

FAA exclusivity would say to the rest of the world that when the US conducts bulk electronic surveillance overseas, we are doing so for a particular, national security purpose. The FAA structure with FISC review provides an independent check that the statutory purposes are met. Through transparency agreements with the government, the American companies are able to provide their customers with some sense of how many requests are made.

This would not change the 12333 authorities with respect to non-US companies. It would also **not change** 12333 authorities when the Executive Branch seeks to obtain the information in **some other way than through the US company** (i.e. breaking into the target's laptop, parking a surveillance van outside their house, sending a spy, etc.).

Affirmative

2ac – domestic

We meet – it's domestic surveillance even if collection occurs overseas – geographic limits are impossible

Lee, 13 – Senior Editor at Vox (Timothy, "The NSA is trying to have it both ways on its domestic spying programs" Washington Post, 12/22, http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/22/the-nsa-is-trying-to-have-it-both-ways-on-its-domestic-spying-programs/

But now the Internet has **made a hash of the tidy distinction** between foreign and domestic surveillance. Today, citizens of France, Brazil and Nigeria routinely use Facebook, Gmail, and other American online services to communicate. Americans make calls with Skype. And much Internet traffic between two foreign countries often passes through the United States.

The NSA has reacted to this changing communications landscape by trying to claim the best of both worlds. The FISA Amendments Act, passed in 2008, gave the NSA the power to compel domestic telecommunications providers to cooperate with the NSA's surveillance programs. Yet the NSA has resisted the transparency and judicial oversight that has traditionally accompanied domestic surveillance. They've argued that disclosing the existence of these programs would compromise their effectiveness. And they've argued that because the "targets" of surveillance are overseas, only limited judicial oversight by the secretive Foreign Intelligence Surveillance Court, not individualized Fourth Amendment warrants, were required.

But the NSA programs revealed by Snowden, including PRISM and the phone records program, look **more like domestic surveillance programs than foreign ones**. Like conventional domestic wiretaps, they rely on **compelling domestic firms to cooperate with surveillance**. Like conventional wiretaps, they sweep up information about the communications of Americans on American soil. And like domestic wiretaps, information collected by the NSA is sometimes shared with domestic law enforcement agencies for prosecution of Americans.

If the NSA is going to run what **amounts to a domestic surveillance program** that collects the **private information of Americans on American soil**, it's going to face pressure to subject that program to the same kind of oversight as other domestic surveillance program. That means disclosing the general characteristics of the program—but not the specific targets—to the public. And it means requiring individualized warrants, supported by probable cause, before the government can intercept the communications of Americans on American soil.

Corporations are US persons – that's Eoyang. Controlling legal precedent says that also meets the territorial limit

Daskal, 15 – professor of law at American University (Jennifer, "THE UN-TERRITORIALITY OF DATA" Washington College of Law Research Paper No. 2015-5, SSRN)

In December 2013, U.S. federal law enforcement agents served a search warrant on Microsoft, demanding information associated with a Microsoft user's web-based email account. Because the

sought-after emails were located in a data-storage center in Dublin, Ireland, Microsoft refused to turn them over, claiming that the government's warrant authority does not extend extraterritorially, and thus the warrant was invalid. The government, along with the magistrate judge and district court, disagreed— concluding that the relevant reference point was the location of Microsoft, not the location of the data.1 Because the data could be accessed and controlled from Microsoft employees within the United States, **this was a territorial, not extraterritorial, warrant**. It was therefore valid.2

The question of where the relevant state action takes place when the government compels the production of emails from an Internet Service Provider (ISP) is one of first impression, now being litigated before the Second Circuit. It has garnered the attention of communication companies throughout the United States, the Irish government and European Parliament, media outlets, the U.S. Chamber of Commerce, and a wide array of commentators.3 In a strongly worded letter, the former European Union Justice Commissioner warned that execution of the warrant may constitute a breach of international law—a sentiment echoed in many of the amicus briefs filed in support of Microsoft.4 But such a statement simply assumes the answer to the key question that the case poses: **Where does the key state action occur?** At the place where data is accessed? Or the place where it is stored? If the relevant state action occurs within the United States, as the U.S. government claims, there was no breach of Ireland's sovereignty, and no violation of international law.

1ar - Corporations CI

US persons are citizens, LPRs, and corporations

PCLOB 14 - independent, bipartisan agency within the executive branch established by the Implementing Recommendations of the 9/11 Commission Act ("Report on the Surveillance Program Operated Pursuant to Sec7on 702 of the Foreign Intelligence Surveillance Act", 07/02/14, https://www.pclob.gov/library/702-Report.pdf)//GK Pg. 21

Our description of Section 702's statutory authorization begins by breaking down the four-part sentence above. First, Section 702 authorizes the targeting of persons. 47 FISA does not define what constitutes "targeting," but it does define what constitutes a "person." Persons are not only individuals, but also groups, entities, associations, corporations, or foreign powers.48 The definition of "person" is therefore broad, but not limitless: a foreign government or international terrorist group could qualify as a "person," but an entire foreign country cannot be a "person" targeted under Section 702.49 In addition, the persons whom may be targeted under Section 702 may not intentionally include United States persons.50 "United States persons" or "U.S. persons" are United States citizens, United States permanent residents (green card holders), groups substantially composed of United States citizens or permanent residents, and virtually all United States corporations.51 As is discussed in detail below, the NSA targets persons by tasking "selectors," such as email addresses and telephone numbers. The NSA must make determinations (regarding location, U.S. person status, and foreign intelligence value) about the users of each selector on an individualized basis. It cannot simply assert that it is targeting a particular terrorist group.

They're incorporated within the United States and process data there – means their subject to territorial jurisdiction

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM)

Many of the world's most popular Internet companies (email providers, social media services, etc.) are US-based companies. These firms store and process global user data **inside the US**, making such data more readily available to the US government. The US also believes that it has jurisdiction over all of these companies' operations, wherever they occur, since they are **incorporated in the US.** This is true even when the user is not in the US and is not communicating with anyone in the US.

Our interpretation is based in U.S. Code

Rinehart, 14 – Editor in Chief of the Maryland Law Review (Liz Clark Rinehart, "Clapper v. Amnesty International USA: Allowing the FISA Amendments Act of 2008 to Turn "Incidentally" into "Certainly"", Maryland Law Review, 5/1/2014, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3638&context=mlr)//MBB

2. A "United States person," as used in Title 50 of the United States Code, is "a citizen of the United States, an alien lawfully admitted for permanent residence . . . , an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States." 50 U.S.C. § 1801 (i) (2006). This Note will use "person" and "persons" accordingly.

AT: Daskal opposes US territory definition

Daskal is aff either way –the relevant determinant is U.S. persons, but she recognizes the pragmatic nature of US territoriality law

Daskal, 15 – professor of law at American University (Jennifer, "THE UN-TERRITORIALITY OF DATA" Washington College of Law Research Paper No. 2015-5, SSRN)

Specifically, I argue that the Fourth Amendment should presumptively apply to the search and seizure of data, regardless of where the data or target is located, and regardless of the nationality and identity of the target. The presumption could be overcome if and only if the government can conclusively determine that none of the parties to the communication or with an ownership interest in the data are U.S. persons with Fourth Amendment rights. As should be clear, such a proposal is neither inherently rights-protective nor rights-restrictive; it simply applies a presumption in the uniform application of whatever rules are adopted, absent a conclusive determination that the search or seizure does not implicate any U.S. persons Fourth Amendment interests.

Turning to warrant jurisdiction, the arbitrariness and fluidity of data location expose the problems with territorially-limited warrants. **This does not mean**, however, **that these territorial limits ought to be unilaterally rejected** without consideration of the countervailing policy considerations. The kind of unilateral, extraterritorial exercise of law enforcement that the government advocates in the Microsoft case imposes its own set of costs: it exacerbates data localization movements (the Balkanization of the Internet into multiple closed-off systems protected from the extraterritorial reach of foreign-based ISPs, with costs to the efficiently and effectiveness of the Internet) and thereby undercuts U.S. business interests and also risks putting ISPs in an impossible bind—forcing them to choose between violating the laws of the requesting state or state where the data is stored.9 Such an approach also makes it hard to object when another country—say China or Russia—seeks to compel the foreign-based subsidiary of a U.S.-based Internet service provider (ISP) to turn over emails and other data stored in the United States, including data of U.S. citizens. Thus, while this article recognizes, and in fact embraces, the need for new norms and procedures in response to the cross-border data flows, it argues that this is not something that should be unilaterally imposed, but built up over time, based on sovereign nation buy-in and consent.

It's arbitrary to limit out affs based on data location if the data's held by US companies

Daskal, 15 – professor of law at American University (Jennifer, "THE UN-TERRITORIALITY OF DATA" Washington College of Law Research Paper No. 2015-5, SSRN)

Data's mobility—in particular its speed and unpredictability— challenges our understanding of both what it means to transit from place to place and what it means to "store" our property.117 When two Americans located in the United States send an email, the underlying 0s and 1s

generally transit domestic cables. But they also, with some non-negligible frequency, exit our borders before returning and showing up on the recipient's computer screen.118 When one Google chats with a friend in Philadelphia or uses FaceTime with a spouse on a business trip in California, the data may travel through France, without the parties to the communication knowing that this is the case. Similarly, when data is stored in the cloud, it does not reside in a single fixed, observable location akin to a safety deposit box. It may be moved around for technical processing or server maintenance reasons, and it may be copied, possibly divided up into component parts and stored in multiple places, some territorial and some extraterritorial.119 At any given moment, the user may have no idea—and no ability to know—where his or her data is being stored, moved to, or the path by which it is transiting.

These distinctions between tangible property and data matter for at least two reasons. First, they highlight the potential arbitrariness of data location as determinative of the rules that apply. Whereas the location of one's own person and tangible property is subject to generally understood rules and limitations on the way physical property moves through space, data can move from point A to point B in what appears to be circuitous and arbitrary ways, all at breakneck speed based on computer algorithms, rather than specific human choice. This is precisely the government's point in the Microsoft case when it warns against the "arbitrary outcomes" that would result if government access to data depended on where a provider chooses to hold data at any given point in time..120 And while the government fails to make the point, the same argument can be made with respect to privacy protections that turn on data location.

1ar – Collection within US borders

Collection occurs within US borders

Mukasey 14 – former U.S. Attorney General, judge for the Southern District of New York, B.A. from Columbia, LL.B. from Yale (Michael, SAFE AND SURVEILLED: FORMER U.S. ATTORNEY GENERAL MICHAEL B. MUKASEY ON THE NSA, WIRETAPPING, AND PRISM, National Security Law Journal, 3/25/14, https://www.nslj.org/wp-content/uploads/3_NatlSecLJ_196-209_Mukasey.pdf)//JJ

The other program that's been the subject of debate is administered under Section 702 of the Foreign Intelligence Surveillance Act (FISA). That program allows the Attorney General and the Director of National Intelligence to authorize jointly, for up to a year, surveillance that's targeted at foreign persons reasonably believed to be located outside this country, provided that the FISA court approves the targeting procedures under which the surveillance occurs and the minimization procedures that govern the use of the information once it's gathered. Under this program, NSA can operate within the United States to gather the content of telephone calls and Internet traffic of people outside the United States.

How's that possible? Well, it's possible because the Internet and telephone messages that flow overseas pass through servers in the United States, so though telephone conversation or an exchange of e-mail may be between parties located entirely outside this country, the NSA can monitor cables passing through the United States to get that information. The NSA generates specific identifiers that may include, for example, telephone numbers or e-mail addresses of foreign persons outside this country, and then use[s] those identifiers to pick out communications that it is entitled to get from the general flow. The surveillance by law may not target anyone of any nationality known to be in this country or intentionally target a U.S. person anywhere in the world. In other words, they can't do reverse targeting on U.S. persons by listening in on foreign conversations. In order to get the content of communications involving anyone in the United States or any U.S. person located anywhere in the world, it's necessary to get a warrant supported by a showing of probable cause, just as one would in an ordinary criminal case.

AT: Domestic = territory

Technology makes foreign and domestic inseparable – their definition is out of date

Tene, 14 - Associate Professor at the College of Management School of Law (Omar,2014, "A NEW HARM MATRIX FOR CYBERSECURITY SURVEILLANCE", http://ctlj.colorado.edu/wp-content/uploads/2014/11/Tene-website-final.pdf)//gg

To respond to these perils, governments all over the world have been developing comprehensive programs and systems to boost cyber defenses. By monitoring or imposing requirements to monitor communications data, such programs and systems inexorably affect individuals' privacy. This presents policymakers with a formidable challenge: balancing cyber and national security risks against privacy and civil liberties concerns. This delicate balancing act must be performed against a backdrop of laws that are **grounded in an obsolescent technological reality**. Legal distinctions between communications content and metadata; interception and access to stored information; and foreign intelligence and domestic law enforcement – do not necessarily reflect the existing state of play of the Internet, where metadata may be more revealing than content, storage more harmful than interception, and **foreign and domestic intelligence inseparable**.

It's impossible to demarcate territory or citizenship accurately

Brown et al, 15 – Professor of Information Security and Privacy at the Oxford Internet Institute (Ian, "Towards Multilateral Standards for Surveillance Reform", Oxford Institute Discussion Paper, January 5, 2015, https://cihr.eu/wp-content/uploads/2015/01/Brown_et_al_Towards_Multilateral_2015.pdf)//TT

The second issue is the standard of privacy protection that applies extraterritorially to the communications of persons subject to foreign intelligence collection. Most states appear to routinely ignore the privacy rights of persons affected by SIGINT collection, and current law and practice relies overwhelmingly on distinctions that technology has rendered more difficult if not **impossible to draw**, between internal and external communications, citizens and non-citizens, content and traffic etc., all of which have the effect of imposing a lower standard of protection for communications data relating to foreign nationals. It is clear that international law places an obligation on states to recognise the right to privacy and security of communications of foreign surveillance targets, but a fierce debate now rages among international jurists as to the precise nature of those obligations and the best way of demarcating them within the international legal order. However, even if some clarity is provided by the United Nations Human Rights Council, it will still be left to Member States to meet these commitments through domestic law and policy. How can this be achieved and what standards will apply?

The internet means wholly domestic communications are intercepted overseas – a territorial limit doesn't reflect modern surveillance tech

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

Three points related to the volume and intrusiveness of the resulting surveillance deserve notice. First, to obtain "about" communications, because of how the Internet is constructed, the NSA must monitor large amounts of data. n180 That is, if the NSA may [*163] collect not just e-mail to or from the target's e-mail account (badguy@ISP.com), but, in addition, other communications happening to mention badguy@ISP.com that pass through the collection point, then the NSA is monitoring a significant amount of traffic. And the agency is not just considering envelope information (for example, messages in which the selector is sending, receiving, or copied on the communication) but the actual content of messages. n181

Second, **wholly domestic conversations** may become swept up in the surveillance simply by nature of **how the Internet is constructed**. Everything one does online involves packets of information. Every Web site, every e-mail, every transfer of documents takes the information involved and divides it up into small bundles. Limited in size, these packets contain information about the sender's IP address, the intended receiver's IP address, something that indicates how many packets the communication has been divvied up into, and what number in the chain is represented by the packet in question. n182

Packet switched networks ship this information to a common destination via the most expedient route--one that may, or may not, include the other packets of information contained in the message. If a roadblock or problem arises in the network, the packets can then be re-routed, to reach their final destination. Domestic messages may thus be routed through international servers, if that is the most efficient route to the final destination.

What this means is that even if the NSA applies an IP filter to eliminate communications that appear to be within the United States, it may nevertheless monitor domestic conversations by nature of them being routed through foreign servers. In this manner, a student in Chicago may send an e-mail to a student in Boston [*164] that gets routed through a server in Canada. Through no intent or design of the individual in Chicago, the message becomes international and thus subject to NSA surveillance.

Third, further collection of domestic conversations takes place through the NSA's intercept of what are called multi-communication transactions, or MCTs. It is important to distinguish here between a transaction and a communication. Some transactions have only single communications associated with them. These are referred to as SCTs. Other transactions contain multiple communications. If even one of the communications in an MCT falls within the NSA's surveillance, all of the communications bundled into the MCT are collected.

The consequence is of significant import. FISC estimated in 2011 that somewhere between 300,000 and 400,000 MCTs were being collected annually on the basis of "about" communication--where the "active user" was not the target. So hundreds of thousands of communications were being collected that did not include the target as either the sender or the recipient of the communication. n183

A territorial limit is meaningless in the context of the Internet

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

To the extent that the interception of U.S. persons' communications constitutes a search or seizure within the meaning of the Fourth Amendment, it would appear that, at least at the front [*230] end, U.S. persons are entitled to protections. n456 The inspection and collection of content falls within the meaning of a search and seizure under the Fourth Amendment.

Just as virtual entry into the United States should not matter for purposes of setting a threshold for application of the Fourth Amendment to aliens, use of global communications should not thereby divest U.S. persons of their constitutional protections. This approach is consistent with the geographic focus of the Courts in regard to the Fourth Amendment. It does not hinge constitutional protections on movement along global communications networks--itself an untenable proposition in light of how information flows over the Internet.

If the courts, for instance, were to construct a rule that said that U.S. persons sending information outside the United States lose the protections of the Fourth Amendment in the privacy afforded those communications, it would be difficult to police. This rule assumes that individuals have control over whether their communications leave domestic bounds. They do not. The Internet is constructed to find the most efficient route between two ISP addresses. This means that **even domestic communications may be routed internationally**. Individuals have no control over how their messages are conveyed. At the back end, the government would have to be able to ascertain which messages originated within the United States and then left U.S. bounds. But the NSA claims that it does not have the appropriate technologies to make this call.

As a result, the effect of this rule would essentially be to assume that every time a U.S. person communicates, she loses constitutional protections in the content of those communications. This would eviscerate the meaning of the Fourth Amendment. It would assume that U.S. persons have no reasonable expectation of privacy in their communications, regardless of whether they flow across international borders.

The Supreme Court can avoid this conclusion by underscoring the status of the individual as Rehnquist articulated for the majority in Verdugo-Urquidez: emphasizing membership in the political community. Where established, the protection of the Fourth Amendment applies.

It's impossible to enforce a territorial limit – no way to tell where communications originated from

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

II. PROGRAMMATIC COLLECTION n143

Almost immediately after passage of the FAA, members of Congress, scholars, and others began criticizing Section 702 because [*154] of the potential for the government to use the authorities to engage in programmatic surveillance. n144

In 2009 prominent national security law Professor William Banks explained, "the FAA targets do not have to be suspected of being an agent of a foreign power or, for that matter, they do not have to be suspected of terrorism or any national security offense, so long as the collection of foreign intelligence is a significant purpose of the surveillance." n145 Surveillance could be directed at a person, organization, e-mail address, or even "an entire ISP or area code." n146 He noted, "the surveillance permitted under the FAA does not require that the Government identify a particular known facility where the intercepted communications occur." n147 These provisions represented a sea change from how FISA had previously worked (albeit introducing, for the first time, statutory restrictions in an area previously governed by Executive Order). U.S. persons' communications now could be incidentally collected under the statute, on a large scale, without many of the protections in traditional FISA. n148

Banks presciently pointed out the most likely way in which the new authorities would be used:

Although details of the implementation of the program . . . are not known, a best guess is the Government uses a **broad vacuum cleaner**-like first stage of collection, focusing on transactional data, where wholesale interception occurs following the development and implementation of filtering criteria. Then the NSA engages in a more particularized collection of content after analyzing mined data . . . [A]ccidental or incidental acquisition of U.S. persons inside the United States [will] surely occur[], especially in light of the difficulty of ascertaining a target's location. n149

For Professor Banks, part of the problem was that the nature of international information flows meant that it would be **impossible** [*155] **to tell** if an individual is located overseas or within domestic bounds. n150

We meet – communications infrastructure

The plan covers the physical internet infrastructure within the United States

Emmerson 14 [Ben, QC is a British lawyer, specialising in European human rights law, public international law and international criminal law, Promotion and protection of human rights and fundamental freedoms while countering terrorism*, http://s3.documentcloud.org/documents/1312939/un-report-on-human-rights-and-terrorism.pdf] Schloss

According to reports in both newspapers, the material retrieved through PRISM was made available to other intelligence agencies, including the Government Communications Headquarters of the United Kingdom. Subsequent disclosures reported the existence of a separate data collection programme called Upstream, which is said to involve the capture of both telephone and Internet communications passing through fibre-optic cables and infrastructure owned by United States service providers. Much of the world's Internet traffic is routed through servers physically located in the United States.

AT: Targets must be domestic, not incidental

Incidental collection is deliberate – Americans are actually the target

Goitein, 13 [Elizabeth, co-directs the Liberty and National Security Program at New York University School of Law's Brennan Center for Justice., The NSA's Backdoor Search Loophole, http://bostonreview.net/blog/elizabeth-goitein-nsa-backdoor-search-loophole-freedom-act] Schloss

Even though the target must be a non-citizen, programmatic surveillance under section 702 sweeps up all international communications to, from, or about the target. This includes communications coming into or out of the United States. Granted, the NSA may capture these calls and e-mails only if it intends to acquire "foreign intelligence information." But the FAA defines this term so broadly—it encompasses any information relevant to the foreign affairs of the United States – that it would in theory permit the capture of almost all communications between Americans and their friends, relatives, or business associates overseas. The NSA refers to this as "incidental" collection, but there is nothing "incidental" about it. As officials made clear during the debates leading up to the enactment of section 702, communications involving Americans were "**the most important** to us."

The 'target' interpretation is a cover for a massive domestic surveillance loophole – section 702 is designed for domestic surveillance

Goitein and Patel 15 - Elizabeth (Liza) Goitein co-directs the Brennan Center for Justice's Liberty and National Security Program. Served as counsel to Sen. Russell Feingold with a particular focus on government secrecy and privacy rights. Was a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. Graduated from the Yale Law School and clerked for the Honorable Michael Daly Hawkins on the U.S. Court of Appeals for the Ninth Circuit. Faiza Patel serves as co-director of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015, p.41-42//DM)

As enacted in 1978, FISA required the government to show probable cause that the target of surveillance was a foreign power or an agent of a foreign power. The FAA eliminated this requirement for programmatic surveillance. The target of surveillance may be any non-U.S. person or entity located overseas, and the FISA Court has interpreted the law to allow the government to obtain any communications to, from, or about the target.258 The only limitation is a requirement that the government certify that a significant purpose is the collection of "foreign intelligence."

Consider how these changes could operate in practice. As noted in Part II.C.2, "foreign intelligence information," where non-U.S. persons are concerned, is broadly defined to include information "that relates to . . . (A) the national defense or the security of the United States; or (B) the conduct of the foreign affairs of the United States."259 This elastic concept is unlikely to impose any meaningful restraint — particularly since the FISA Court is not allowed to probe the government's foreign intelligence certification.260 The only real limitation on surveillance, then, is the target's nationality and location.

Given the prevalence of international communication today, the government could **shoehorn** literally **billions** of communications (including communications with Americans) into a warrantless foreign intelligence collection framework, as long as there is a chance that the net will pull in some information relating to security or foreign affairs. This is plainly inconsistent with the admonition of most courts that warrantless foreign intelligence surveillance must be "carefully limited" to "those situations in which the interests of the executive are paramount."261

In a 2008 opinion approving Section 702 targeting and minimization procedures, the FISA Court held that limiting the foreign intelligence exception to foreign powers or their agents is unnecessary when the target is a non-citizen overseas.262 This ruling ignores the fact that Section 702 is **designed** to capture communications involving U.S. persons, and **expressly contemplates that U.S. person information may be kept and shared** where minimization would be inconsistent with "the need of the United States to obtain, produce, and disseminate foreign intelligence information."263 **Regardless of who is labeled the "target,"** Section 702 involves the acquisition and use of Americans' information for foreign intelligence purposes, in volumes that likely far exceed the collection in Truong and similar cases. The need to construe the exception narrowly is thus at least as important in the Section 702 context.

90% of NSA surveillance is incidental collection – only way to be 'substantial' is to curtail it

Gellman, 14 – reporter for the Washington Post (Barton, "In NSA-intercepted data, those not targeted far outnumber the foreigners who are" 7/5, http://www.washingtonpost.com/world/national-security/in-nsa-intercepted-data-those-not-targeted-far-outnumber-the-foreigners-who-are/2014/07/05/8139adf8-045a-11e4-8572-4b1b969b6322_story.html

Ordinary Internet users, American and non-American alike, far outnumber legally targeted foreigners in the communications intercepted by the National Security Agency from U.S. digital networks, according to a four-month investigation by The Washington Post.

Nine of 10 account holders found in a large cache of intercepted conversations, which former NSA contractor Edward Snowden provided in full to The Post, were not the intended surveillance targets but were caught in a net the agency had cast for somebody else.

Many of them were Americans. Nearly half of the surveillance files, a strikingly high proportion, contained names, e-mail addresses or other details that the NSA marked as belonging to U.S. citizens or residents. NSA analysts masked, or "minimized," more than 65,000 such references to protect Americans' privacy, but The Post found nearly 900 additional e-mail addresses, unmasked in the files, that could be strongly linked to U.S. citizens or U.S.residents.

Targeting is a bad standard – ignores how domestic surveillance occurs

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

[*158] A. Targeting

As aforementioned, Section 702 places four limitations on acquisition, each of which is meant to restrict the amount of information that can be obtained by the government. n166 The NSA has sidestepped these statutory restrictions in three important ways: first, it has adopted procedures that allow analysts to acquire information "about" selectors (that is, communications modes used by targets) or targets, and not merely communications to or from targets (or selectors employed by targets), or information held by targets themselves. Second, it has created a presumption of non-U.S. person status: That is, if an individual is not known to be a U.S. person (and thus exempted from Section 702 and treated either under Sections 703 and 704 or under traditional FISA, depending on the location), then the NSA assumes that the individual is a non-U.S. person. Third, the NSA has failed to adopt standards that would require it to ascertain whether a target is located within domestic bounds. Instead, the agency, having looked at the available evidence, absent evidence to the contrary, assumes that the target is located outside the United States. These interpretations work together to undermine Congress's addition of Sections 703 and 704, even as they open the door to more **extensive collection of domestic communications**.

The targeting limitation is wholly inadequate to account for modern surveillance – it creates the justification for widespread domestic surveillance

Goitein and Patel 15 - Elizabeth (Liza) Goitein co-directs the Brennan Center for Justice's Liberty and National Security Program. Served as counsel to Sen. Russell Feingold with a particular focus on government secrecy and privacy rights. Was a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. Graduated from the Yale Law School and clerked for the Honorable Michael Daly Hawkins on the U.S. Court of Appeals for the Ninth Circuit. Faiza Patel serves as co-director of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015, //DM)

It is no exaggeration to say that the world of electronic surveillance looks entirely different today than it did in 1978 when the FISA Court was established to oversee foreign intelligence surveillance. Communications technology and the legal framework have fundamentally changed, vastly increasing the nature and quantity of information the government may collect — and decreasing the court's role in supervising these operations.

Although the Supreme Court in Keith attempted to distinguish between surveillance of domestic organizations and surveillance of foreign powers, the demarcation was never clean and has become ever more strained. Advances in technology mean that the exercise of authorities aimed at foreigners abroad inevitably picks up swaths of information about Americans who should enjoy constitutional protections. But rather than develop additional safeguards for this information, the law has developed in the opposite direction: the government's authority to collect communications pursuant to its foreign intelligence-gathering authorities has expanded significantly. At the same time, the safeguard of judicial review — already limited when FISA was first enacted in 1978 — **has eroded to near-nothingness**. Indeed, in some cases, the role played by the FISA Court is so different from the normal function of a court that it likely violates the Constitution's separation of powers among the legislative, executive, and judicial branches.

A. A Revolution in Communications Technology

The impact of advances in communications technology over the last decades cannot be overstated. In 1978, most domestic telephone calls were carried over copper wires,102 while most international calls took place via satellite.103 To listen to a domestic call, the government had to identify the wire that geographically connected the two ends of a communication and manually tap into it.104 Capturing a satellite communication to or from a particular source required sophisticated equipment; resulting databases were subject to practical limitations on storage and analytical capability.105 Cellular phones were not commercially available,106 and the Internet existed only as a Department of Defense prototype.107 Surveillance generally had to occur in real time, as electronic communications were ephemeral and unlike later forms of communication (like e-mail) were not usually stored.

Today, a large proportion of communications — including e-mails and international phone calls — are transmitted by breaking down information into digital packets and sending them via a worldwide network of fiber-optic cables and interconnected computers.108 The government can access these communications by tapping directly into the cables or into the stations where packets of data are sorted.109 Digital information often is stored for long periods of time on servers that are owned by private third parties, giving the government another way to obtain information, as well as access to a trove of historical data. Most cell phone calls, along with other forms of wireless communication, travel by radio signals that are easily intercepted.

These changes have weakened the relationship between the place where communications are intercepted and the location (and nationality) of the communicants. For communications that travel wholly or in part via packets, each packet may follow a different route, and the route may be unrelated to the locations of the sender or recipient. An e-mail from a mother located in San Diego to her daughter in New York could travel through Paris, and the contents might be stored by an online service provider in Japan. But FISA, as enacted in 1978, is keyed to the location and nationality of the target and the location of acquisition. As discussed further in Part II.B.3.a, the globalization of the communications infrastructure has changed the way the law plays out in practice.110

Technological changes also have expanded the amount of information about Americans the government can acquire under FISA. For one thing, globalization and advances in communications technology have vastly increased the volume — and changed the nature — of international communications. The cost and technological difficulties associated with placing international calls during the era of FISA's passage meant that such calls were relatively rare. In 1980, the average American spent less than 13 minutes a year on international calls.111 Today, the number is closer to four and a half hours per person — a thirty-fold increase.112 That number does not include the many hours of Skype, FaceTime, and other Internet-based voice and video communications logged by Americans communicating with family, friends, or business associates overseas. And, of course, the advent of e-mail has removed any barriers to international communication that may have remained in the telephone context, such as multi-hour time differences. Worldwide e-mail traffic has reached staggering levels: in 2013, more than 182.9 billion e-mails were sent or received daily.113 As international communication has become easier and less costly, the content of communications is much more likely to encompass — and, in combination, to create a wide-ranging picture of — the intimate details of communicants' day-to-day lives.

Technology and globalization also have led to much greater mobility, which in turn has generated a greater need to communicate internationally. Foreign-born individuals comprised around 6

percent of the U.S. population when FISA was enacted but account for more than 13 percent today.114 Immigrants often have family members and friends in their countries of origin with whom they continue to communicate. Similarly, there has been a sharp increase in Americans living, working, or traveling abroad, creating professional or personal ties that generate ongoing communication with non-citizens overseas. The number of Americans who live abroad is nearly four times higher than it was in 1978 and the number of Americans who travel abroad annually is nearly three times higher.115 The number of American students who study abroad each year has more than tripled in the past two decades alone.116 These trends show no signs of abating, suggesting that the volume of international communications will only continue to expand.

In addition, technological changes have made it likely that government attempts to acquire international communications will pull in significant numbers of wholly domestic communications for which Congress intended the government to obtain a regular warrant rather than proceeding under FISA. For instance, a recently declassified FISA Court decision shows that when the NSA taps into fiberoptic cables, it pulls in some bundles of data that include multiple communications — including communications that may not involve the target of surveillance. The NSA claims that it is "generally incapable" of identifying and filtering out such data bundles.117 The result is that the agency routinely collects large numbers of communications — including "tens of thousands of **wholly domestic communications**" between U.S. persons — that are neither to, from, or about the actual "target."118

For all of these reasons, the collection of foreign intelligence surveillance today involves Americans' communications at a volume and sensitivity level Congress never imagined when it enacted FISA. If the government wished to acquire the communications of a non-citizen overseas in 1978, any collection of exchanges involving Americans could plausibly be described as "incidental." Today, with international communication being a daily fact of life for large numbers of Americans, the collection of their calls and e-mails in vast numbers is an inevitable consequence of surveillance directed at a non-citizen overseas. The volume of information collected on U.S. persons makes it difficult to characterize existing foreign intelligence programs as focused solely on foreigners and thus exempt from ordinary Fourth Amendment constraints.

The targeting limit is a loophole designed to authorize domestic collection – reject it

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 12)//AK

Section 702 of the FISA Amendments Act was a little different. The provision was supposed to solve a very specific problem. Administration officials would draw diagrams: a terrorist in Saudi Arabia was talking to a terrorist in Cuba, and the data was flowing through the US, but the NSA had to eavesdrop outside of the US. This was inefficient, it argued, and Section 702 allowed it to grab that conversation from taps inside the US. Again, there's nothing in Section 702 that authorizes mass surveillance. The NSA justifies the use by abusing the word "incidental."

Everything is intercepted, both metadata and content, and automatically searched for items of interest. The NSA claims that only the things it wants to save count as searching. Everything else is incidental, and as long as its intended "target" is outside the US, it's all okay. A useful analogy would be allowing police officers to search every house in the city without any probable cause or warrant, looking for a guy who normally lives in Bulgaria. They would save evidence of any crimes they happened to find, and then argue that none of the other searches counted because they hadn't found anything, and what they found was admissable as evidence because it was "incidental" to the search for the Bulgarian. The Fourth Amendment specifically prohibits that sort of search as unreasonable, and for good reason. My guess is that by the time the FISA Amendments Act came around in 2008, the NSA knew what it was doing and deliberately wordsmithed the bill to allow for its preferred interpretation. Its leadership might have even briefed the Senate and House intelligence committees on how it was going to interpret that language. But they certainly didn't brief all of Congress, and they never told the American people.

AT: XO12333 surveillance only foreign

XO12333 includes foreign and domestic – we only limit collection on Americans

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Executive Order 12333, the 1981 presidential document authorizing most of NSA's surveillance, is incredibly permissive. It is supposed to primarily allow the NSA to conduct surveillance outside the US, but it gives the agency **broad authority to collect data on Americans**. It provides minimal protections for Americans' data collected outside the US, and even less for the hundreds of millions of innocent non-Americans whose data is incidentally collected. Because this is a presidential directive and not a law, courts have no jurisdiction, and congressional oversight is minimal. Additionally, at least in 2007, the president believed he could modify or ignore it at will and in secret. As a result, we know very little about how Executive Order 12333 is being interpreted inside the NSA.

Bulk records collection means the NSA inevitably captures domestic communications – it's incapable of excluding it

Sommer, 14 - The author is with ZwillGen PLLC in Washington, D.C.; a law firm that represented a telecomm provider against a FISA order (Jacob, "FISA Authority and Blanket Surveillance: A Gatekeeper Without Opposition" Litigation, Spring, Vol. 40 No. 3

http://www.americanbar.org/publications/litigation_journal/2013-14/spring/fisa_authority_and_blanket_surveillance_gatekeeper_without_opposition.html

The NSA discontinued SHAMROCK in 1975, but it still incidentally collected Americans' communications—much like it does (to a lesser extent) today. The Church Committee described the NSA's "initial interception of a stream of communications" as "analogous to a vacuum cleaner." "NSA picks up all communications carried over a specific link that it is monitoring. The combination of this technology and the use of words to select communications of interest results in NSA analysts reviewing the international messages of American citizens, groups, and organizations for foreign intelligence." Id. at 741. This is eerily similar to the FISC's description of bulk records collection as recently as October 2011, in which it stated "that NSA has acquired, is acquiring, and . . . will continue to acquire tens of thousands of **wholly domestic** communications," Redacted, slip op. at 33 (FISA Ct. Oct. 3, 2011), because it intercepts **all communications** over certain Internet links it is monitoring and is "**unable to exclude certain Internet transactions**." Id. at 30.

We meet – Exec. O 12333 collects and can target U.S. persons in bulk
Nojeim 14 – Senior Counsel and Director of the Freedom, Security, and Technology Project at the Center for Democracy & Technology, B.A. University of Rochester, J.D. University of Virginia (Gregory, WRITTEN STATEMENT REGARDING SHORT AND LONG TERM AGENDA OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, Center for Democracy and Technology, 8/29/14,
https://d1ovv0c9tw0h0c.cloudfront.net/files/2014/09/pclob-written-statement-82914.pdf)//JJ

Surveillance Under Executive Order 12333

Executive Order 12333 governs surveillance and other intelligence gathering activities, including human intelligence and signals intelligence directed outside the United States. Surveillance that targets U.S. persons (citizens and lawful permanent residents of the U.S.) abroad is conducted under the Foreign Intelligence Surveillance Act ("FISA") as opposed to EO 12333. EO 12333 was first issued in 1981. It was modified in 2003, 2004, and, most recently, in 2008 to accommodate creation of the Office of the Director of National Intelligence. Each intelligence agency issues regulations that interpret EO 12333, and for purposes of surveillance conducted under the Executive Order, DOD Regulation 5240.1-R which governs DOD surveillance activities that could affect U.S. persons (1982),1 and the United States Signals Intelligence Directive, USSID-18 (2011)2 are perhaps the most relevant for PCLOB's consideration.

EO 12333 is the legal grounding for mass surveillance activities, including many brought to public attention for the first time in documents released by Edward Snowden. Among other things, EO 12333 is the basis for bulk collection of: (i) location information generated by use of mobile devices;3 (ii) communications content passing over the main communications links that connect data centers around the world, including Yahoo and Google data centers;4 (iii) text messages;5 (iv) email address books.6 These collection activities sweep in communications of <u>many U.S. persons</u> even though U.S. persons are not targeted for surveillance. PCLOB's review should include an assessment as to whether EO 12333 and the regulations issued thereunder adequately protect U.S. persons' rights, and in particular, whether the minimization for which it calls is up to the task of protecting U.S. persons' rights, given the breadth of collection the Executive Order authorizes and the context in which it occurs. PCLOB should assess whether minimization procedures are an adequate protection for bulk collection activities that can

reasonably be anticipated to sweep in a significant proportion of U.S. persons' communications. When, for example, the NSA can reasonably anticipate that a significant proportion of the communications seized by tapping the back-ups between data centers of a U.S. tech company will be those of U.S. persons, it collects those communications in bulk nonetheless. PCLOB should assess whether this is appropriate and whether, instead, additional protections are called for at collection when it is reasonable to believe that a significant portion of the collected data will include the communications of U.S. persons.

Incidental collection is inevitable

Vladeck 15 - professor of law at American University Washington College of Law (Steven "Forget the Patriot Act – Here Are the Privacy Violations You Should Be Worried About", Foreign Policy, 06/01/15, http://foreignpolicy.com/2015/06/01/section-215-patriot-act-expires-surveillance-continues-fisa-court-metadata/)//GK

The answer, we now know, has everything to do with technology. Although the government is only allowed to "target" non-citizens outside the United States, it is inevitable, given how it collects information under both of these regimes, that the communications of U.S. citizens and non-citizens lawfully present in the United States will also be collected, albeit "incidentally," as the government puts it. After all, when thousands of unrelated emails and other electronic communications are bundled together in a packet that travels through an Internet switch that's physically located in the United States (for the 2008 statute) or overseas (for Executive Order 12333), it's simply not possible for the government to only collect the communications between non-U.S. citizens and leave the others untouched, any more so than it's possible for a vacuum to segregate particles of dirt.

AT: FISA surveillance only foreign

We meet – our aff stops the abuse of FISA exceptions that authorize domestic searches

Robertson, 15 - James Robertson served on the U.S. District Court for the District of Columbia from 1994 to 2010. He also served on the Foreign Intelligence Surveillance Court from 2002 to 2005 ("What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015)

And here is where concern about the Foreign Intelligence Surveillance Act comes in. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 established the rules for domestic government wiretaps. FISA, enacted ten years later, focused on foreign intelligence. But it is the use (or misuse) of FISA, and FISA's potential allowance of unreasonable **domestic** searches and seizures, that the reporting of James Risen and Eric Lichtblau and the disclosures of Edward Snowden have brought into sharp focus.

FISA's internationality requirement is vague and allows targeting purely domestic groups

Harper 14, University of Chicago Law School, U.S. Department of Justice, Civil Division, (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism", University of Chicago Law Review; Summer2014, Vol. 81 Issue 3)//AK

Because foreign policy interests constitutionally distinguish international and domestic terrorist groups, FISA's internationality requirement, which attempts to sort these groups for Fourth Amendment purposes, must identify cases in which these interests are present. However, some interpretations of the nebulous FISA standard allow for the targeting of terrorist groups that should be considered domestic for Fourth Amendment purposes because they do not trigger foreign policy interests. This, in turn, permits the employment of certain FISA procedures against domestic groups that may violate the Fourth Amendment.

Abdul-Latif demonstrates how an expansive interpretation of FISA's internationality requirement179 can permit the targeting of groups that do not implicate the two foreign affairs interests described above. In this case, the government engaged in FISA surveillance even though neither the target of the attack (a domestic military entrance processing station) nor Abdul- Latif's international YouTube activity risked creating a diplomatic crisis. Moreover, there is no available evidence indicating that Abdul-Latif may have been a link in a global chain of terror such that the government's duty to control international terrorism was triggered. Therefore, even if Abdul-Latif's conspiracy qualified as international terrorism under FISA—as the court seemed to think—the conspiracy still did not implicate the foreign policy interests necessary to merit such a designation under the Fourth Amendment.

Even assuming that such expansive interpretations of FISA's internationality requirement are rare, more limited interpretations that clearly satisfy FISA's language may similarly fail to trigger foreign policy concerns. To illustrate, a US citizen purchasing weapons from a friend in Mexico for use in a terrorist attack in the United States almost certainly qualifies as international terrorism under FISA. Such activity "transcend[s] national boundaries in terms of the means by which [the terrorist acts] are accomplished"180 because the guns used to perpetrate the attack have a substantial international character. However, it is not readily apparent that such activity would cause a foreign affairs crisis or that it would trigger a domestic duty to control international terrorism. Thus, this activity should be seen as domestic terrorism for Fourth Amendment purposes.

The overinclusive nature of FISA's internationality requirement raises the important question whether FISA's procedures would violate the Fourth Amendment when applied to terrorist groups that should be considered domestic because they do not trigger the government's foreign policy interests. On one view, FISA's procedures are reasonable even when applied to domestic terrorist groups. As mentioned above, the Keith Court noted that in the domestic terrorism context, warrants for electronic surveillance need not be identical to Title III warrants.181 Rather, the warrants could utilize a less stringent standard of probable cause, have looser time and reporting requirements, and be sought at a specially designated court.182 FISA's procedures appear to roughly track these recommendations, as was noted by the FISCR in a rare published case upholding the constitutionality of FISA warrant procedures in the foreign-intelligence context.183 Therefore, FISA proponents would argue, FISA warrants are reasonable under the Fourth Amendment regardless of whether domestic or international terrorist groups are targeted.

Although FISA's procedures generally track the recommendations made in Keith, there are at least two FISA procedures that seem inappropriate when applied in the domestic terrorism context, and which may render a FISA warrant unreasonable when applied to domestic groups. The most problematic of these is FISA's notice requirement. FISA does not require notice to the surveillance target unless the government intends to use the surveillance in a criminal proceeding,184 and the Supreme Court has found such a lack of default notice to be a constitutionally significant factor in determining the reasonableness of a warrant. 185 The FISCR justified FISA's notice procedure in the foreignintelligence context by pointing to the conclusion in the FISA Senate report that "[t]he need to preserve secrecy for sensitive counterintelligence sources and methods justifies elimination of the notice requirement."186 However, the Senate report from which the FISCR quotes concluded that FISA's stark departure from the standard notice requirement was reasonable only in the context of foreign counterintelligence investigations.187 While the investigation of truly international terrorism might rise to the level of foreign counterintelligence due to the pseudopolitical nature of many foreign terrorist organizations, the same cannot be said of domestic terrorism investigations. Investigations of domestic terrorism simply do not require the same level of secrecy because there is no risk of injuring the foreign policy of the United States. As the Keith Court suggested, investigations of domestic groups might justify a looser notice requirement than Title III in sensitive cases or in cases involving long-term surveillance, 188 but there is no apparent justification for a no-notice default rule when FISA is applied to domestic terrorists.

FISA's minimization procedures also raise constitutional concerns when applied to domestic terrorists. The Supreme Court has forbidden warrant schemes that give an officer the ability to seize "any and all conversations" from a targeted device or facility.189 In an effort to prevent

such broad information acquisition, FISA requires that the government adopt minimization procedures—"specific procedures" that limit the amount of information that the government can acquire, retain, and dis- seminate.190 Although any suggested minimization procedures are subject to approval or modification by the FISC, the government has adopted standard procedures that, in practice, permit the initial acquisition of all information from a monitored device or facility.191 Title III, on the other hand, requires procedures that minimize the irrelevant information acquired in the first place.192 FISA does require further minimization of information that is retained and disseminated, but these additional safeguards likely do not provide a meaningful filter to the acquisition process because the standards of retention are extremely low.193 Moreover, data acquisition can continue indiscriminately for weeks before further minimization procedures are applied.194

FISA's internationality requirement is blurring – allowing surveillance of purely domestic groups
Harper 14, University of Chicago Law School, U.S. Department of Justice, Civil Division, (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism", University of Chicago Law Review; Summer2014, Vol. 81 Issue 3)//AK

The Foreign Intelligence Surveillance Act of 1978 (FISA**)** regulates, **among other things,** the government's acquisition of electronic surveillance within the United States for foreign intelligence purposes. **FISA allows a federal officer to seek an order from a judge at a specially designated court "approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information." As long as the requisite foreign nexus can be shown, FISA warrants are preferable to their possible substitutes because they are easier to obtain and allow for more secretive and penetrating investigations.**

Consistent with FISA's foreign focus, the government may use the statute to investigate members of international terrorist groups within the United States**.** However, the activities of purely domestic terrorist groups do not fall under FISA and must therefore be investigated using standard criminal investigative tools. **Often**, terrorists will easily be identified as international; members of designated "foreign terrorist organizations" operating within the United States are clearly international terrorists. **But** the proliferation of modern communication technologies has caused increasing slippage between the definitions of domestic and international terrorism**. For example, many homegrown terrorists are inspired by international groups to commit attacks in the United States. In many cases, the government seems to classify these actors as international terrorists based on Internet activity that ranges from viewing and posting jihadist YouTube videos to planning attacks**

with suspected foreign terrorists in chat rooms, thus using FISA's formidable investigatory weapons against them. The government is aided in this task by FISA's definition of international terrorism, which has an extremely vague and potentially loose internationality requirement**. An expansive interpretation of this requirement could be used to subject what might properly be considered domestic terrorist groups to FISA surveillance.**

One should be concerned about both the existence and the effects of an expansive interpretation of FISA's internationality requirement. Not only would subjecting domestic terrorist groups to FISA surveillance violate FISA itself, but such an application might also be unreasonable under the Fourth Amendment. **Moreover, the FISA application and surveillance process is very secretive, lacks a true adversarial process, and is devoid of meaningful oversight. This setting offers an ideal environment for the government to push statutory and constitutional boundaries. Indeed, recent revelations from Edward Snowden offer confirmation that** the government is more likely to cross constitutional lines in the name of national security when these institutional factors are present**.**

FISA's loose internationality requirement allows surveillance of domestic groups

Harper 14, University of Chicago Law School, U.S. Department of Justice, Civil Division, (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism", University of Chicago Law Review; Summer2014, Vol. 81 Issue 3)//AK

FISA's definition of international terrorism permits the government to draw a fuzzy line between international and domestic terrorism. This uncertainty potentially allows the government to engage in FISA surveillance of terrorist groups that do not implicate the government's foreign policy interests. This, in turn, raises serious constitutional questions. To fashion a solution that avoids these constitutional issues, this Comment has identified the government interests that distinguish these groups for Fourth Amendment purposes and has proposed a more limited interpretation of FISA's internationality requirement. The proposed interpretation seeks to identify international terrorists by asking if they implicate these foreign policy interests. Beyond more accurately identifying terrorist groups, a more tailored internationality standard would give courts and defendants the tools necessary to counteract the distinct institutional advantage currently possessed by the government.

FISA is entirely about the use of foreign intelligence information within the United States

Sommer, 14 - The author is with ZwillGen PLLC in Washington, D.C.; a law firm that represented a telecomm provider against a FISA order (Jacob, "FISA Authority and Blanket Surveillance: A Gatekeeper Without Opposition" Litigation, Spring, Vol. 40 No. 3

http://www.americanbar.org/publications/litigation_journal/2013-14/spring/fisa_authority_and_blanket_surveillance_gatekeeper_without_opposition.html

FISA occupies an uneasy place. It resides where intelligence gathering meets the Fourth Amendment. FISA addresses the problem of how, and when, the government can conduct surveillance for intelligence-gathering purposes **on United States soil**. Over time, Congress has addressed this delicate balance by amending FISA to expand and contract surveillance capabilities. Today, FISA provides a comprehensive set of procedures for obtaining and using "foreign intelligence information" **within the United States**.

AT: 702 only foreign

702 governs collection within the US

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 12)//AK

Section 702 of the FISA Amendments Act was a little different. The provision was supposed to solve a very specific problem. Administration officials would draw diagrams: a terrorist in Saudi Arabia was talking to a terrorist in Cuba, and **the data was flowing through the US**, but the NSA had to eavesdrop outside of the US. This was inefficient, it argued, and **Section 702 allowed it to grab that conversation from taps inside the US.**

None of their evidence assumes for incidental collection – the location of a source can't be determined until data is already gathered

PCLOB 14 - independent, bipartisan agency within the executive branch established by the Implementing Recommendations of the 9/11 Commission Act ("Report on the Surveillance Program Operated Pursuant to Sec7on 702 of the Foreign Intelligence Surveillance Act", 07/02/14, https://www.pclob.gov/library/702-Report.pdf)//GK p.6

Although U.S. persons may not be targeted under Section 702, communications of or concerning U.S. persons may be acquired in a variety of ways. An example is when a U.S. person communicates with a non-U.S. person who has been targeted, resulting in what is termed "incidental" collection. Another example is when two non-U.S. persons discuss a U.S. person. Communications of or concerning U.S. persons that are acquired in these ways may be retained and used by the government, subject to applicable rules and requirements. The communications of U.S. persons may also be collected by mistake, as when a U.S. person is erroneously targeted or in the event of a technological malfunction, resulting in "inadvertent" collection. In such cases, however, the applicable rules generally require the communications to be destroyed.

We meet – Section 702 gathers U.S. person data

Bates 14 – United States District Judge for the United States District Court for the District of Columbia, B.A. from Wesleyan University, J.D. from the University of Maryland School of Law (John, Comments of the Judiciary on Proposals Regarding the Foreign Intelligence Surveillance Act, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, 1/10/14, http://www.judiciary.senate.gov/imo/media/doc/011413RecordSub-Grassley.pdf)//JJ

Querying Section 702 Information: Section 702 of FISA concerns certain acquisitions of foreign intelligence information targeting non-U. S. persons who are reasonably believed to be outside the United States. Currently, the government may not target U.S. persons for acquisition under Section 702, see § 702(b)(1), (3), but information about U.S. persons may still be obtained (e.g., when a U.S. person communicates with a targeted non-U.S. person). Proposals have been made to generally prohibit querying data acquired under Section 702 for information about particular U.S. persons, with an exception for emergency circumstances and for U.S. persons for whom a probable cause showing has been made. These proposals would engender a new set of applications to the FISC. Decisions about querying Section 702 information are now made within the Executive Branch. As a result, the Courts do not know how often the government performs queries of data previously acquired under Section 702 in order to retrieve information about a particular U.S. person. It seems likely to us, however, that the practice would be common for U.S. persons suspected of activities of foreign intelligence interest, e.g., engaging in international terrorism, so that the burden on the FISC of entertaining this new kind of application could be substantial.1

We meet – section 702 gathers communications of Americans

Kayyali 14 – B.A. from UC Berkeley and J.D. from UC Hastings, Community Outreach Editor for the Hastings Race and Poverty Law Journal (Nadia, The Way the NSA Uses Section 702 is Deeply Troubling. Here's Why., Electronic Frontier Foundation, 5/7/14, https://www.eff.org/deeplinks/2014/05/way-nsa-uses-section-702-deeply-troubling-heres-why)//JJ

Even though it's ostensibly used for foreign targets, Section 702 surveillance sweeps up the **communications of Americans**. The NSA has a twisted, and incredibly permissive, interpretation of targeting that includes communications about a target, even if the communicating parties are completely innocent. As John Oliver put it in his interview with former NSA General Keith Alexander: "No, the target is not the American people, but it seems that too often you **miss the target** and **hit the person next to them** going, 'Whoa, him!'"

The NSA has confirmed that it is searching **Section 702 data** to **access American's communications** without a warrant, in what is being called the "back door search loophole." In response to questions from Senator Ron Wyden, former **NSA director General** Keith Alexander admitted that the NSA specifically searches Section 702 data **using "U.S. person identifiers**," for example email addresses associated with someone in the U.S.

Section 702 proves that US person data is under surveillance regardless of if the surveillance is domestic or foreign

Sanchez 15* Washington, D.C.–based writer, policy analyst, and journalist who covers the intersection of privacy, technology, and politics (Julian, "GOVERNMENT DISCRETION IN THE AGE OF BULK DATA COLLECTION: AN INADEQUATE LIMITATION?", Federalist Edition Volume 2 p.32-35)//GK

Section 702 of the FISA Amendments Act permits blanket surveillance authorizations. Those are general warrants, plain and simple.57 We are meant to feel reassured by the fact that Americans cannot be "targeted" under these authorizations,58 even though our communications are intercepted.59 But of course, no particular person is the specific target of any general warrant—that is what makes it a general warrant. That is not much of a consolation if your communications can nevertheless be intercepted, not pursuant to the order of a neutral magistrate but at the discretion of an NSA analyst.60 The scale of col- lection under these authorities,61 makes it very lice the system for misuse of that data. It is also increasingly clear that the public's initial under- standing of how these programs operated was fundamentally inaccurate.62 Even the understanding of the Supreme Court, which formed the basis of the ruling in Clapper v. Amnesty International USA, 63 was grounded in a significant misunderstanding of how "targeting" under section 702 authorities op- erated.64 Both the Court and most members of the public presumed that an American's communications could be intercepted without a warrant, but only if they were in contact with a foreign surveillance target.65 But, in fact, your communications could also be intercepted if your communication mentioned a "selector," such as an e-mail address, that the NSA had tasked for collection.66 So the NSA is essentially filtering all international communication, searching their contents by computer, and flagging those e-mails and other digital communications that reference a target, whether or not that target is actually a party to the conversation.67 When we consider that a "target" as defined by FISA can also be a corporate entity68—or an entire website, when the target is an entity like The Pirate Bay or Wikileaks69—the potential for large- scale interception of American communications is made fairly clear. Returning again to the question of "balancing," what we should be asking is not what particular abuses we have found out about to date. Although the suggestion is disturbing in one set of leaked NSA documents that "radicalizers" who are not terrorists, but who speak critically about the U.S. and justify violence against it in writing, could be targeted for smear campaigns using signals intelligence about their private online sexual activity.70 Rather, the question we need to ask is: If someone with the intentions of a Hoover once again gained his powerful position, what effective limits would there be on his ability to use this intelligence gathering architecture in anti-democratic ways? Are there, and can there be, appropriate and necessary limits on the mass collection of Internet communications? What about enormous collection of tele- phone, financial, and other types of data that can paint an incredibly detailed portrait of anyone's life? There can be no meaningful guarantee of privacy—not "security" against unreasonable search—when this information is indiscriminately collected. Even if it is simply sitting in a database today,71 it remains waiting to be scrutinized and searched. Indeed, even if the initial "targeting" of NSA's collection is limited to foreigners, those databases can subsequently be searched using "selectors" associated with U.S. persons.72 In oth- er words, once that information is collected under a sweeping authority justified by the exigencies of foreign intelligence and counterterrorism, the NSA and the FBI are allowed to go in and search for an American's name, even though they would have needed a particularized warrant to do initial collection targeting that person.73 What are the practical constraints on the misuse of that vast store of data? Given that the FISA court has itself been repeatedly misinformed about the technical details of how these programs operate, in some cases for years at a time,74 the only realistic answer is that there are not any. We are effectively rely- ing on the probity of intelligence officials.75 We can hope they have been deserving of that trust so far—but in the long run, hope is not an acceptable strategy.

We meet – Section 702 allows for mass surveillance of US persons

Wilhelm 14 – writer for TechCrunch (Alex, "Why Section 702 Reform Matters", Techcrunch, 07/6/14, http://techcrunch.com/2014/07/06/why-section-702-reform-matters/?ncid=rss)//GK

A recent report in the Washington Post delved into the National Security Agency's (NSA) Section 702 surveillance activities, and although it found that the program returns useful information to the agency, it also revealed broad use of the legal authority to collect data and communications from non-target parties. It also

indicated that "unmasked identities remain in the NSA's files, and the agency's policy is to hold on to 'incidentally' collected U.S. content, even if it does not appear to contain foreign intelligence." In short under the legal purview of Section 702 of the Foreign Intelligence Surveillance Act (FISA), the NSA regularly collects — albeit in a roundabout fashion, and likely not one as robust and complete as it would like — data and communications of United States citizens that it hangs onto even if it has no immediate merit relating to national security. The Post did not go into too much detail on the "valuable" information the sweeps returned for national security reasons, but noted the searches provided the government with information about a secret overseas nuclear project and the identities of cyber hackers attacking U.S. networks. But the sweeps also provided the government agency with detailed information about the lives of more than 10,000 people who were not necessarily being targeted by the NSA. The Post report described the files, "determined as useless but nonetheless retained" as running the gamut from illicit sexual liaisons to financial anxieties. Pictures, including mothers kissing their infants and women modeling lingerie, were picked up in the broad searches. As we have recently seen, the NSA is unafraid to use its authority to search its pooled data — that it collects directly from technology companies and by tapping the core fiber cables of the Internet — with "selectors" that relate to United States persons. The Post report is damning in detailing the painful laxity that appears to pervade our national intelligence apparatus. In one example, it cites an analyst who inferred that every member of the chat friend list of a known foreigner to be foreign as well, a view so broad as to be almost ridiculous. The report also indicates that Section 702 authority is often used when traditional warrants expire: In an ordinary FISA surveillance application, the judge grants a warrant and requires a fresh review of probable cause — and the content of collected surveillance — every 90 days. When renewal fails, NSA and allied analysts sometimes switch to the more lenient standards of PRISM and Upstream. "These selectors were previously under FISA warrant but the warrants have expired," one analyst writes, requesting that surveillance resume under the looser standards of Section 702. The request was granted. This matters as there has been action in the United States Congress to ban using so-called "backdoor" searches on United States persons. A backdoor search under Section 702 is when stored data is queried using search terms to find the communications of Americans. The NSA, under Section 702, cannot go out and try to collect the communications of a known United States person, but it can search what it picks up "incidentally." Given the NSA's own admitted broad use of Section 702, and that the FBI and CIA also use similar methods, and especially that the NSA's incredibly broad interpretation of what it can collect under the rule, the amount of data and communications in its databases stemming from United States persons must be massive. And it has the authority to query that information without securing a warrant. The NSA and the executive branch do not view backdoor searches as outside the letter, or spirit, of the law, according to their recent comments appended to the data released concerning the use of such authority.

Section 702 is used to spy on U.S. citizens

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The NSA has confirmed that it is searching Section 702 data to access American's communications without a warrant, in what is being called the "back door search loophole." In response to questions from Senator Ron Wyden, former NSA director General Keith Alexander admitted that the NSA specifically searches Section 702 data using "U.S. person identifiers," for example email addresses associated with someone in the U.S.

Domestic includes one-end communication

One-end communications with a U.S. person are domestic

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There are two types of domestic communications: wholly domestic (sent to and from a U.S. citizen) and one-end domestic (communications to, from, or concerning a U.S. citizen). Upstream acquisitions inadvertently sweep in tens of thousands, up to 56,000 wholly domestic communications (0.248% of all communications collected under § 702 upstream authorities). However, the number of one-end domestic communications remains unknown. The multiple categories – all Internet communications, communications collected under § 702, communications collected under the § 702 upstream program, and wholly domestic or one-end communications – combined with the mix of percentages and absolute numbers of both total data traffic and total communications can be difficult to keep straight. A simple chart placing the 56,000 wholly domestic communications (small black box below), in its greater context of all communications collected under the § 702 upstream program (the white box below) and all internet communications (big black box below), would demonstrates the NSA's low margin of error.

Surveillance

Negative

Surveillance must be non-public information

Information held by third parties lacks right to privacy – prefer U.S. government definitions, *not the rest of the world's*

Donohue 15 – Professor of Law, Georgetown Law and Director, Center on National Security and the Law, Georgetown Law (Lauren, HIGH TECHNOLOGY, CONSUMER PRIVACY, AND U.S. NATIONAL SECURITY, Symposium Articles, 4 Am. U. Bus. L. Rev. 11 p.42, 2015, Hein Online)//JJ

1. Residual Rights in Third Party Data

One central question that **divides the United States from numerous other countries** and regions-including the European Union-centers on **who owns an individual's data**. In the United States, since Smith v. Maryland (addressing pen registers and trap and trace devices), and U.S. v. Miller (focusing on financial records), **all three branches** have **treated information held by third parties as lacking an individual right to privacy**.

In contrast, **the EU considers** that the individual who has provided **data to a third party** to **still have a privacy interest** in the information. The recent European Court decision, recognizing the right to anonymity, necessarily presupposes a continued interest in data, even once it is obtained by a third party.

Excludes zero day vulnerabilities

Undermining encryption isn't a surveillance program

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM)

BULLRUN

• **Not in and of itself a surveillance program**, BULLRUN is an operation by which the NSA undermines the security tools relied upon by users, targets and non-targets, and US persons and non-US persons alike. The specific activities include dramatic and unprecedented efforts to attack security tools, including:

• Inserting vulnerabilities into commercial encryption systems, IT systems, networks, and endpoint communications devices used by targets;

• Actively engaging US and foreign IT industries to covertly influence and/or overtly leverage their commercial products' designs;

• Shaping the worldwide commercial cryptography marketplace to make it more vulnerable to the NSA's surveillance capabilities;

• Secretly inserting design changes in systems to make them more vulnerable to NSA surveillance, and

• Influencing policies, international standards, and specifications for commercial public key technologies.

Excludes science fiction affs

Surveillance definitions demand precision – science fiction is useless for current debates

Cetina 14– John Marshall Law School (Daniel, "Balancing Security and Privacy in 21st century America: A Framework for FISA Court Reform", John Marshall Law Review, Summer 2014, http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jmlr47&type=Text&id=1540)//DBI

Any legitimate attempt to discuss and **critique** United States surveillance tactics necessarily **demands defining exactly what surveillance is and what it entails**. Although discourse surrounding governments' intelligence and law enforcement techniques transcends any specific epoch or state,11 modern communication technologies "have revolutionized our daily lives [and] have also created minutely detailed recordings of those lives," 12 thereby making governmental surveillance simple, potentially ubiquitous, and susceptible to abuse.13 Of course, recent surveillance programs were implemented for the noble purpose of conducting the War on Terrorism; 14 but the danger is that pursuing this purpose unchecked can undermine the central principles that both provide the Republic's foundation and differentiate it from the very enemies it combats. 15

While the prospect of governmental surveillance seems to implicitly suggest a quasi-Orwellian dystopia,16 fantastical science fiction mythologies, 17 abstruse philosophical concepts, 18 or documented repressive regimes,19 **the reality is both less foreboding and more nuanced**. Although American society, ostensibly, is looking increasingly akin to such fiction, theory, and totalitarianism, surveillance as applied is not so disturbing. Surveillance involves and encompasses many topics and practices, both abstract and practical,20 but it primarily involves power relationships. 2 1 Specifically, **surveillance is "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction.**"22 Surveillance can target a modern society's numerous communications networks, 28 which exist to send and receive information. 24 The communications include both envelope information and content information, distinct categories that draw varying degrees of interest from the surveillance authority. 25

But surveillance is not strictly the province of the federal government. 26 Indeed, state and local governments have their own surveillance practices, 27 as do private corporations, which routinely use surveillance data to determine purchasing trends and calibrate advertising, especially through such social media sites as Facebook. 28 Surveillance, therefore, transcends the boundary between the private sector and the public sector. 29

The focus here, however, is on federal governmental surveillance. It is therefore critical to understand from where the federal government derives its authority to monitor and analyze communications networks.

2nc – limits impact

Err negative – the topic is overwhelmingly broad, with 17 agencies conducting intelligence surveillance alone

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The NSA might get the headlines, but the US intelligence community is actually composed of 17 different agencies. There's the CIA, of course. You might have heard of the NRO—the National Reconnaissance Office—it's in charge of the country's spy satellites. Then there are the intelligence agencies associated with all four branches of the military. The Departments of Justice (both FBI and DEA), State, Energy, the Treasury, and Homeland Security all conduct surveillance, as do a few other agencies. And there may be a still-secret 18th agency. (It's unlikely, but possible. The details of the NSA's mission remained largely secret until the 1970s, over 20 years after its formation.)

After the NSA, the FBI appears to be the most prolific government surveillance agency. It is tightly connected with the NSA, and the two share data, technologies, and legislative authorities. It's easy to forget that the first Snowden document published by the Guardian—the order requiring Verizon to turn over the calling metadata for all of its customers—was an order by the FBI to turn the data over to the NSA. We know there is considerable sharing amongst the NSA, CIA, DEA, DIA, and DHS. An NSA program code-named ICREACH provides surveillance information to over 23 government agencies, including information about Americans.

That said, unlike NSA surveillance, FBI surveillance is traditionally conducted with judicial oversight, through the warrant process. Under the Fourth Amendment to the US Constitution, the government must demonstrate to a judge that a search might reasonably reveal evidence of a crime. However, the FBI has the authority to collect, without a warrant, all sorts of personal information, either targeted or in bulk through the use of National Security Letters (NSLs). These are basically administrative subpoenas, issued by the FBI with no judicial oversight. They were greatly expanded in scope in 2001 under the USA PATRIOT Act (Section 505), although the initial legal basis for these letters originated in 1978. Today, NSLs are generally used to obtain data from third parties: email from Google, banking records from financial institutions, files from Dropbox.

In the US, we have reduced privacy rights over all that data because of what's called the third-party doctrine. Back in 1976, Michael Lee Smith robbed a woman in Baltimore, and then repeatedly harassed her on the phone. After the police identified someone matching Smith's description, they had the phone company place a "pen register" on Smith's phone line to create a record of all the phone numbers Smith dialed. After verifying that Smith called the woman, they got a search warrant for his home and arrested him for the robbery. Smith tried to get the pen register evidence thrown out, because the police hadn't obtained a warrant. In a 1979 decision, the Supreme Court ruled that a warrant was not necessary: "This Court consistently has held that

a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." Basically, because Smith shared those phone numbers with his phone company, he lost any expectation of privacy with respect to that information. That might have made sense in 1979, when almost all of our data was held by us and close to us. But today, all of our data is in the cloud somewhere, held by third parties of undetermined trust.

Technology has greatly enhanced the FBI's ability to conduct surveillance without a warrant. For example, the FBI (and also local police) uses a tool called an IMSI-catcher, which is basically a fake cell phone tower. If you've heard about it, you've heard the code name StingRay, which is actually a particular type of IMSI-catcher sold by Harris Corporation. By putting up the tower, it tricks nearby cell phones into connecting to it. Once that happens, IMSI-catchers can collect identification and location information of the phones and, in some cases, eavesdrop on phone conversations, text messages, and web browsing. The FBI is so scared of explaining this capability in public that the agency makes local police sign nondisclosure agreements before using the technique, and instructs them to lie about their use of it in court. When it seemed possible that local police in Sarasota, Florida, might release documents about StingRay cell phone interception equipment to plaintiffs in civil rights litigation against them, federal marshals seized the documents.

It's **hard to keep track of all the US government organizations** involved with surveillance. The National Counterterrorism Center keeps track of the Terrorism Identities Datamart Environment, the US government's central repository of international terrorist suspects. The institution maintains a huge database of US citizens, keeping tabs on 700,000 identifiers (sort of like people, but not really) in 2007, and is where the various watch lists come from. The procedures for getting on these lists seem very arbitrary, and of course there's no recourse once someone gets on one. Boston Marathon bomber Tamerlan Tsarnaev was on this list.

There are also Organized Crime Drug Enforcement Task Forces for drug-related investigations, and a Comprehensive National Cybersecurity Initiative for computer threats. The Bureau of Alcohol, Tobacco, and Firearms is building a massive database to track people and their friends. Even the Pentagon has spied on Americans, through a littleknown agency called the Counterintelligence Field Activity, closed in 2008. In 2010, the Naval Criminal Investigative Service monitored every computer in the state of Washington running a particular file-sharing program, whether associated with the military or not—a clear violation of the law.

Affirmative

2ac – non-public information

Third Party Doctrine doesn't apply- information wasn't truly voluntarily provided

Doney, 15 – George Mason University School of Law, J.D. Candidate, May 2015; University of Central Florida, B.A., August 2011; Director of Communications and Engagement, Just Security; Notes and Research Editor, National Security Law Journal, 2014-2015. (Lauren Doney, "Practical Limitations to The Third-Party Doctrine in The Digital Age", National Security Law Journal, 5/15/2015, https://www.nslj.org/wp-content/uploads/3_NatlSecLJ_462-496_Doney.pdf)//MBB

In this first stage of analysis, the Court would assess whether an individual could reasonably avoid sharing the information in question with the government and/or a third party.118 As third party technology has become an integral aspect of our daily lives, it is becoming increasingly difficult to avoid it. So, rather than presuming every instance in which an individual has shared information with a third party is evidence that the individual has voluntarily relinquished his or her "legitimate expectation of privacy," the Court should first ask whether the individual could reasonably avoid providing this information to a third party.119 If the answer is "yes," the third-party doctrine applies and no Fourth Amendment concerns may be raised. But if the answer is "no," the Court would consider the context and consequences of the surveillance, which is discussed in section B below.

The loss of privacy rights accompanying the application of the third-party doctrine is premised on the assumption of voluntary consent.120 However, as Justice Marshall observed in his Smith dissent, information has not truly been "voluntarily" provided to the third party if "as a practical matter, individuals have no realistic alternative."121 In Jones, Justice Sotomayor questioned whether true consent was possible in the digital age where individuals "reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks . . . . I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection." 122

If the Court were to consider the Section 215 program, the answer to this first inquiry would likely be "no." Individuals could not reasonably avoid providing this information to third parties, which in turn, share that information with the government. Given the scope of the Section 215 program, 123 the only way for an individual to avoid providing her or his information to the government is never to use any telephone at all. Even if "opting out" is a possibility, doing so would be tantamount to divesting "oneself of a role in the modern world—impacting one's social relationships, employment, and ability to conduct financial and personal affairs."124 In effect, there is no alternative available to individuals who want to avoid disclosing their telephone communications to the government. The situation becomes even direr when one considers the Section 215 program not within the confines of this Comment, but in the context of other bulk intelligence collection activities, such as the surveillance program conducted under Section 702 authority, which monitors Internet communications.125 An individual might be able to avoid using either the Internet or the telephone in some circumstances, but to opt out of using both would surely render the individual a non-participating member of society. As a matter of

practicality, it is not reasonable for an individual in modern society to completely abstain from using the telephone. In this case, when third party information-sharing cannot be reasonably avoided, the Court would next consider the context and consequences of the surveillance.

They overlimit – nothing is completely private

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B. Post-Snowden Leak Challenges and Recent Developments

Despite the above, the Supreme Court indicated a potential willingness to address whether various methods of electronic surveillance violated the Fourth Amendment **in United States v. Jones, a case involving the placement of a GPS tracker on a suspect's vehicle.54 In a concurring opinion, Justice Sotomayor suggested a need to revisit the TPD in the digital age in the concurring opinion and noted that electronic monitoring of individuals can chill associational and expressive freedoms and that the government's unfettered access to substantial intimate information "may alter the relationship between citizen and government that is inimical to democratic society."55 Further, it may be "necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties" as that expectation is ill suited to the digital age due to the massive amounts of information disclosed "in the course of carrying out mundane tasks."56 Information disclosed to a third party for a limited purpose should not be disentitled to Fourth Amendment protections simply because as it stands, secrecy is a prerequisite for privacy.57**

It is increasingly obvious that the court's reliance upon the concept data is voluntarily disseminated is misplaced because of the reality that post-modern usage of the Internet is to conduct **one's necessary daily activities, fostering arguments toward the fundamental right of access to the Internet.58 There is no longer a dichotomy between voluntary and involuntary relinquishment of electronic information due to the ubiquity of e-communication, rendering untenable any construction of the Fourth Amendment that makes unreasonable the expectation of privacy through such communication.59 The Court recognized this distinction in City of Ontario v. Quon,**

Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior . . . . Cell phone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self- expression, even self-identification. That might strengthen the case for an expectation of privacy.

1ar – Third Party Doctrine doesn't apply

Third-party doctrine doesn't apply to modern surveillance

Doney, 15 – George Mason University School of Law, J.D. Candidate, May 2015; University of Central Florida, B.A., August 2011; Director of Communications and Engagement, Just Security; Notes and Research Editor, National Security Law Journal, 2014-2015. (Lauren Doney, "Practical Limitations to The Third-Party Doctrine in The Digital Age", National Security Law Journal, 5/15/2015, https://www.nslj.org/wp-content/uploads/3_NatlSecLJ_462-496_Doney.pdf)//MBB

Thirty-five years ago when Smith created the third-party doctrine, no one could have imagined that soon ninety percent of adult Americans would carry a cellular phone, the Internet would be available in nearly every home, and iPhones would sweep the market. The Smith era had not even anticipated the commercialization of technology that is now considered functionally obsolete, such as beepers or facsimile machines.73 The general American public now owns technology that was simply unfathomable in 1979. The proliferation of technology was accompanied by a decline in the cost of new surveillance techniques, making surveillance more affordable and easier to conduct on a large scale.74

Defenders of NSA's Section 215 program point to the fact that telephony metadata collection does not include collection of the contents of the communications, relating the telephony metadata program to the pen register used in Smith.75 However, there is little evidence to suggest that the Smith Court envisioned its approval of the limited and specific surveillance of one individual would also sanction something like the long-term GPS tracking in Jones, the search of cell phone data, or the broad surveillance of millions of individuals under the Section 215 program. The Smith Court, in determining that no Fourth Amendment search had occurred, emphasized the limited nature of the information resulting from the pen register surveillance and the fact that law enforcement officials did not acquire the contents of Smith's calls.76 But there are significant differences between the government surveillance approved in Smith and the Section 215 program: the differences in the methods of surveillance used, and the level of detail of the information derived from the surveillance in the two scenarios.

A. The Nature of Smith Surveillance: Narrow and Primitive

Smith involved surveillance conducted through a pen register, a small device installed at the telephone company that made a record of the numbers dialed by that specific telephone line. The pen register in Smith was directed at one specific person, an identified criminal suspect who was placing obscene and threatening telephone calls to a woman.77 Police installed a pen register on the suspect's telephone line, capable only of recording the telephone numbers dialed by the defendant via electrical impulses created by the telephone's rotary dial when released.78 It did not collect the content or length of the call, and, in fact, could not even collect information about the call's completion.79 Unlike the information collected in the Section 215 program, the information collected from the pen register was not placed into any database, not aggregated with any other information, and did not disclose any aggregate data from any other individuals.80 The pen register surveillance was in place for only one day before it yielded enough information for police to secure a warrant to search the suspect's home.81 In short, the method of surveillance conducted in Smith was both narrow in scope and primitive in its technological reach.

B. The Nature of Section 215 Surveillance: Broad and Advanced

In contrast, the surveillance undertaken by the government in the Section 215 program is both broad in scope and technologically advanced: NSA collects millions of telephone records from telecommunications providers. These records contain information such as the telephone numbers of calls placed and received, as well as the time and length of calls.82 The records are requested and received in bulk, and include the call records of individuals not suspected of any wrongdoing.83 This call detail information is then compiled into one database and retained there for a period of up to five years.84 According to the government, the aggregation and maintenance of the call detail records is necessary to establish a "historical repository that permits retrospective analysis."85 NSA analysts may access this database and query the records contained within it without a warrant or court order, in order to obtain foreign intelligence information.86 This surveillance method has been in place for seven years, and is conducted on a continuous basis.87

Although telephony metadata does not disclose the contents of communications, the call detail records currently collected by the government contain rich data that was unavailable for pen register collection at the time of Smith.88 The Court in Smith had distinguished the installation of a pen register from the listening device held to have constituted a search in Katz, saying, "pen registers do not acquire the contents of communications."89 Yet modern call detail records contain substantially more information than in the Smith era: they now include the times and dates of telephone calls, along with the length of the conversation and other unique identifying characteristics.90 The aggregation of call detail records creates a database of personal information that offers substantial details about an individual's life. This information is far more valuable to the government than information yielded from a single instance of pen register surveillance—if it were not, there would be no reason for the government to collect, compile, and retain this metadata on such a substantial scale.91 Former NSA Director General Michael Hayden has illustrated that fact, boasting that metadata evidence is so complete and reliable that it can justify the use of deadly force against an individual, once claiming: "We kill people based on metadata."92 Another government official explained at a 2014 Senate hearing that "there is quite a bit of content in metadata."93 This aggregation of telephony metadata raises privacy concerns for individuals for the same reason that it carries value for the government: it can provide a highly detailed and intimate description of an individual's life.

C. Why a New Approach is Needed

What was once an infrequent and relatively minor restraint on Fourth Amendment rights has become a frequent barrier to nearly any assertion of Fourth Amendment rights. The third-party doctrine in Smith prevented one criminal suspect from using the Fourth Amendment to prohibit the police from monitoring the numbers he dialed. The third-party doctrine in the context of modern surveillance, such as the 215 program, prevents millions of individuals who are not criminal suspects from using the Fourth Amendment to protect themselves against government monitoring of the numbers they dial, the length of their phone calls, and the calls they receive.

In the time of Smith, voluntarily sharing information with a third party was an active choice, and therefore, so was the relinquishing of Fourth Amendment protections. Now it is nearly impossible to avoid conveying information to some third party on a regular basis. We no longer send letters in the mail; we send text messages and emails through our telephone company, arming the company (and the government) with rich personal data in doing so. We no longer conduct

research in a library; we conduct research on the Internet, supplying a variety of websites (and the government) with our personal information as we search. We no longer rent videos at Blockbuster; we order movies through our cable provider, or stream them through a provider like Netflix or Amazon, allowing these services to monitor our preferences and habits as we watch. It is not difficult to imagine a world in which physical mail no longer exists—the U.S. Postal Service has already scaled back mail delivery services.94 Nor is it difficult to envision a world in which physical libraries and books no longer exist—library usage has declined with the advent of technology, and funding for operating public libraries has also dropped.95 We do not have to conceive of a world in which Blockbusters no longer exist—the video rental company announced plans to close all retail stores in 2014.96 Landlines are quickly being replaced by cell phones, which are now used for purposes far beyond simple phone calls.

The only way for an individual to avoid sharing information with a third party is never to use any telephone at all.97 Because avoidance is practically impossible, Smith's third-party doctrine has become an almost insurmountable obstacle in asserting Fourth Amendment privacy rights in the digital age. Strict application of the third-party doctrine, when applied in an increasingly sophisticated digital context, seems to subvert the Fourth Amendment,98 rendering extremely sensitive personal information vulnerable to government search, surveillance, collection, and analysis. And as technology advances, it becomes less necessary for the government to conduct physical searches and seizures of property, papers, and effects. If the Fourth Amendment is to provide any safeguards at all from government intrusion, the third-party doctrine cannot continue to serve as a complete bar to asserting these rights.

Collection from third parties is still surveillance – their evidence doesn't reflect the realities of technological change

Heymann, law professor, 15 [Philip B, former Deputy Attorney General in the Clinton administration and currently a law professor at Harvard Law School, AN ESSAY ON DOMESTIC SURVEILLANCE, file:///C:/Users/Jonah/Downloads/Lawfare-Philip-Heymann-SURVEILLANCE-for-publ-10-May-2015.pdf] Schloss4

Consider the latter point first. For decades, the government has been able to demand records about their customers from business third parties without a predicate or warrant. Borrowing from still older legal rules based on the concepts of constructive consent and assumption of risk – associated with, for example, foolishly trusting a false friend or trusting someone who turned out to be a government informant with records or other information – the Supreme Court has held that any records of transactions with a third party are subject to government demands for access from that third party. The government has not been constrained in any significant way in its power to subpoena records, papers, or physical objects. It has been able to search for, seize, retain, and use records pertaining to a target of a search, but did not belong to that target. Finally, it has been able to exploit the fear of further investigation or mistakes about the reach of actual government authority in order to obtain consent to what otherwise would have required a predicate and approval by a court.

The result is this: Whether in the form of gathering, storing, combining, and exploiting data, or in the form of new sensor devices that can penetrate areas that used to be protected by an individual taking advantage of the laws of nature and storing the results digitally, **the new government**

surveillance as it stands today needs no new legal powers in most cases to proceed without a predicate or warrant.

Nor is the degree of cumulative surveillance of a suspect's life much changed. Though at a much greater cost per suspect, the government has long been able to use a trusted informant (such as Partin, who spied on Jimmy Hoffa) to gather a very large amount of information about a targeted individual. The information it could obtain about a suspect was sometimes as great as the information that so troubled today's Supreme Court in the case of an electronic GPS device (Jones) or the information stored on a cell phone, seized "incident to an arrest" (Riley v. California).

Indeed, the government's ability to amass a great amount of information about a particular individual being targeted – to assemble, analyze, and combine it with other information – has long been possible in particular cases. What is new is that these steps can now be taken cheaply and quickly by the use of a global positioning device or the seizure of a mobile phone for one or any number of individuals. These surveillance methods can be made applicable to much of the U.S. population through demands for metadata, collected for other purposes by businesses, such as Verizon or Google.

The situation today is thus not a consequence of any great change in the legal powers of the government to engage in surveillance. It results instead **from a massive change in technologies to exploit surveillance** in areas that the law has not protected in the past – allowing massive discovery of information, yet without violating the law. This has created a new situation where citizens have much more reason to be concerned about their privacy and the effects of loss of privacy: an increase in the practical consequences of disagreeing with government and an increase in the social pressure to conform one's behavior.

The causes of the vast increase in surveillance has been, in part, a vast increase in the felt need for such surveillance to deal with post – 9/11 terrorism and, in part, the natural human desire of investigators to exploit emerging technology that can operate in the areas where the law has not granted protection. The FBI, the CIA, and the NSA (among others) have major research arms to explore the uses of new technologies; they also have access to the product of new technologies developed by internet-based businesses.

AT: FISA definition of surveillance

The FISA definition is antiquated and riddled with loopholes

Arnbak and Goldberg 14- cybersecurity and information law research at the Institute for Information Law, LL.M degree from Leiden University, A Competitive Strategy and Game Theory degree from London School of Economics University of Amsterdam; Associate professor in the Computer Science Department at Boston University, phD from Princeton University, B.A.S.c from University of Toronto (Axel and Sharon, "Loopholes for Circumventing the Constitution: Warrantless Bulk Surveillance on Americans by Collecting the Network Traffic Abroad", Working Paper, June 27, 2014)//TT

FISA and FAA have serious implications for the privacy rights of Americans. And current reform proposals, including the proposed USA Freedom Act, pay far too little attention to the loopholes **in the antiquated 1978 FISA definition** of 'electronic surveillance' and the **permissive workarounds** for the restrictions on 'intentionally targeting U.S. persons'. Nonetheless, adopting a long term perspective on reform, the FISA and FAA statutes have been approved by the U.S. Congress, while the targeting and minimization procedures have been approved by the FISA Court. In response to the recent disclosures, proposals have been made to reform this legal regime, including tightening the s. 702 loopholes and making hearings before the FISA Court adversarial by allowing a 'civil liberties advocate' to defend privacy interests. As with domestic surveillance, all three branches of government will be involved in long term FISA reform. As such, the barriers to strengthening privacy rights of Americans are mostly political, not institutional. We will see that this is not the case in the third legal regime.

Includes stored communication

Surveillance includes the acquisition of stored communications on US servers

Patel and Goitein, 15 – *co-director of the Liberty and National Security Program at the Brennan Center for Justice AND ** co-directs the Brennan Center for Justice's Liberty and National Security Program (Faiza and Liza, "Fixing the FISA Court by Fixing FISA: A Response to Carrie Cordero" 4/8, Lawfare,

http://www.lawfareblog.com/fixing-fisa-court-fixing-fisa-response-carrie-cordero

That's because of the statute's complicated definition of "electronic surveillance," which is the activity that FISA regulates. The definition is broken down into three types of surveillance: acquisition of wire communications (which includes phone calls or Internet communications in transit over cables), acquisition of radio communications (which includes calls or Internet communications in transit through wireless means), and "monitoring" (which previously meant planting a bug, but today **includes acquiring stored e-mails**). For the first two categories, acquisition is defined as "electronic surveillance" only if one or more of the communicants is a U.S. person. In other words, for wire or radio communications between foreigners, 1978 FISA simply had nothing to say; "monitoring" is the only category of foreign-to-foreign communication that 1978 FISA regulated.

Surveillance is querying and analyzing stored data

Tene, 14 - Associate Professor at the College of Management School of Law (Omar,2014, "A NEW HARM MATRIX FOR CYBERSECURITY SURVEILLANCE", http://ctlj.colorado.edu/wp-content/uploads/2014/11/Tene-website-final.pdf)//gg

Second, it is no longer clear that lawful real-time interception of communications presents a greater risk of harm to individuals than government access to stored data. In a world of big data, where every crumb of information is cataloged and recorded, perhaps forever, stored data can be far more revealing than transitory, ephemeral communications.51 Real-time interception and communication analysis— alongside data retention limitations—would leave a **smaller privacy footprint** than mass collection and later access to stored data. In this vein, the Review Group ruminated whether:

[T]echnical collection agencies could make use of artificial intelligence software that could be launched onto networks and would be able to determine in real time what precise information packets should be collected. Such smart software would be making the sorting decision online, as distinguished from the current situation in which vast amounts of data are swept up and the sorting is done after it has been copied on to data storages systems.52

AT: Collection isn't surveillance

Their definition reflects arbitrary NSA legalism – NSA practice dictates a broader definition

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM) **The Principles = International Principals on the Application of Human Rights**

Much of the expansive NSA surveillance revealed in the past year has been defended by the United States on the basis that the mere collection of communications data, even in troves, is not "surveillance" because a human eye never looks at it. Indeed, under this definition, the NSA also does not surveil a person's data by subjecting it to computerized analysis, again up until the point a human being lays eyes on it. The Principles, reflecting the human right to privacy, defines "surveillance" to include the monitoring, interception, collection, analysis, use, preservation, and retention of, interference with, or access to information that includes, reflects, or arises from or a person's communications in the past, present, or future. States should not be able to **bypass privacy protections** on the **basis of arbitrary definitions**.

Topicality– Northwestern

SUBSTANTIAL

MUST BE ELIMINATION

Description

Substantial modifies curtailment meaning while restriction might normally be a curtailment substantial modifies it to require that it is completely eliminated.

1NC

A. Interpretation: Substantially curtailing domestic surveillance necessitates elimination.

Substantially is without material qualification

Black's Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

Sharply curtailing something means eliminating it.

Ackerman 14 (Spencer, national security editor for Guardian US. A former senior writer for Wired, "Failure to pass US surveillance reform bill could still curtail NSA powers," October 3rd, 2014, http://www.theguardian.com/world/2014/oct/03/usa-freedom-act-house-surveillance-powers)//ghs-VA

Two members of the US House of Representatives are warning that a **failure to pass** landmark surveillance reform will result in a far more drastic curtailment of US surveillance powers – one that will occur simply by the House doing nothing at all. As the clock ticks down on the 113th Congress, time is running out for the USA Freedom Act, the first legislative attempt at reining in the National Security Agency during the 9/11 era. **Unless the Senate passes the stalled bill** in the brief session following November's midterm elections, **the NSA will keep all of its existing powers to collect US phone records in bulk**, despite support for the bill from the White House, the House of Representatives and, formally, the NSA itself. But supporters of the Freedom Act are warning that the intelligence agencies and their congressional allies will find the reform bill's legislative death to be a cold comfort. On 1 June 2015, Section 215 of the Patriot Act will expire. The loss of Section 215 will deprive the NSA of the legal pretext for its bulk domestic phone records dragnet. But it will cut deeper than that: the Federal Bureau of Investigation will lose its controversial post-9/11 powers to obtain vast amounts of business records relevant to terrorism or espionage investigations. Those are investigative authorities the USA Freedom Act leaves largely untouched. Section 215's expiration will occur through simple legislative inertia, a characteristic of the House of Representatives in recent years. Already, **the House has voted to sharply curtail domestic** dragnet **surveillance**, both **by** passing the Freedom Act in May and **voting** the following month **to ban the NSA from warrantlessly searching through its troves of** international **communications for Americans'** identifying information. Legislators are warning that the next Congress, expected to be more Republican and more hostile to domestic spying, is unlikely to reauthorise Section 215.

B. Violation: They only place a restriction or regulation.

C. Reasons to prefer

1. Limits – They justify an infinite number of affirmatives – there are thousands of ways the aff could tinker with the scope, target, or means of any of the thousand surveillance programs which makes it impossible for the neg to prepare.

2. Ground – Allows them to spike out of any disad by claiming that they're only a minor reduction. Forces us to rely on the worst forms of generic argumentation.

Competing interpretations, reasonability makes judge intervention inevitable.

MUST BE AT LEAST 13%

1NC – 13%

A. Interpretation: Substantial indicates that the aff has to reduce surveillance by at least 13%.

Substantial Curtailment is at LEAST 13 percent

Utter 77 (Utter http://courts.mrsc.org/mc/courts/zsupreme/088wn2d/088wn2d0909.htm, This is from a formal court decision between Shell Oil and the appellant Norward Brooks, Decisions were made by Wright, C.J., and Rosellini, Hamilton, Stafford, Brachtenbach, Horowitz, Dolliver, and Hicks, JJ.)

The act specifies the particular circumstances in which one who leaves employment due to a labor dispute may qualify for compensation, despite the voluntary character of such a termination. "An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed . . ." RCW 50.20.090. The parties concede each claimant was unemployed because of the labor dispute. The next issue presented then is whether there was a "stoppage of work" which raises the ancillary issues of how that term is to be defined and whether the record supports the findings of the commissioner. The term "stoppage of work" refers to the operation of the employer's plant or business rather than the activity of individual employees. LAWRENCE BAKING CO. v. UNEMPLOYMENT COMPENSATION COMM'N, 308 Mich. 198, 13 N.W.2d 260, 154 A.L.R. 660 (1944), CERT. DENIED, 323 U.S. 738, 89 L. Ed. 591, 65 S. Ct. 43 (1944). SEE CONSTRUCTION OF PHRASE "STOPPAGE OF WORK" IN STATUTORY PROVISION DENYING UNEMPLOYMENT COMPENSATION BENEFITS DURING STOPPAGE RESULTING FROM LABOR DISPUTE, Annot., 61 A.L.R.3d 693 (1975); Shadur, UNEMPLOYMENT BENEFITS AND THE "LABOR DISPUTE" DISQUALIFICATION, 17 U. Chi. L. Rev. 294 (1950). Cases from other jurisdictions interpreting statutes similar to RCW 50.20.090 are in general agreement that the term "stoppage of work" is most often defined in terms of a substantial curtailment of the employer's overall operations at the particular situs in question. MOUNTAIN STATES TEL. & TEL. CO. v. SAKRISON, 71 Ariz. 219, 225 P.2d 707 (1950); INTER-ISLAND RESORTS, LTD. v. AKAHANE, 46 Hawaii 140, 377 P.2d 715 (1962); GENERAL ELEC. CO. v. DIRECTOR OF EMPLOYMENT SECURITY, 349 Mass. 358, 208 N.E.2d 234 (1965); TRAVIS v. GRABIEC, 52 Ill. 2d 175, 287 N.E.2d 468 (1972). SEE Annot., SUPRA, 61 A.L.R.3d 693, 5, at 705. Whether there is a substantial curtailment is resolved by application of a number of established criteria to the facts of the particular case. There are a few fixed boundaries for the meaning of the term "substantial" in this context. The attempts by other courts to devise a formula based upon a percentage of reduction in normal production or operations by which a line delineating substantial from nonsubstantial could be established have varied from 50 percent of normal production in early decisions to as low as a 20 percent decline in business activity in subsequent decisions. More recently, the difficulty of applying a fixed percentage concept to define "substantial" has resulted in courts assessing a number of factors.¶ The specific criteria accented by the commissioner in this case were whether there was a diminution in production and whether there was a substantial curtailment of other normal nonproduction "operations." The parties concede and the court found there was no curtailment of production. The parties then focused on whether there was a substantial curtailment of other, nonproduction related, operations. Appellant placed its primary emphasis upon disruptions resulting from the necessity to reassign nonproduction personnel. Of the nonproduction staff, a total of 64 employees out of the total employment complement of 381 employees, were reassigned. Because these individuals were not replaced, there was at least a 16 percent reduction in the overall personnel within the employer's operations. Appellant argues a 16 percent reduction in overall personnel constitutes a substantial curtailment of normal employer operations. Jurisdictions outside the state of Washington considering the same question have varied in their conclusions, ranging from a low of perhaps 13 percent to a high of over 50 percent in personnel reduction as being indicative of "substantial curtailment" of employer operations. COMPARE MOUNTAIN STATES TEL. & TEL. CO. v. SAKRISON, SUPRA, AND GENERAL ELEC. CO. v. DIRECTOR OF EMPLOYMENT SECURITY, SUPRA. Appellant asserts first the commissioner's decision was fundamentally wrong as a matter of law in that he failed to consider the nature of the work that was not being performed in relation to the total operation of the refinery, and that he should have considered factors other than simply the reduction in overall personnel. We do not read the record as limiting the commissioner's determination solely to that factor. In this context, in his decision the commissioner discussed at length another case involving a strike at a refinery which is in many respects factually similar to this situation. TRAVIS v. GRABIEC, SUPRA. He emphasized the strike in TRAVIS had caused a severe curtailment in overall operations, including the destroying of work in the treatment and research department and the suspension of construction and maintenance work, as well as truck and barge transportation. He recognized that these factors had led the court in that case to find significant evidence of a stoppage of work despite the fact that for a period of time full production of barrels of oil per day was carried on by a skeleton force working abnormal hours and performing abnormal functions. Later in his opinion the commissioner made it clear that he believed the impact on normal operations caused by the reduction in personnel was not as severe as that in the TRAVIS case.

B. Violation: The aff has not substantially curtailed domestic surveillance

C. Reasons to prefer

1. Limits- The topic is already massive and has a huge aff side bias. A strict definition of substantial is key to creating debates with clash and negative ground.
2. Topic Research and education- they shift the focus of the topic from discussions about large forms of surveillance to finding the smallest aff.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is the substantial curtailment at the very least is 13%

Their interpretation allows for an infinite number of tiny affs that have no substantial negative ground.

A big topic restricts debates about specific mechanisms and internal link scenarios and focuses on broad unspecific policies. Modeling policy makers gives us the best form of education because it teaches us methods to solve real world problems. Only our interpretation allows for competitive debates with substantial literature on both sides.

Fairness is essential to maintaining the educational practices of debate. Their model incentivizes research on fringe policies, rather than substantive claims about the topic. Lack of negative literature disincentives students from researching and creating case and to instead go for generics. Research skills and education allow debaters to identify problems in the real world and create solutions.

Prefer our evidence

Our evidence is from an official US court ruling. It is the only evidence that speaks to all official court rulings of the term "substantial curtailment" and says that the lowest a judge has EVER decided is 13%.

CURTAIL

MUST BE ELIMINATION

Eliminate – 1NC

A. Interpretation: Curtailing domestic surveillance necessitates elimination.

Ackerman 14 (Spencer, national security editor for Guardian US. A former senior writer for Wired, "Failure to pass US surveillance reform bill could still curtail NSA powers," October 3rd, 2014, http://www.theguardian.com/world/2014/oct/03/usa-freedom-act-house-surveillance-powers)//ghs-VA

Two members of the US House of Representatives are warning that a **failure to pass** landmark surveillance reform will result in a far more drastic curtailment of US surveillance powers – one that will occur simply by the House doing nothing at all. As the clock ticks down on the 113th Congress, time is running out for the USA Freedom Act, the first legislative attempt at reining in the National Security Agency during the 9/11 era. **Unless the Senate passes the stalled bill** in the brief session following November's midterm elections, **the NSA will keep all of its existing powers to collect US phone records in bulk**, despite support for the bill from the White House, the House of Representatives and, formally, the NSA itself. But supporters of the Freedom Act are warning that the intelligence agencies and their congressional allies will find the reform bill's legislative death to be a cold comfort. On 1 June 2015, Section 215 of the Patriot Act will expire. The loss of Section 215 will deprive the NSA of the legal pretext for its bulk domestic phone records dragnet. But it will cut deeper than that: the Federal Bureau of Investigation will lose its controversial post-9/11 powers to obtain vast amounts of business records relevant to terrorism or espionage investigations. Those are investigative authorities the USA Freedom Act leaves largely untouched. Section 215's expiration will occur through simple legislative inertia, a characteristic of the House of Representatives in recent years. Already, **the House has voted to sharply curtail domestic** dragnet **surveillance**, both **by** passing the Freedom Act in May and **voting** the following month **to ban the NSA from warrantlessly searching through its troves of** international **communications for Americans'** identifying information. Legislators are warning that the next Congress, expected to be more Republican and more hostile to domestic spying, is unlikely to reauthorise Section 215.

B. Violation: The aff is a reduction, not a curtailment because it does not eliminate surveillance programs.

C. Reasons to prefer

1. Limits – They justify an infinite number of affirmatives – there are thousands of ways the aff could tinker with the scope, target, or means of any of the thousand surveillance programs which makes it impossible for the neg to prepare.

2. Ground – Allows them to spike out of any disad by claiming that they're only a minor reduction. Forces us to rely on the worst forms of generic argumentation.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that you must eliminate, not just implement a minor reduction, in order for it to constitute a curtailment. Your aff ____ (Insert Specific Aff Mechanism) ____ which doesn't meet our interpretation.

Topical version of the aff – eliminate instead of reduce which solves all of their offense because it allows us to discuss and learn about their affirmative without collapsing limits and ground.

2NC Limits/Case List XT

There are only 3 real evaluative terms in the resolution – defining and limiting them is necessary in order to make this topic manageable. Allowing curtailment to be minor reductions allows the aff to alter any aspect of any surveillance program.

The aff could –

- **Reduce the scope of PRISM by exempting senior citizens.**
- **Reduce the means of PRISM by excluding data from AT&T.**
- **Reduce the amount of money spent on PRISM.**
- **Reduce the duration of the PRISM program.**

Think about all of the thousands of ways the aff could scale back programs without eliminating them and think about the hundreds of different surveillance programs that exist. Their interpretation collapses the limiting function of the resolution and destroys any semblance of predictable negative ground.

MUST BE REDUCTION

1NC – Reduce

A. Interpretation: Curtail means to reduce not eliminate.
Merriam Webster NO DATE (Merriam Webster Dictionary, Online Dictionary, "Curtail," http://www.merriam-webster.com/dictionary/curtail)//ghs-VA

to reduce or limit (something)

B. Violation: The aff eliminates a program.

C. Reasons to prefer

1. Topic Education – Congressional debates are about restrictions on current programs not elimination which kills predictable clash and core topic learning.
2. Limits – They allow the aff to defend a massive array of mechanisms that range from small reductions to complete eliminations. Forcing the aff to defend only reduction provides a stable and predictable stasis for negative ground.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that curtailment means reduction, not elimination. Your aff ____ (Insert Specific Aff Mechanism) ____ which doesn't meet our interpretation.

Topical version of the aff – reduce a specific part of ____ (Insert Aff) ____ rather than eliminate the entire program. Solves their offense because it still constrains the topic literature but allows for more focused and pragmatic debates.

2NC Topic Education XT

Policymakers aren't debating the merits of elimination – rather debates are centered on the question of what additional restrictions are necessary to balance privacy versus security.

Their interpretation forces us into a binary between no security or no privacy which eliminates the compromise aspect of policy making. Only our interpretation allows for a reasonable middle ground that fosters pragmatic discussions of surveillance.

They focus our discussion on the question of whether or not surveillance programs should exist instead of focusing the discussion on how they should be curtailed.

AT: Curtail = Elimination

Curtail is distinct from elimination – our evidence is comparative.

Williams 2K (Cary, a Lawyer with Williams, Williams & Williams, P.C, "American Federation of Government Employees, Local 1145 and Department of Justice, Federal Bureau of Prisons, United States Penitentiary, Atlanta, GA," October 4, 2000, http://www.cpl33.info/files/USP_Atlanta_-_Annual_Leave_during_ART.pdf)//ghs-VA

The Agency relies on the language of Article 19, Section 1.2. for its right to "curtail" scheduled annual leave during training. The record is clear that the Agency has limited or curtailed leave during ART in the past, and has the right to do so in the future. But there is a **difference in curtailing** leave during ART **and totally eliminating it**. There was no testimony regarding the intent of the parties in including the term "curtail" in Section 1.2., but Websters New Twentieth Century Dictionary (2nd Ed) defines the term as, "to cut short, reduce, shorten, lessen, diminish, decrease or abbreviate". The import of the term "curtail" in the Agreement based on these definitions is to cut back the number of leave slots, but there is no proof the parties intended to give the Agency the right to totally eliminate leave slots in the absence of clear proof of an emergency or other unusual situation. The same dictionary on the other hand defines "eliminate" as, "to take out, get rid of, reject or ornit". From a comparison of the two terms there is clearly a difference in curtailing and eliminating annual leave. I disagree with the Agency's contention that curtailing leave can also mean allowing zero leave slots. If the parties had intended such a result they would have simply stated the Agency could terminate or eliminate annual leave during training and/or other causes. This language would leave no doubt the Agency had the right to implement the policy it put in place for January I through March 25, 2000. That language, however, is not in the Agreement, and the term "curtail" does not allow the Agency to totally eliminate all scheduled annual leave during the year.

2NC Interpretation XT

Curtail means to reduce not eliminate.

Merriam Webster NO DATE (Merriam Webster Dictionary, Online Dictionary, "Curtail," http://www.merriam-webster.com/dictionary/curtail)//ghs-VA

to reduce or limit (something)

Curtail is a reduction in quantity.

Oxford NO DATE (Oxford Dictionary, online dictionary, "curtail," http://www.oxforddictionaries.com/us/definition/american_english/curtail)//ghs-VA

Reduce in extent or quantity; **impose a restriction on**

Curtail is to reduce not to eliminate – we have comparative evidence.

Barratt and Ord 15 (Own Cotton-Barratt, professor @ University of Oxford, Toby Ord, professor @ University of Oxford, "Existential Risk and Existential Hope: Definitions," 2015, http://www.fhi.ox.ac.uk/Existential-risk-and-existential-hope.pdf)//ghs-VA

Is this an existential catastrophe? Bostrom's definition doesn't clearly specify whether it should be considered as one. Either answer leads to some strange conclusions. Saying it's not an existential catastrophe seems wrong as it's exactly the kind of thing that we should strive to avoid for the same reasons we wish to avoid existential catastrophes. Saying it is an existential catastrophe is very odd if humanity does escape and recover – then the loss of potential wasn't permanent after all. **The problem here is** that **potential isn't binary**. **Entering the regime certainly seems to curtail the potential, but not to eliminate it**.

Curtailment are additional regulations.

Martin 12 (Robert, J.D., "HUMAN RESOURCES & EMPLOYMENT LAW CUMULATIVE CASE BRIEFS AND NOTES," October 11, 2012, https://www.lexisnexis.com/Community/labor-employment-law/cfs-filesystemfile.ashx/__key/CommunityServer.Components.PostAttachments/00.00.08.42.73/Human-Resources-and-Employment-Law-cumulative-database_2D00_Master-2012-10_2D00_12.doc)//ghs-VA

(a) Section 3 intrudes on the field of alien registration, a field in which Congress has left no room for States to regulate. In Hines, a state alien-registration program was struck down on the ground that **Congress intended its "complete" federal registration plan** to be a "single integrated and all-embracing system." 312 U. S., at 74. **That scheme did not allow the States to "curtail or** complement" federal law or "**enforce additional** or auxiliary **regulations**." Id., at 66–67. The federal registration framework remains comprehensive. Because Congress has occupied the field, even complementary state regulation is impermissible. Pp. 8–11. (b) Section 5(C)'s criminal penalty stands as an obstacle to the federal regulatory system. The Immigration Reform and Control Act of 1986 (IRCA), a comprehensive framework for "combating the employment of illegal aliens," Hoffman Plastic Compounds, Inc. v. NLRB, 535 U. S. 137, 147, makes it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers, 8 U. S. C. §§1324a(a)(1)(A), (a)(2), and requires employers to verify prospective employees' employment authorization status, §§1324a(a)(1)(B),

Language in federal documents creates a definite distinction between prohibition and curtailment as a reduction.

Department of Justice NO DATE (United States Department of Justice, "National Firearms Act," https://www.atf.gov/rules-and-regulations/national-firearms-act)//ghs-VA

While the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to **curtail, if not prohibit**, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem because of their frequent use in crime, particularly the gangland crimes of that era such as the St. Valentine's Day Massacre. The $200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress' purpose to discourage or eliminate transactions in these firearms. The $200 tax has not changed since 1934.

ITS

MUST BE GOVERNMENT

1NC – Possessive

A. Interpretation: Its means possessive.
Dictionary.com NO DATE (Online Dictionary, "its"
http://dictionary.reference.com/browse/its)//ghs-VA

the possessive form of it1.(**used as an attributive adjective**)

B. Violation: The surveillance must be conducted by the USFG.

C. Reasons to prefer

1. Limits – Gives them access to plans based on private surveillance which allows for an infinite number of private industry based affs that makes it impossible for the neg to prepare.
2. Topic Education – They shift the focus from government to corporate surveillance programs which kills predictable clash and core topic learning.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that the USFG has to conduct the surveillance that the 1AC curtails. Your aff ____ (Insert Specific Aff Mechanism) ____ which isn't topical.

Ours is more qualified

A. Grammar

Bagovich 13 (Sydnee, bachelor's degree from Robert Morris University and an MBA from The Katz Graduate School of Business at The University of Pittsburgh, "How to Write Like You Care," August 01, 2013, http://www.grammarly.com/blog/2013/how-to-write-like-you-care/)//ghs-VA

Its, your, and their are all possessive pronouns. Since the possession is already included in the word, no apostrophes are needed. Other possessive pronouns include: my, him, her, our. None of these words require an apostrophe.

B. Our authors are all professors and etymologists who analyze the structure and meaning of words.

2NC Limits/Case List XT

This topic is massive – the only hope of a limited topic is to draw lines around what kinds of surveillance the government can curtail.

Your interpretation justifies the government reducing corporate, private, or any surveillance conducted by a third party. Forcing the neg to research private actors creates an unreasonable research burden and incentivizes defaulting to generics hurting argument innovation. A precise definition of "its" allows us to have in-depth focused debates about the topic.

Without the ability to focus preparation, the Affirmative would never have to defend their arguments against a well-equipped opponent, which prevents us from learning how to effectively advocate for our positions.

Our interpretation would justify Case List: Big Stick Privacy, FISA Court, Patriot act, Sarbanes Oxley, Drones, Dual Use, and Borders affs.

2NC Topic Education XT

The USFG conducts the most egregious forms of surveillance in the status quo that affects everyone – fostering discussions that shift the focus to them creates civic education that enables us to create change and produces the necessary legal language to advocate for reform. Government surveillance always affects <u>everyone</u> versus corporate surveillance that affects certain groups of people.

2NC Interpretation XT

Its means possessive.
Dictionary.com NO DATE (Online Dictionary, "its"
http://dictionary.reference.com/browse/its)//ghs-VA

the possessive form of it1.(**used as an attributive adjective**)

Indicates possession as related to the agent.
Merriam Webster NO DATE (Merriam Webster Dictionary, online dictionary, "its,"
http://www.merriam-webster.com/dictionary/its)//ghs-VA

of or relating to it or itself especially **as possessor, agent**, or object **of an action** <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

Its without the apostrophe indicates possession.
Straus 12 (Jane, etymologist, "Its vs. It's," April 12, 2012,
http://data.grammarbook.com/blog/pronouns/1-grammar-error/)//ghs-VA

Rule 1: When you mean it is or it has, use an apostrophe. Examples: It's a nice day. It's your right to refuse the invitation. It's been great getting to know you. Rule 2: **When you are using its as a possessive, don't use the apostrophe**. Examples: The cat hurt its paw.

DOMESTIC SURVEILLANCE

CANT RELATE TO FOREIGN POWER

1NC – Domestic

A. Interpretation: Domestic means physically within the U.S. borders.

DOD 82 (Department of Defense, regulation sets forth procedures governing the activities of DoD intelligence components that affect United States persons, "PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS," December 1982, https://fas.org/irp/doddir/dod/d5240_1_r.pdf)//ghs-VA

C10.2.1. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization or person. C10.2.2. The term organization includes corporations and other commercial organizations, academic institutions, clubs, professional societies, associations, and any other group whose existence is formalized in some manner or otherwise functions on a continuing basis. C10.2.3. An organization within the United States means all organizations physically located within the geographical boundaries of the United States whether or not they constitute a United States persons. Thus, a branch, subsidiary, or office of an organization within the United States, **which is physically located outside the United States**, is not considered as an organization within the United States.

B. Violation: The aff has restricted forms of surveillance that affect foreign powers

C. Reasons to prefer

1. Limits – They justify an infinite number of foreign embassy and cable-based monitoring affs shifting the topic base and exploding limits.

2. Topic Education – they shift the focus of the topic away from the way surveillance affects us to how it impacts foreign entities.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that in order to be considered domestic surveillance it cannot have a significant connection to a foreign power and be within the U.S. Borders. Your aff ____ (Insert Specific Aff Mechanism) ____ which means you don't meet our interp.

Evidence Comparison

1. Our evidence is from the department of defense that gives the governments interpretation of what is considered domestic.

Prefer the DOD – they're one of the largest organizations in the U.S. and in charge of defense.

DOD NO DATE (Department of Defense, Government Agency, "About the Department of Defense (DOD)," http://www.defense.gov/about/)//ghs-VA

The Department of Defense is America's oldest and largest government agency. With our military tracing its roots back to pre-Revolutionary times, the Department of Defense has grown and evolved with our nation. Today, the Department, headed by Secretary of Defense Ash Carter, is not only in charge of the military, but it also employs a civilian force of thousands. With over 1.4 million men and women on active duty, and 718,000 civilian personnel, we are the nation's largest employer. Another 1.1 million serve in the National Guard and Reserve forces. More than 2 million military retirees and their family members receive benefits. Headquarters of the Department of Defense, the Pentagon is one of the world's largest office buildings. It is twice the size of the Merchandise Mart in Chicago, and has three times the floor space of the Empire State Building in New York. Built during the early years of World War II, it is still thought of as one of the most efficient office buildings in the world. Despite 17.5 miles of corridors it takes only seven minutes to walk between any two points in the building. The national security depends on our defense installations and facilities being in the right place, at the right time, with the right qualities and capacities to protect our national resources. Those resources have never been more important as America fights terrorists who plan and carry out attacks on our facilities and our people. Our military service members and civilians operate in every time zone and in every climate. More than 450,000 employees are overseas, both afloat and ashore. The Defense Department manages an inventory of installations and facilities to keep Americans safe. The Department's physical plant is huge by any standard, consisting of more than several hundred thousand individual buildings and structures located at more than 5,000 different locations or sites. When all sites are added together, the Department of Defense utilizes over 30 million acres of land.

2. Our evidence is in the context of government surveillance and how it operates in the U.S.

2NC Limits/Case List XT

This topic is massive – the only hope of a limited topic is to draw lines around what domestic surveillance is. Allowing domestic to be surveillance that impacts foreign powers allows the aff to curtail surveillance relating to any part of the world.

The aff could –

- **Curtail surveillance of fiber optics that run through our country.**
- **Curtail surveillance of ships passing through our harbors.**
- **Curtail surveillance of foreign embassies**
- **Curtail immigration surveillance from all countries around the world.**

Our interpretation creates the necessary divide between foreign and domestic that is necessary for a limited topic. Think about the number of ways the aff could scale back programs that have connections to hundreds of foreign powers. Their interpretation collapses the limiting function of the resolution and destroys any semblance of predictable negative ground. Our interpretation limits the topics to debates about the way surveillance affects us as citizens.

CANT INVOLVE TARGETS CONSENT

1NC – No Consent

A. Interpretation: Surveillance means the target cannot consent.

FISA 78 (Foreign Intelligence Surveillance Act, Legal Document Outlining Electronic Surveillance Within The United States For Foreign Intelligence Purposes, "Foreign Intelligence Surveillance Act of 1978. 50 us e 1801," http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1783.pdf)//ghs-VA

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person •'• has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, **without the consent of any party thereto**, if such acquisition **occurs in the United States**; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

B. Violation: The target has consented to the surveillance.

C. Reasons to prefer

1. Limits – Would justify an infinite number of affs that curtail contracts between the government and organizations which makes neg prep impossible kills clash.

2. Topic Education – they move the debate away from privacy versus utility which kills predictability and core topic learning.

3. Extra-topicality – Justifies any number of untopical actions, which kills neg prep and causes a rush to generics.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation says that the target of surveillance cannot consent to being surveilled. Your aff _____ (Insert Specific Aff Mechanism) _____ which means you don't meet our interpretation.

There's no topical version of the aff – this aff is a whole separate lit base which is a bad direction for the topic to move in. Meta-data is a huge topic area already and is important to talk about especially with recent controversies.

Our interpretation is also more qualified and the basis for federal definitions of domestic surveillance.

EPIC 15 (Electronic Privacy Information Center, non-profit organization of legal analysts, "Foreign Intelligence Surveillance Court (FISC)," 2015, https://epic.org/privacy/surveillance/fisa/fisc/)//ghs-VA

The FISC has jurisdiction to hear applications for, and issue orders authorizing, four traditional FISA activities: electronic surveillance, physical searches, pen/trap surveillance, and compelled production of business records. In addition, the FISC has jurisdiction to review the government's targeting and minimization procedures related to programmatic surveillance certified under Section 702 of the FISA Amendments Act of 2008. The FISC was originally composed of seven district judges, from seven circuits, appointed by the Chief Justice of the United States to serve for a maximum of seven years. In 2001, amendments in the USA PATRIOT Act increased the number of judges on the Court to eleven, with three required to live within 20 miles of the District of Columbia. The Chief Justice appoints a Presiding Judge for the court from amongst these eleven judges. The FISC operates out of a **secure location in the federal courthouse** in Washington, D.C., but can authorize searches or surveillance "anywhere within the United States." The FISC operations are largely kept secret due to the sensitive nature of the proceedings, and the court's ex parte process is primarily non-adversarial. The target of the order is not given an opportunity to appear at the hearing or informed of the presence of the order. However, the court rules of procedure do allow the electronic service providers and business order recipients to petition to challenge or modify any order. Records from FISC hearings are not revealed, even to petitioners challenging surveillance orders under the court rules. The FISC has discretion to publish its opinions. FISC Review of FISA Applications Traditional FISA investigative tools include: electronic surveillance, physical searches, pen/trap surveillance, and orders compelling production of business records. In order to conduct electronic surveillance or a physical search, **the government must apply to the FISC** and show probable cause to believe that the target is a "foreign power" or an "agent of a foreign power." For electronic surveillance, the government must also establish that the facilities are being used by an agent of a foreign power or a foreign power. For physical searches, the government must show that the place to be searched contains "foreign intelligence information" and that it is used, owned, or possessed by an agent of a foreign power or a foreign power. The government must also provide a description of the information sought and the places or facilities that will be searched. When the FISC grants applications for surveillance it issues a "primary order" finding that **all the FISA requirements were met**. The FISC also issues a "secondary order" providing that "upon request of the applicant," a specified third party must "furnish the applicant forthwith with all information, facilities, or technical assistance necessary" to accomplish the search "in such a manner as will protect its secrecy and produce a minimum of interference." Assisting third parties, such as telephone and Internet service providers, are compensated for any assistance rendered, and can keep certain records under security procedures adopted by the government.

2NC Limits/Case List XT

Your interpretation allows for SOX, Fracking Regulation, TSA, and more because you can simply curtail contractual agreements between the government and citizens or corporations which explodes limits because there's a whole separate lit base about corporations who have agreements with the USFG, your interpretation would allow for curtailment in all of those areas which means the neg is dis-incentivized from doing specific work and will default to generics. Discussions of surveillance is important and we won't get that if we debate the same two process counterplans.

Our interpretation allows for innovation with constraints – SSRA, Big Stick Privacy Affs, FISA Court, and Border 1AC's are all topical under our interpretation. Limited case lists allow for the negative to have specific prep which guarantees topic specific quality debates and puts both sides on an equal playing field.

Government Info Gathering that people or businesses opt into or consent to:

- Food stamps
- SEC Financial Regulatory Compliance
- Export Control Licensing
- Federal Standardized Testing
- Taxes
- Census
- FDA Regulatory Compliance
- Federal Wage Regulations
- Office of Workers Compensation Program Regulations
- Federal Contract Compliance Regulations
- Federal Safety Regulations

There are a litany of things businesses consent to information wise to the government – this is JUST TECH.

EDGE NO DATE (Enterprise Development & Growth Engine, Execution-MiH EDGE is an unmatched platform, which provides an organization with a capacity to significantly boost the field/front-end effectiveness, "Business Metadata for IT," http://www.executionmih.com/metadata/business.php)//ghs-VA

As you will learn further in Metadata Management section, business Metadata is a bigger challenge than IT metadata, because the IT related meta-data is belonging to an environment, which is mostly owned by IT. Secondly, IT folks are wired to manage these kinds of initiatives. For business environment, this is a fairly new concept and we are still in the beginning of

the evolution life-cycle. This by no means underplays challenge related to the technical metadata, as it is not far ahead in the evolution curve. Even today, IT has a challenge for having robust all-encompassing repositories. Examples of the Business Meta-data Business Model Business data models Business Analysis models (for business modeling) Business Hierarchies (from a business analyst point of view) Business dimensions and attributes with business descriptions Data Management Data Groups Data Custodians owning the data Data stewards responsible for the health of the data. Data quality Data quality business rules Data Quality statistics Data Analysis and Reporting Business Reports Definition Data Analysis definition in the reports (what analysis is done in the reports, why and how it is done) Reports structure and layout Performance Management Measures and key performance metrics Performance dashboards and scorecards Documents Rules Policies Standard Operating procedures Legal Contracts Business rules and processes Business Processes Business Rules

2NC Extra-Topicality XT

Even if they win their education is good, it's short circuited by a lack of engagement—if they are not predictable that skews negative strategy and turns education arguments – that was above. Staying within the bounds of the topic is necessary for engagement which is a key internal link to advocacy skills which outweighs their education arguments because it's the only thing we take from debate.

2NC Ground XT

Their interpretation also removes core negative arguments – critiques and disads based around rights violations are removed if the aff can get the target to consent.

2NC Knowledge O/W

Debates over meta-data and the NSA and uniquely key now – outweighs your education claims.

Mimoso 14 (Michael, award-winning journalist and former Editor of Information Security magazine, a two-time finalist for national magazine of the year. He has been writing for business-to-business IT websites and magazines for over 10 years, with a primary focus on information security, "NSA Reforms Demonstrate Value of Public Debate," March 26, 2014, https://threatpost.com/nsa-reforms-demonstrate-value-of-public-debate/105052)//ghs-VA

The president's proposal would end the NSA's collection and storage of phone data; those records would remain with the providers and the NSA would require judicial permission under a new court order to access those records. The House bill, however, requires no prior judicial approval; a judge would rule on the request after the FBI submits it to the telecommunications company. "**It's absolutely crucial to understand the details of how these things will work**," the ACLU's Kaufman said in reference to the "new court order" mentioned in the New York Times report. "There is no substitute for robust Democratic **debate** in the court of public opinion and in the courts. **The system of oversight is broke and issues like these need to be debated in public**." Phone metadata and dragnet collection of digital data from Internet providers and other technology companies is supposed to be used to map connections between foreigners suspected of terrorism and threatening the national security of the U.S. The NSA's dragnet, however, also swept up communication involving Americans that is supposed to be collected and accessed only with a court order. The NSA stood by claims that the program was effective in stopping hundreds of terror plots against U.S. interests domestic and foreign. Those numbers, however, quickly were lowered as they were challenged by Congressional committees and public scrutiny. "The president said the effectiveness of this program was one of the reasons it was in place," Kaufman said. "But as soon as these claims were made public, journalists, **advocates** and the courts **pushed back** and it could not withstand the scrutiny. It's remarkable how quickly [the number of] plots turned into small numbers. The NSA was telling FISC the program was absolutely necessary to national security, but the government would not go nearly that far in defending the program. That shows **the value of public debate and an adversarial process** in courts."

AT: PRISM Not Topical

Our interpretation says that the target of surveillance cannot consent to being surveilled. This doesn't mean they cannot know about it, which is distinct.

AT: Hurts Neg Generics

Just because certain generics like consult, tradeoff disads, and politics have existed on previous topics doesn't mean they should on this one – our interpretation incentivizes research and innovation and prevents laziness to defaulting to arguments made on previous topics.

Disads like the big data, president powers, corporation's disad all focus on the topic literature versus bad generics that have existed forever which forces innovation.

2NC Interpretation XT

Executives order set the precedent that surveillance means no consent.

XO 12333 (Executive Order 12333, "Executive Order 12333--United States intelligence activities," The provisions of Executive Order 12333 of Dec. 4, 1981, appear at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, http://www.archives.gov/federal-register/codification/executive-order/12333.html)//ghs-VA

(b) Electronic surveillance means acquisition of a nonpublic communication by electronic means **without the consent of a person who is a party to an electronic communication** or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

There's an across government consensus that surveillance means no consent.

Jordan 11 (David Alan Jordan, New York University School of Law, "U.S. Intelligence Law," 2011, https://books.google.com/books?id=C2b6mqniwyAC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

Administrative Law Executive Order 12333, United States Intelligence Activities, 3.5(C) (20I0) Electronic surveillance means acquisition of a nonpublic communication by electronic means **without the consent of a person who is a party to an electronic communication** or, in the case of a non-electronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter. Department of Defense Regulation 5240.1-R, Procedures Governing the Activities of DOD Intelligence Components that Affect U.S. Persotis, f DL1.1.9 (Dec. 1982): Electronic Surveillance Acquisition of a nonpublic communication by electronic means **without the consent of a person who is a party** to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter. (Electronic surveillance within the United States is subject to the definitions in the Foreign Intelligence Surveillance Act of 1978 (reference (b)).)

Surveillance applied empirically necessitates a lack of consent.

Lee et al 12 (Lisa M. Lee, the Office of Surveillance, Epidemiology, and Laboratory Services at the Centers for Disease Control and Prevention (CDC), Charles M. Heilig, with the Tuberculosis Trials Consortium, Angela White, with the J.L. Rotman Institute of Philosophy, University of Western Ontario, "Ethical Justification for Conducting Public Health Surveillance Without Patient Consent," 2012 January; 102(1): 38–44, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490562/)//ghs-VA

Public health surveillance **by necessity occurs without explicit** patient **consent**. There is strong legal and scientific support for maintaining name-based reporting of infectious diseases and other types of public health surveillance. We present conditions under which surveillance without explicit patient consent is ethically justifiable using principles of contemporary clinical and public health ethics. Overriding individual autonomy **must be justified in terms of the obligation of public health** to improve population health, reduce inequities, attend to the

health of vulnerable and systematically disadvantaged persons, and prevent harm. In addition, data elements collected without consent must represent the minimal necessary interference, lead to effective public health action, and be maintained securely.

Surveillance involves access to information that you expect not to be shared without your consent.

Lemos 11 (Andre, University of Baha, "Locative Media and Surveillance at the Boundaries of Informational Territories," 2011, https://books.google.com/books?id=quEd4w61EYoC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

The question I would pose is whether the term surveillance can be generalized to cover ALL these actions and systems. I do not believe that when I use Facebook I am under surveillance (the information is protected and there is no intent). But Facebook can be used for surveillance (if there is **unauthorized access** to my personal data and intent with a view to avoiding or causing something), I am not convinced that control, monitoring and surveillance are the same thing or that systems (social networks) that collect non-nominal data and cross these with other non-nominal data in databases in other systems inherently constitute surveillance. To my mind **these systems monitor and control**, which is dangerous precisely because such monitoring and control can give rise, a posteriori, to a form of individual or group surveillance. It should be noted that locative media pose a threat to private life and anonymity. Privacy can be defined as the control and possession of personal information, as well as the use that is made of it subsequently. Anonymity in turn implies an absence of information about an individual and an absence of control over the collection of personal information (GOW. 2005). Privacy is one of the pillars of democratic societies, as it:

CANT CURTAIL FOREIGN-FOREIGN

1NC – Cannot Be Foreign-to-Foreign

A. Interpretation: One end of the communication has to be a citizen of the U.S. located in the U.S.

FISA 78 (Foreign Intelligence Surveillance Act, Legal Document Outlining Electronic Surveillance Within The United States For Foreign Intelligence Purposes, "Foreign Intelligence Surveillance Act of 1978. 50 us e 1801," http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1783.pdf)//ghs-VA

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, **known United States person who is in the United States**, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person •'• has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

B. Violation: The sender or receiver are not from the U.S.

C. Reasons to prefer

1. Limits – Justifies affs that choose any country of the week exploding limits which kills neg prep causing a rush to generics.

2. Topic Education – Shifts the controversy away from constitutional rights violations of citizens that are at the core of the topic lit which hurts predictability and core topic learning.

Competing interpretations, reasonability makes judge intervention inevitable.

1NC – PRISM Violation

Repealing PRISM isn't T – Collects foreigners' information.

Saletan 13 (Will Salten, writer @ Slate, "PRISM Planet," Jun 6, 2013, http://www.slate.com/articles/technology/technology/2013/06/prism_and_u_s_citizens_does_the_government_s_cyber_surveillance_program.html)//ghs-VA

This is the problem at the core of PRISM, a U.S. surveillance program disclosed yesterday by the Washington Post and the Guardian. The government has decided that the difficulty of distinguishing foreigners from Americans won't be its problem anymore. It will be your problem. Counterterrorism officers will scan everything that goes through the Internet, collect the stuff that sounds like it might belong to foreigners, and **figure out later whether what they're reading actually belongs to a U.S. citizen**. Unlike the NSA's phone surveillance program (code-named BLARNEY), which I defended yesterday, PRISM captures the content of electronic communications, not just "metadata" such as the time and length of phone calls. A PRISM briefing slide lists the kinds of materials intelligence analysts can get through the system, including email, videos, VoIP, and online chats. The Post, paraphrasing a "User's Guide for PRISM Skype Collection," says Skype "can be monitored for audio when one end of the call is a conventional telephone and for any combination of 'audio, video, chat, and file transfers' when Skype users connect by computer alone." The official who leaked this document told the Post that through PRISM, surveillance officers "literally can watch your ideas form as you type."

2NC Overview

Our interpretation is that in order for something to be considered surveillance the data must be received or sent by a U.S. Citizen residing in the U.S.

They ____ (Insert Specific Aff Mechanism) ____ which means they don't meet our interpretation.

Our interpretation is also more qualified and the basis for federal definitions of domestic surveillance.

EPIC 15 (Electronic Privacy Information Center, non-profit organization of legal analysts, "Foreign Intelligence Surveillance Court (FISC)," 2015, https://epic.org/privacy/surveillance/fisa/fisc/)//ghs-VA

The FISC has jurisdiction to hear applications for, and issue orders authorizing, four traditional FISA activities: electronic surveillance, physical searches, pen/trap surveillance, and compelled production of business records. In addition, the FISC has jurisdiction to review the government's targeting and minimization procedures related to programmatic surveillance certified under Section 702 of the FISA Amendments Act of 2008. The FISC was originally composed of seven district judges, from seven circuits, appointed by the Chief Justice of the United States to serve for a maximum of seven years. In 2001, amendments in the USA PATRIOT Act increased the number of judges on the Court to eleven, with three required to live within 20 miles of the District of Columbia. The Chief Justice appoints a Presiding Judge for the court from amongst these eleven judges. The FISC operates out of a **secure location in the federal courthouse** in Washington, D.C., but can authorize searches or surveillance "anywhere within the United States." The FISC operations are largely kept secret due to the sensitive nature of the proceedings, and the court's ex parte process is primarily non-adversarial. The target of the order is not given an opportunity to appear at the hearing or informed of the presence of the order. However, the court rules of procedure do allow the electronic service providers and business order recipients to petition to challenge or modify any order. Records from FISC hearings are not revealed, even to petitioners challenging surveillance orders under the court rules. The FISC has discretion to publish its opinions. FISC Review of FISA Applications Traditional FISA investigative tools include: electronic surveillance, physical searches, pen/trap surveillance, and orders compelling production of business records. In order to conduct electronic surveillance or a physical search, **the government must apply to the FISC** and show probable cause to believe that the target is a "foreign power" or an "agent of a foreign power." For electronic surveillance, the government must also establish that the facilities are being used by an agent of a foreign power or a foreign power. For physical searches, the government must show that the place to be searched contains "foreign intelligence information" and that it is used, owned, or possessed by an agent of a foreign power or a foreign power. The government must also provide a description of the information sought and the places or facilities that will be searched. When the FISC grants applications for surveillance it issues a "primary order" finding that **all the FISA requirements were met**. The FISC also issues a "secondary order" providing that "upon request of the applicant," a specified third party must "furnish the applicant forthwith with all information, facilities, or technical assistance necessary" to accomplish the search "in such a manner as will protect its secrecy and produce a minimum of interference." Assisting third parties, such as telephone and Internet service providers, are compensated for any assistance rendered, and can keep certain records under security procedures adopted by the government.

Proves our argument about limits and predictability – our evidence is contextualized to the USFG and shows that it excludes foreign-to-foreign communication which means we never had the ability to prepare.

2NC Limits/Case List XT

The phrase "domestic surveillance" allows the aff to do potentially anything within the U.S. The only chance of limiting the topic is through defining the area and targets they can surveil.

Your interpretation allows you to choose any country of the week to base your advantages around based on the extra-topical portions of the plan. Under-limiting the topic is dangerous because allowing them to access the data of foreign-domestic surveillance explodes affirmative ground and gives them the ability to choose advantages all around the world which causes the neg to rush to generic process CP's and destroys in depth debate which crushes topic education and engagement. Outweighs because detailed and precise debates on this topic are especially important.

Mimoso 14 (Michael, award-winning journalist and former Editor of Information Security magazine, a two-time finalist for national magazine of the year. He has been writing for business-to-business IT websites and magazines for over 10 years, with a primary focus on information security, "NSA Reforms Demonstrate Value of Public Debate," March 26, 2014, https://threatpost.com/nsa-reforms-demonstrate-value-of-public-debate/105052)//ghs-VA

The president's proposal would end the NSA's collection and storage of phone data; those records would remain with the providers and the NSA would require judicial permission under a new court order to access those records. The House bill, however, requires no prior judicial approval; a judge would rule on the request after the FBI submits it to the telecommunications company. "**It's absolutely crucial to understand the details of how these things will work**," the ACLU's Kaufman said in reference to the "new court order" mentioned in the New York Times report. "There is no substitute for robust Democratic **debate** in the court of public opinion and in the courts. **The system of oversight is broke and issues like these need to be debated in public**." Phone metadata and dragnet collection of digital data from Internet providers and other technology companies is supposed to be used to map connections between foreigners suspected of terrorism and threatening the national security of the U.S. The NSA's dragnet, however, also swept up communication involving Americans that is supposed to be collected and accessed only with a court order. The NSA stood by claims that the program was effective in stopping hundreds of terror plots against U.S. interests domestic and foreign. Those numbers, however, quickly were lowered as they were challenged by Congressional committees and public scrutiny. "The president said the effectiveness of this program was one of the reasons it was in place," Kaufman said. "But as soon as these claims were made public, journalists, **advocates** and the courts **pushed back** and it could not withstand the scrutiny. It's remarkable how quickly [the number of] plots turned into small numbers. The NSA was telling FISC the program was absolutely necessary to national security, but the government would not go nearly that far in defending the program. That shows **the value of public debate and an adversarial process** in courts."

Easy topical version of the aff – you simply limit the targets to be individuals who are sending or receiving messages and are U.S. citizens living within the U.S.

This means the same types of plans are justified but the targets are differentiated which gives reasonable limits on the affirmative in terms of ground which promotes equity of ground.

2NC Topic Education XT

You shift the debate away from the heart of the topic – all controversy surrounding surveillance programs are round constitutional violations such as the fourth amendment. Shifting the debate away from there takes away critical neg ground such as critiques with rights based links and disads based on the perception of the plans effect on U.S. citizens.

Also proves our predictability arguments – shifting the stasis puts us at a disadvantage leaving us unprepared and destroys fairness meaning the aff wins every debate on squirrely affs.

AT: FISA Doesn't Spec U.S. Persons

Protect America Act clarifies that in order for it to be surveillance it has to be sent or received by a Citizen of the US located within the US, being intentionally targeted.

Bazan 8 (Elizabeth B. Bazan, Legislative Attorney American Law Division, "P.L. 110-55, the Protect America Act of 2007: Modifications to the Foreign Intelligence Surveillance Act," February 14, 2008, https://www.fas.org/sgp/crs/intel/RL34143.pdf)//ghs-VA

New Section 105A of FISA, as added by Section 2 of P.L. 110-55, states: Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance **directed at a person reasonably believed to be located outside of the United States**. Section 101(f) of FISA, 50 U.S.C. § 1801(f), sets forth the definition of "electronic surveillance" under the statute. It provides: (f) "Electronic surveillance" means — (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person[6] who is in the United States, if the contents are acquired by **intentionally targeting that United States person**, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

2NC Interpretation XT

Foreign-to-foreign communication isn't topical – it's foreign intelligence.

Mayer 14 (Jonathan, Lawyer @ Stanford, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier," December 3, 2014, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/)//ghs-VA

The United States is the world's largest telecommunications hub. Internet traffic and voice calls are routinely routed through the country, even though both ends are foreign. According to leaked documents, **the NSA routinely scoops up many of these two-end foreign communications as they flow through American networks**.2 **The agency calls it "International Transit Switch Collection**," operated under "Transit Authority." **That authority stems from Executive Order 12333, not the Foreign Intelligence Surveillance Act**.

FISA surveillance defines domestic surveillance as communication that begins or ends in the US.

Mayer 14 (Jonathan, Lawyer @ Stanford, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier," December 3, 2014, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/)//ghs-VA

The term "electronic surveillance" has a precise (and counterintuitive) **meaning in FISA**. There are multiple parts to the definition; the component that directly addresses wireline intercepts is 50 U.S.C. § 1801(f)(2). It encompasses: **the acquisition** . . . **of the contents of any wire communication to or from a person in the United States** . . . **if such acquisition occurs in the United States** A **two-end foreign communication is**, of course, **not "to or from a person in the United States**." When the NSA intercepts a two-end foreign wireline communication, then, it hasn't engaged in "electronic surveillance."3

Domestic Surveillance can't involve a significant foreign connection.

Jordan 11 (David Alan Jordan, New York University School of Law, "U.S. Intelligence Law," 2011, https://books.google.com/books?id=C2b6mqniwyAC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

C2.2.3. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization, or person.

Foreign-to-foreign, even if the data permeates the U.S., is foreign surveillance.

Mayer 14 (Jonathan, Lawyer @ Stanford, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier," December 3, 2014, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/)//ghs-VA

3. **These Aren't "Domestic" Communications Under FISA** and the Wiretap Act Both the Wiretap Act and FISA include exclusivity provisions. The Wiretap Act text, in 18 U.S.C. § 2511(2)(f), reads: [Procedures] in [the Wiretap Act, the Stored Communications Act, and FISA] shall be the exclusive means by which electronic surveillance, as defined in [FISA], and the interception of domestic wire, oral, and electronic communications may be conducted. The similar FISA text, in 50 U.S.C. § 1812, says: Except as [otherwise expressly authorized by statute,] the procedures of [the Wiretap Act, the Stored Communications Act, the Pen Register Act, and FISA] shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted. Once again unpacking the legalese, these parallel provisions establish exclusivity for 1) "electronic surveillance" and 2) interception of "domestic" communications. As I explained above, **intercepting a two-end foreign wireline communication doesn't constitute "electronic surveillance**." As for what counts as a "domestic" communication, the statutes seem to mean a communication wholly within the United States.[7] A two-end foreign communication would plainly flunk that definition. So, there's the three-step maneuver. If the NSA intercepts foreign-to-foreign voice or Internet traffic, as it transits the United States, that isn't covered by either FISA or the Wiretap Act. All that's left is Executive Order 12333.

MUST HAVE EXPECTATION OF PRIVACY

1NC – Expectation of Privacy

Surveillance requires a violation of someone's reasonable expectation of privacy.

FISA 78 (Foreign Intelligence Surveillance Act, Legal Document Outlining Electronic Surveillance Within The United States For Foreign Intelligence Purposes, "Foreign Intelligence Surveillance Act of 1978. 50 us e 1801," http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1783.pdf)//ghs-VA

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person ·· **has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes**; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

B. Violation:

C. Reasons to prefer

1. Limits – infinitely increases the number of affs and reduces the topic to simple observation – explodes limits and makes neg prep impossible which causes a rush to generics.

2. Topic Education – Shifts the topic away from rights violations which is at the core of the topic lit which wrecks predictability and kills topic education.

Competing interpretations, reasonability makes judge intervention inevitable.

1NC – TSA Violation

No expectation of privacy at the airport.

Cavuto 15 (Neil, reporter @ Fox News, "TSA Official Shares Photo of Passenger's Cash-Filled Luggage on Twitter," July 1st, 2015, http://insider.foxnews.com/2015/07/01/tsa-official-tweets-photo-passengers-cash-filled-luggage-twitter)//ghs-VA

Farbstein told The Washington Post that "the carry-on bag of the passenger alarmed because of the large unknown bulk in his carry-on bag. When TSA officers opened the bag to determine what had caused the alarm, the money was sitting inside. Quite unusual. TSA alerted the airport police, who were investigating." She did not respond to questions about whether posting the photo to social media violated the passenger's privacy rights. On "Your World," attorney Lisa Giovinazzo said the incident is strange, but passengers can't expect to have privacy while traveling. "**There's no expectation of privacy**, we all go through the same security and we know that everything will be scanned," she stated.

2NC Overview

Our interpretation is that in order for something to be considered surveillance the target they're surveilling needs to have a reasonable expectation of privacy based on legal precedent. Your aff ____ (Insert Specific Aff Mechanism) ____ which means you don't meet our interpretation.

Our interpretation is also more qualified and the basis for federal definitions of domestic surveillance.

EPIC 15 (Electronic Privacy Information Center, non-profit organization of legal analysts, "Foreign Intelligence Surveillance Court (FISC)," 2015, https://epic.org/privacy/surveillance/fisa/fisc/)//ghs-VA

The FISC has jurisdiction to hear applications for, and issue orders authorizing, four traditional FISA activities: electronic surveillance, physical searches, pen/trap surveillance, and compelled production of business records. In addition, the FISC has jurisdiction to review the government's targeting and minimization procedures related to programmatic surveillance certified under Section 702 of the FISA Amendments Act of 2008. The FISC was originally composed of seven district judges, from seven circuits, appointed by the Chief Justice of the United States to serve for a maximum of seven years. In 2001, amendments in the USA PATRIOT Act increased the number of judges on the Court to eleven, with three required to live within 20 miles of the District of Columbia. The Chief Justice appoints a Presiding Judge for the court from amongst these eleven judges. The FISC operates out of a **secure location in the federal courthouse** in Washington, D.C., but can authorize searches or surveillance "anywhere within the United States." The FISC operations are largely kept secret due to the sensitive nature of the proceedings, and the court's ex parte process is primarily non-adversarial. The target of the order is not given an opportunity to appear at the hearing or informed of the presence of the order. However, the court rules of procedure do allow the electronic service providers and business order recipients to petition to challenge or modify any order. Records from FISC hearings are not revealed, even to petitioners challenging surveillance orders under the court rules. The FISC has discretion to publish its opinions. FISC Review of FISA Applications Traditional FISA investigative tools include: electronic surveillance, physical searches, pen/trap surveillance, and orders compelling production of business records. In order to conduct electronic surveillance or a physical search, **the government must apply to the FISC** and show probable cause to believe that the target is a "foreign power" or an "agent of a foreign power." For electronic surveillance, the government must also establish that the facilities are being used by an agent of a foreign power or a foreign power. For physical searches, the government must show that the place to be searched contains "foreign intelligence information" and that it is used, owned, or possessed by an agent of a foreign power or a foreign power. The government must also provide a description of the information sought and the places or facilities that will be searched. When the FISC grants applications for surveillance it issues a "primary order" finding that **all the FISA requirements were met**. The FISC also issues a "secondary order" providing that "upon request of the applicant," a specified third party must "furnish the applicant forthwith with all information, facilities, or technical assistance necessary" to accomplish the search "in such a manner as will protect its secrecy and produce a minimum of interference." Assisting third parties, such as telephone and Internet service providers, are compensated for any assistance rendered, and can keep certain records under security procedures adopted by the government.

2NC Limits/Case List XT

The phrase "domestic surveillance" without constraint allows the aff to do virtually anything – creating a limited interpretation that allows for innovation with constraint is necessary to produce good debates.

Reducing the topic to simple observation on anything allows the aff to run functionally unlimited number of plans. They would justify watching TSA, Sarbanes Oxley, Borders, or any aff based around pure observation and completely lacks a legal basis. Your interpretation would allow for curtailment in all of those areas which means the neg never has specific prep and is forced to read generics. That leads to un-educational repetitive debates and puts the negative at a huge disadvantage which turns their education arguments.

Our interpretation would allow for SSRA, FISA Court Affs, Employee Protection affs, which still allows for innovation within all the federal programs but still places constraints that promotes equitable ground.

2NC Topic Education XT

You shift the debate away from the heart of the topic – all controversy surrounding surveillance programs are round constitutional violations such as the fourth amendment. Shifting the debate away from there takes away critical neg ground such as critiques with rights based links and disads based on the perception of the plans effect on U.S. citizens.

Also proves our predictability arguments – shifting the stasis puts us at a disadvantage leaving us unprepared and destroys fairness meaning the aff wins every debate on squirrely affs.

AT: Smith v Maryland/Katz

Federal courts have concluded that people's emails have a reasonable expectation of privacy – it's still under the purview of the fourth amendment.

Team 14 2011 (Online anonymous blog concerned with surveillance in the 21st Century, "Reasonable Expectation of Privacy," April 2011, https://wikispaces.psu.edu/display/IST432SP11Team14/Reasonable+Expectation+of+Privacy)//ghs-VA

Privacy is defined as "the expectation that confidential personal information disclosed in a private place will not be disclosed to third parties, when that disclosure would cause either embarrassment or emotional distress to a person of reasonable sensitivities". Reasonable expectation of privacy is an issue dealing with the Fourth Amendment of the United States Constitution. In the constitution the Fourth Amendment known as "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." To learn more about the Fourth Amendment click here. Expectation of privacy is defined as the belief in the existence of freedom from unwanted governmental intrusion of personal property, house, or persons. **Expectation of privacy is similar but not the same thing as right of privacy**. There are two different types of reasonable expectation of privacy, subjective expectation of privacy and objective, legitimate or reasonable expectation of privacy. Subjective expectation of privacy is the opinion of someone that a certain event or occurrence is private whereas objective, legitimate, or reasonable expectation of privacy is a generalized idea of privacy known by society. A person may not have an expectation of privacy in public places except a ones residence, hotel room, in a place of business, public restroom, private portions of a jailhouse, and or a phone booth. A personal vehicle is known as a subjective expectation of privacy, but does not always fall under the category of objective expectation of privacy, like a house. The expectation of privacy plays a crucial part when deciding if a search and seizure is a correct or incorrect. In order to follow the Fourth Amendment, the US congress has come up with a two part test to help make a decision if a search and seizure is appropriate. The two circumstances of the test are; (1) governmental action must take into consideration the individual's subjective expectation of privacy and (2) the expectation of privacy must be reasonable, in that society agrees and recognizes it. Since the Fourth Amendment was written way before any kind of technology with memory capabilities, the law has adapted and caught up with the times. **Surveillance equipment has recently diminished the expectation of privacy**. With today's technology, we can watch and predict criminals next moves. Also, we can find out information about a person and look up background and history information. Computer and internet users are constantly logging their history onto their hard drives. Government forces can retrieve this information and use it in a trial if needed. E-mails, e-mail addresses, IP addresses, and websites are all recorded and could be searched. Today, the Federal courts agree that the sender of an e-mail has an objectively reasonable expectation of privacy in the content of a message while it is in transmission.

Even under Katz there's still no expectation of privacy.

Donahue 14 (Laura K, Prof Law @ Georgetown Law Center, "ARTICLE: BULK METADATA COLLECTION: STATUTORY AND CONSTITUTIONAL CONSIDERATIONS," Summer 2014, 37 Harv. J.L. & Pub. Pol'y 757)//ghs-VA

Under Katz, in turn, Americans do not expect that their telephony metadata will be collected and analyzed. n20 Most Americans do not even realize what can be learned from such data, making invalid any claim that they **reasonably expect** the government to have access to such information. The courts also have begun to recognize, in a variety of contexts, the greater incursions into privacy represented by new technologies.

AT: No Expectation of Privacy for PRISM

Data mining still violates reasonable expectations of privacy – the fourth amendment simply operates in a diminished capacity.

Grier 1 (Manton M. Grier, Graduated @ Colombia University, "Software Formerley known as Carnivore: When Does E-Mail Surveillance Encroach upon a Reasonable Expectation of Privacy," 2001, http://heinonline.org/HOL/LandingPage?handle=hein.journals/sclr52&div=43&id=&page=)//ghs-VA

B. What is a Reasonable Expectation of Privacy? Although not explicit in the United States Constitution, a reasonable expectation of privacy exists in the context of the Fourth Amendment's right to be free from unreasonable searches and seizures. In Katz v. United States,6 the United States Supreme Court accepted this view by declaring "the Fourth Amendment protects people, not places."37 In Katz the Court held that recording Katz's telephone conversations in aphone booth constituted a search under the Fourth Amendment because the conduct "violated the privacy upon which he justifiably relied while using the telephone booth . . . ." Although the Katz majority opinion did not mention the phrase "reasonable expectation of privacy," Justice Harlan formulated a test in his concurrence for measuring this expectation.3 Under Justice Harlan's test a search violates a person's reasonable expectation of privacy if (1) the person has exhibited an actual (subjective) expectation of privacy and (2) that expectation is one which society recognizes as reasonable (objective).' Justice Harlan, however, later de-emphasized the importance of a subjective expectation of privacy.4' Moreover, he suggested an expectation must be more than merely reasonable; something else was required.42 He proposed the "something else" was a balancing of "the nature of a particular practice and the likely extent of its impact on the individual's sense of security balanced against the utility of the conduct as a technique of law enforcement." Subsequent Supreme Court cases have held that the reasonableness of a search, and whether a legitimate expectation of privacy exists, is determined by balancing the needs of the government versus the rights of a particular individual." Thus, an individual may possess an expectation of privacy, but this expectation is unreasonable if the court concludes that the governmental interest outweighs the individual's privacy interest.45 When an individual's expectation of privacy is deemed unreasonable, the Fourth Amendment provides no protection, regardless of whether a warrant was properly obtained.' However, if an individual's expectation is reasonable, the Fourth Amendment provides protection from police intrusion absent a warrant supported by probable cause. 7 Finding bright guidelines for this balancing test has proved elusive. Nevertheless, delineations of what is considered a reasonable expectation of privacy, however vague, can be placed on a spectrum,"8 and the Court will recognize those expectations as either legitimate, diminished, or altogether nonexistent."9 On one end of this spectrum are situations where an individual experiences the greatest expectation of privacy. Thus, legitimate expectations are found, for example, in the privacy of one's home, especially at night,5" or in one's personal effects."' In the middle of this spectrum are instances where an individual experiences a diminished expectation, such as in a car 2 or at a business establishment.53 However, perhaps the best way to define a reasonable expectation of privacy is to examine those situations where there is no legitimate expectation. Thus, the Supreme Court has found, for example, there is no reasonable expectation of privacy in the contents of a conversation divulged to a third party,54 in something knowingly exposed to the public,5 or in the garbage on the side of the street. C. A Reasonable Expectation of Privacy While Using E-Mail Electronic mail, commonly known as "e-mail," is a medium of communication transmitted via computers connected over either the Internet (World Wide Web) or an intranet (your office system). 7 In many respects, email is a hybrid of the postal mail and the telephone. Communication via e-mail is similar to postal mail because both (1) are written communications; (2) allow for the attachment of items, such as files or pictures; (3) lack voice inflection, which affects the recipient's ability to judge the tone of the communication; and (4) cannot be retracted once sent. On the other hand, e-mail is similar to a phone call because the communication is virtually instantaneous and is electronic, meaning it is capable of being intercepted by electronic means. Understanding how an e-mail message is sent and received requires a cursory understanding of how the Internet works. The Internet is basically "a network of networks." 'Rather than a physical entity, it is "a giant network which interconnects innumerable smaller groups of linked computer networks." 59 Because the smaller networks are owned by various individuals or organizations, public and private, the Internet is essentially a decentralized, global cyberspace that links the entire world. When an e-mail is sent via the Internet, the message is not sent as a whole entity; rather, it is divided into a series of "packets" which are reassembled at the receiving end.6' These packets may take many and varying paths to their destination."2 If certain computers along the path become overloaded, some packets will travel through less congested computers.63 Because e-mail is not sealed or secure, intermediate computers may be used to access or. view the message, unless it is encrypted.' The first federal appellate court to address the issue of an individual's reasonable expectation of privacy in the use of e-mail was the Court of Appeals for the Armed Forces.6 In United States v. Maxwell the appellant had been convicted of knowingly transporting

or receiving child pornography in violation of the Sexual Exploitation and Other Abuse of Children Act of 1978.6 The appellant was discovered by an FBI sting that targeted a child pornography ring operating on the Internet service provider America Online (AOL).67 On the one hand, **the court found that the appellant "possessed a reasonable expectation of privacy**, albeit a limited one," in the e-mails he sent via AOL." The court stressed that these e-mail messages were privately stored by AOL,69 thus affording more protection than, for example, an e-mail transmitted at work. The court, however, also determined that expectations of privacy depend on the type of e-mail used and on the indentity of the intended recipient.7" Thus, the court found that "[m]essages sent to the public at large in the 'chat room' or e-mail that is 'forwarded' from correspondent to correspondent [lose] any semblance of privacy. In United States v. Monroe," the United States Court of Appeals for the Armed Forces, while acknowledging its holding in Maxwell, found the appellant had no reasonable expectation of privacy in his e-mail messages that were viewed by Air Force personnel who maintained the network system.73 In distinguishing Monroe from the holding in Maxwell, the court noted that in Maxwell, AOL contractually agreed not to disclose subscribers' e-mail.74 Thus, e-mails sent at work or through the Internet itself, absent contractual guarantees, experience a diminished degree of protection from the Fourth Amendment. In sum, the use of e-mail falls into the middle of the spectrum-a diminished expectation of privacy. On the one hand, **the use of e-mail is generally subject to the same Fourth Amendment protections** found in the use of the telephone and postal mail,76 and the sender of an e-mail can reasonably expect that the contents will remain private and free from police intrusion, absent a search warrant supported by probable cause." On the other hand, "chat" messages,78 received e-mails, 79 forwarded e-mails, 0 and e-mails divulged to third parties'" afford **no reasonable expectation** of privacy. Thus, in order to implicate the Fourth Amendment, it is necessary to determine how, when, where, and to whom the e-mail was sent.

Privacy expectations are diminished but still exist – means it still operates within the purview of expected privacy rights.

Ashdown 81 (Gerald, Professor of Law, West Virginia University College of Law, "The Fourth Amendment and the "Legitimate Expectation of Privacy"," 34 Vand. L. Rev. 1289 1981)//ghs-VA

In addition to combining the notion of standing with substantive fourth amendment law under the "legitimate expectation of privacy" formula, the Court in Rakas also reaffirmed that such expectations^—and thus the scope of fourth amendment rights—are dependent upon what a majority of the Court chooses to recognize as constitutionally legitimate.33 This approach has permitted the Court to develop a new graduated view of fourth amendment rights in which some expectations of privacy are less legitimate—and thus less entitled to protection—than others. While finding privacy expectations to be clearly legitimate in some situations78 and completely absent in others,7* the Court also has chosen to recognize a middle ground, predominantly in cases that deal with automobiles, in which **privacy expectations are diminished and fourth amendment protection is concomitantly reduced**.75 Thus, the Burger Court's view of the fourth amendment, although perhaps still in its incipient stages, appears to be reducible to a three-tiered hierarchical scheme, with protection being dependent upon the Court's willingness to recognize asserted privacy interests as either legitimate, diminished, or altogether nonexistent. When the Court is willing to recognize a claimed privacy interest as legitimate, full fourth amendment safeguards, including both the probable cause and warrant requirements, are applicable. In other words, the Court demands strict compliance with the fourth amendment's warrant clause in these cases. In United States v. Chadwick,8 for example, the government argued that the fourth amendment warrant clause protected only those interests traditionally associated with the home. Chief Justice Burger's majority opinion, however, stated that "a fundamental purpose of the Fourth Amendment [was] to safeguard individuals from unreasonable government invasions of legitimate privacy interests, and not simply those interests found inside the four walls of the home.'"7 The Chief Justice concluded that the users of a locked footlocker, which was characterized as a repository of personal effects, enjoyed a legitimate expectation of privacy in the contents of the locker, and that the warrant clause therefore applied. In a later case the Court held that the same privacy expectations and warrant requirement applied to an unlocked suitcase found in an automobile, even though automobiles themselves traditionally had been provided with less fourth amendment protection.78 Recently, a plurality of the Court in Robbins v. California9 expanded these holdings to apply to any closed, opaque container.80 Other privacy interests that the Court has found to be legitimate and thus governed by the warrant clause include those associated with the home,81 packaged films,82 and telephone booths.83 The second level in the new hierarchy of fourth amendment interests comprises those cases in which the Court has concluded that the privacy expectation in question is diminished or

reduced. This category apparently is governed by the fourth amendment's reasonableness clause rather than its warrant clause. Thus, in a relatively recent line of cases, the Court has held warrantless searches of automobiles to be reasonable on the ground that any expectation of privacy in a car is diminished.8 The Court has justified this conclusion in a variety of ways, reasoning that automobiles, unlike houses, are constantly used in plain view for transportation,85 are extensively regulated by the state,86 are often subject to official inspection, and are frequently taken into police custody.8 Another area of police activity to which the Court applies this second category of diminished privacy expectations is public arrests. Although it was not specifically stated in Watson v. United States,8 a case upholding the validity of warrantless public arrests, a majority of the Justices apparently felt that privacy expectations. are diminished when a person is in public.89 Juxtaposing United States v. Santana"° with Payton v. New York91 makes it even more clear that this was the implication intended by the Court in Watson. In Santana the Court upheld the warrantless arrest of a defendant who had been standing in the doorway to her home. The majority concluded that since the defendant was not in an area where she had any expectation of privacy, the situation was governed by Watson. The Payton Court, on the other hand, stressed individual privacy to invalidate a warrantless arrest made in a private dwelling, declaring that in no setting "is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home. 9' 2 Although Justice Rehnquist's majority opinion in Santana stated that the defendant lacked an expectation of privacy while in the doorway of her home, he undoubtedly meant that her expectation of privacy merely was diminished, since public arrests, unlike other situations in which the Court has found a complete absence of privacy interests, 9" are governed by the fourth amendment probable cause requirement. 9 4 That a person retains some privacy interest in his person when he appears in public was indicated in Terry v. Ohio in which the Court noted that the fourth amendment applies whenever an individual harbors a reasonable expectation of privacy. "Unquestionably," the Court stated, "petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland."96 It can be seen from the Court's treatment of public arrests and vehicular searches that in those cases in which the new notion of diminished privacy expectations applies, generally only probable cause, and not a warrant, is required. In a few instances, however, the Supreme Court has relied on its diminished expectations rationale to justify a law enforcement practice even when probable cause was absent. Examples of this can be found in South Dakota v. Opperman97 and Bell v. Wolfish." In Opperman the Court relied on the diminished expectation of privacy in a vehicle to hold that a police inventory search without probable cause of an automobile that had been impounded for multiple parking violations was not "unreasonable." Similarly, in Bell the Court found that any privacy expectation of pretrial detainees necessarily is diminished- and thus outweighed-by the need of the institution to conduct strip searches following contact visits. The Court concluded that these searches, including body cavity inspections, are reasonable under the fourth amendment even though conducted on less than probable cause.99 More recently, a majority of the Court upheld the detention without probable cause of persons found at the scene of the execution of a search warrant.100 The Court reasoned that only a limited interest in personal security was involved, that sufficient law enforcement interests were present, and that the issuance of a search warrant provided sufficient articulable suspicion to support the detention. The majority thus held that the officer's actions met the standard of reasonableness embodied in the fourth amendment. The Supreme Court thus has subsumed the Camara/Terry reasonableness analysis under its second category of fourth amendment interests in which the expectations of privacy concerned are of reduced significance.102 With privacy interests diminished, they easily are outweighed by the law enforcement interests in question; the amount of fourth amendment protection in this category is then dependent upon how the Court strikes the reasonableness balance. Although application of the reasonableness clause to this classification generally has resulted in probable cause-but not warrants-being required, the Supreme Court occasionally has viewed the privacy interests at issue to be of such reduced importance in comparison to law enforcement needs that it has justified dispensing with the necessity of probable cause as a prerequisite for particular police conduct. The third and final classification under the Supreme Court's current vision of the fourth amendment comprises those cases in which the Court has found an absence of any privacy expectation whatsoever. This category is the most problematic of the three, since the conclusion that no legitimate expectation of privacy exists at all excludes the particular interest or activity from fourth amendment protection and frees the police practice concerned from either constitutional or judicial control. Because the fourth amendment has been geared to the protection of privacy interests, if the Court is able to conclude that no privacy expectation exists, the fourth amendment affords no protection against the activities of the police regardless of their general contravention of fourth amendment principles. This conclusion in essence means that the commands of the fourth amendment-both the warrant and reasonableness clauses-do not apply in such cases. In other words, the police simply are not required to justify their actions by either probable cause or reasonable suspicion, since, according to the Supreme Court, the object of the fourth amendment-privacy-is not implicated in these cases.

CANT BE GENERAL OBSERVATION

1NC – Prohibitive Intent

A. Surveillance is preventative rather than general observations.

Lemos 11 (Andre, University of Baha, "Locative Media and Surveillance at the Boundaries of Informational Territories," 2011, https://books.google.com/books?id=quEd4w61EYoC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

Although they often appear to be synonymous, it is important to distinguish between informational control, monitoring and surveillance so that the problem can be better understood. We consider control to be the supervision of activities, or actions normally associated with government and authority over people, actions and processes. Monitoring can be considered a form of observation to gather information with a view to making projections or constructing scenarios and historical records, i.e., the action of following up and evaluating data. Surveillance, however, can be **defined as an act intended to avoid something**, as an observation whose purposes are preventive or as behavior that is attentive, cautious or careful. It is interesting to note that in English and French the two words "vigilant" and "surveillance", each of which is spelt the same way and has the same meaning in both languages, are applied to someone who is particularly watchful and to acts associated with legal action or action by the police intended to provide protection against crime, respectively. We shall define surveillance as actions that imply control and monitoring in accordance with Gow, for whom surveillance "implies something quite specific as the intentional observation of someone's actions or the intentional gathering of personal information in order to observe actions taken in the past or future" (Gow. 2005. p. 8). According to this definition, surveillance actions presuppose monitoring and control, but not all forms of control and/or monitoring can be called surveillance. It could be said that all forms of surveillance require two elements: intent with a view to avoiding/causing something and identification of individuals or groups by name. It seems to me to be difficult to say that there is surveillance if there is no identification of the person under observation (anonymous) and no preventive intent (avoiding something). To my mind it is an exaggeration to say, for example, that the system run by my cell phone operator that controls and monitors my calls is keeping me under surveillance. Here there is identification but no intent. However, it can certainly be used for that purpose. The Federal Police can request wiretaps and disclosure of telephone records to monitor my telephone calls. The same can be said about the control and monitoring of users by public transport operators. This is part of the administrative routine of the companies involved. Once again, however, the system can be used for surveillance activities (a suspect can be kept under surveillance by the companies' and/or police safety systems). Note the example further below of the recently implemented "Navigo "card in France. It seems to me that the social networks, collaborative maps, mobile devices, wireless networks and countless different databases that make up the information society do indeed control and monitor and offer a real possibility of surveillance.

B. Violation: They curtail general observations which lack a preventative intent.

C. Reasons to prefer

1. Limits – Affs about general observations can collect data over a million different things which makes neg prep impossible and causes a rush to generics.

2. Topic education – shifts it away from the core controversy of things like PRISM which wrecks predictability and kills core topic learning.

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that in order for something to be considered surveillance it must have a prohibitive intent. Your aff ____ (Insert Specific Aff Mechanism) ____ which means you don't meet our interpretation.

2NC Limits/Case List XT

Your interpretation allows for affs about general observation such as curtailment of Global Earth Observation, NOAA Observation programs, Survey data about poverty. Explodes limits and shifts the stasis to a whole other lit base which means they can access thousands of more affs about general observations.

Think about the millions of different observations governments can make, allowing them would create an unreasonable research burden forcing the neg to read generics. Their interpretation collapses the limiting function of the resolution and destroys any semblance of predictable negative ground.

2NC Topic Education XT

Controversies like rights violations versus terror are at the core of the topic, your interpretation shifts that stasis to observation which proves our predictability arguments which turns fairness and education – their benefits are short circuited by a lack of engagement which is a key internal link to advocacy skills which outweighs their education arguments because it's the only thing we take from debate.

Our education outweighs – detailed and precise debates on this topic are especially important.

Mimoso 14 (Michael, award-winning journalist and former Editor of Information Security magazine, a two-time finalist for national magazine of the year. He has been writing for business-to-business IT websites and magazines for over 10 years, with a primary focus on information security, "NSA Reforms Demonstrate Value of Public Debate," March 26, 2014, https://threatpost.com/nsa-reforms-demonstrate-value-of-public-debate/105052)//ghs-VA

The president's proposal would end the NSA's collection and storage of phone data; those records would remain with the providers and the NSA would require judicial permission under a new court order to access those records. The House bill, however, requires no prior judicial approval; a judge would rule on the request after the FBI submits it to the telecommunications company. "**It's absolutely crucial to understand the details of how these things will work**," the ACLU's Kaufman said in reference to the "new court order" mentioned in the New York Times report. "There is no substitute for robust Democratic **debate** in the court of public opinion and in the courts. **The system of oversight is broke and issues like these need to be debated in public**." Phone metadata and dragnet collection of digital data from Internet providers and other technology companies is supposed to be used to map connections between foreigners suspected of terrorism and threatening the national security of the U.S. The NSA's dragnet, however, also swept up communication involving Americans that is supposed to be collected and accessed only with a court order. The NSA stood by claims that the program was effective in stopping hundreds of terror plots against U.S. interests domestic and foreign. Those numbers, however, quickly were lowered as they were challenged by Congressional committees and public scrutiny. "The president said the effectiveness of this program was one of the reasons it was in place," Kaufman said. "But as soon as these claims were made public, journalists, **advocates** and the courts **pushed back** and it could not withstand the scrutiny. It's remarkable how quickly [the number of] plots turned into small numbers. The NSA was telling FISC the program was absolutely necessary to national security, but the government would not go nearly that far in defending the program. That shows **the value of public debate and an adversarial process** in courts."

2NC Interpretation XT

Surveillance deals with prevention and has specific purpose.

Bush 2 (Eric J, M.D., "The role of surveillance in national animal health strategies," 2002, http://www.caribvet.net/en/system/files/gua00_8_rolesurveillance.pdf)//ghs-VA

A broader definition of surveillance is sought along with a more holistic approach to disease **prevention and control**. Future surveillance efforts must go beyond screening individual animals and become an ongoing process for collection, analysis and interpretation of health related events in animal populations to detect health problems based on an epidemiological description of trends and patterns. Intervention measures should be expanded beyond movement control (import restrictions, herd quarantine) to incorporate/include diverse response capabilities. Furthermore, to be effective, surveillance information must be distributed on a timely basis to those involved in the planning, implementation, and/or evaluation of prevention and control measures.

Surveillance is a priori about prevention and isn't general.

Lee et al 12 (Lisa M. Lee, the Office of Surveillance, Epidemiology, and Laboratory Services at the Centers for Disease Control and Prevention (CDC), Charles M. Heilig, with the Tuberculosis Trials Consortium, Angela White, with the J.L. Rotman Institute of Philosophy, University of Western Ontario, "Ethical Justification for Conducting Public Health Surveillance Without Patient Consent," 2012 January; 102(1): 38–44, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490562/)//ghs-VA

Public health surveillance is defined as the ongoing, systematic collection, analysis, and interpretation of health-related data with **the a priori purpose of preventing** or controlling disease or injury, or of identifying unusual events of public health importance, followed by the dissemination and use of information for public health action.

Surveillance has the purpose of being a form of "preventative law enforcement"

Bloss 7 (William, Department of Political Science and Criminal Justice, The Citadel, South Carolina, USA, "Escalating U.S. Police Surveillance after 9/11: an Examination of Causes and Effects," Part 1, 4(3): 208-228, http://www.surveillance-and-society.org/articles4(3)/escalating.pdf)//ghs-VA

Views of surveillance and privacy have changed dramatically in recent years. Some commentators assert that the U.S. has experienced a progressive shift in the balance between police surveillance authority and individual privacy rights (Chang, 2003; Bloss, 2005). Others cite the terrorist attacks on September 11, 2001 (9/11 hereafter) as a watershed event that provided the catalyst for the widening of police surveillance and search authority (Posner, 2003; Romero, 2003). The record is replete with examples of U.S. official responses to perceived public safety threats that have precipitated an increase in police surveillance activity (Brown, 2003). Events such as the detention of Japanese descendents during World War II, McCarthy anti-communist investigations, anti-crime campaigns, anti-drug wars, and current counter-terrorism policies provide evidence that U.S. public safety strategies commonly involve a prominent police surveillance and search role (Cole, 2003; Abrams, 2005). Faced with modern transnational crime and terrorism, operating in a technologically fluid global environment, the extant official strategy obligates the police to ensure greater public safety under increasingly unpredictable circumstances (Posner, 2003; Stohl, 2003; Kugler and Frost, 2001). In what Cole (2003:13) refers to as "preventive law enforcement," the legal and operational response has been to use greater

surveillance to reduce threats and prosecute transnational offenders. Since the police often lack the manpower and technical expertise to keep pace with global terrorists and criminals, they have widened their surveillance capability by collaborating with private commercial enterprises to obtain personal data or to eavesdrop on the public (O'Harrow, 2005; Bridis and Solomon, 2006). The central position of this paper is that U.S. lawmakers and courts have reacted to perceived global terrorism and crime threats by modifying established civil privacy protections, under the aegis of "**preventive law enforcement**," thereby giving the police broader surveillance powers (Cole, 2003). As a result, the police have transformed their operational approaches and surveillance practices to focus more on information and intelligence gathering (Peterson, 2005; Carter, 2004). This has produced a new privacy paradigm, as the balance between police surveillance authority and civil privacy protection shifts. This paper explains the factors that have caused or contributed to this transition and its effect on civil privacy and civil life in U.S. society.

Surveillance is preventative rather than general observations – only our author make a distinctions.

Lemos 11 (Andre, University of Baha, "Locative Media and Surveillance at the Boundaries of Informational Territories," 2011, https://books.google.com/books?id=quEd4w61EYoC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

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Surveillance is specifically to prevent something.

Merriam Webster (Merriam Webster, Online Dictionary, "surveillance," http://www.merriam-webster.com/dictionary/surveillance)//ghs-VA

the act of carefully watching someone or something **especially in order to prevent or detect a crime**.

AT: Surveillance Has Other Priorities

Surveillance is a priori about prevention and isn't general.

Lee et al 12 (Lisa M. Lee, the Office of Surveillance, Epidemiology, and Laboratory Services at the Centers for Disease Control and Prevention (CDC), Charles M. Heilig, with the Tuberculosis Trials Consortium, Angela White, with the J.L. Rotman Institute of Philosophy, University of Western Ontario, "Ethical Justification for Conducting Public Health Surveillance Without Patient Consent," 2012 January; 102(1): 38–44, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490562/)//ghs-VA

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CANT BE TARGETED

1NC – Can't be Targeted

A. Interpretation: Surveillance means mass surveillance.

Langmuir 63 (A. D. Langmuir, "The surveillance of communicable diseases of national importance," The New England Journal of Medicine, vol. 268, pp. 182–192, 1963. http://www.nejm.org/doi/pdf/10.1056/NEJM196301242680405)

Surveillance, when applied to a disease, means the continued watchfulness over the distribution and trends of incidence through the systematic collection, consolidation and evaluation of morbidity and mortality reports and other relevant data. Intrinsic in the concept is the regular dissemination of the basic data and interpretations to all who have contributed and to all others who need to know" [67.

Substantially is without material qualification

Black's Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

B. Violation: The aff curtails targeted surveillance

C. Reasons to prefer

1. Limits – They justify an infinite number of affirmatives – they allow for thousands of different targeted mechanisms which makes it impossible for the neg to prepare each individual target.

2. Topic Education – they foster discussions about targeted forms of monitoring that detract us from learning about mass surveillance writ large – kills predictable clash and core topic learning

Competing interpretations, reasonability makes judge intervention inevitable.

2NC Overview

Our interpretation is that surveillance has to be indiscriminant monitoring not targeted. Anything that targets a specific group of people or specific type of activity is NOT surveillance. Your aff _____ (Insert Specific Aff Mechanism) _____ which means you don't meet our interpretation.

Topical version of the aff – use the same mechanism of the aff just make it indiscriminate. Solves your education claims because we can still have the same discussions just tie them to their larger context.

2NC Limits/Case List XT

There are only 3 real evaluative terms in the resolution – defining and limiting them is necessary in order to make this topic manageable. Allowing curtailment to target individual groups allows for infinite variations and permutations of affs.

Restricting targeted surveillance fosters discussion about the large forms of surveillance that affect the most people. There are an infinite number of different groups that could potentially be targeted. Making the negative research the individual groups creates an unreasonable research burden preventing substantive and quality clash.

They would allow –

- **Curtailing surveillance on senior citizens**
- **Curtailing surveillance of ocean acidification**
- **Curtailing surveillance of squirrel populations**
- **Curtailing surveillance of Northwestern Debaters**

Clash fosters debates were students can debate the specific warrants behind their advantages and mechanisms. This turns students into excellent advocates who can thoroughly defend every part of their advocacy, allowing us to create the most real world change.

We would allow for SSRA, Dual-Use, Prism, NSA, Freedom-Act affs.

OTHER DEFINITIONS

CURTAIL

Both Reduce and Eliminate

Curtail can be to eliminate OR just reduce.
Farlex NO DATE (The Free Online Dictionary by Farlex, "curtail," http://www.thefreedictionary.com/curtail)//ghs-VA

To cut short or reduce: We curtailed our conversation when other people entered the room.

DOMESTIC

Can't Target

Your interpretation is impossible – we can't limit by targets.

Stray 13 (Jonathan, freelance journalist and a former editor for the Associated Press. He teaches computational journalism at Columbia University, "What You Need to Know About the NSA's Surveillance Programs," August 5th, 2013, http://www.propublica.org/article/nsa-data-collection-faq)//ghs-VA

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because **there is no fully reliable automatic way to separate domestic from international communications**, this program also captures some amount of U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make. The contents of an unknown number of phone calls There have been several reports that the NSA records the audio contents of some phone calls and a leaked document confirms this. This reportedly happens "on a much smaller scale" than the programs above, after analysts select specific people as "targets." Calls to or from U.S. phone numbers can be recorded, as long as the other end is outside the U.S. or one of the callers is involved in "international terrorism". There does not seem to be any public information about the collection of text messages, which would be much more practical to collect in bulk because of their smaller size. The NSA has been prohibited from recording domestic communications since the passage of the Foreign Intelligence Surveillance Act but at least two of these programs -- phone records collection and Internet cable taps -- involve huge volumes of Americans' data. Does the NSA record everything about everyone, all the time? The NSA records as much information as it can, subject to technical limitations (there's a lot of data) and legal constraints. This currently includes the metadata for nearly all telephone calls made in the U.S. (but not their content) and massive amounts of Internet traffic with at least one end outside the U.S. It's not clear exactly how many cables have been tapped, though we know of at least one inside the U.S., a secret report about the program by the NSA's Inspector General mentions multiple cables, and the volume of intercepted information is so large that it was processed at 150 sites around the world as of 2008. We also know that Britain's GCHQ, which shares some intelligence with the NSA, had tapped over 200 cables as of 2012, belonging to seven different telecommunications companies. Until 2011 the NSA also operated a domestic Internet metadata program which collected mass records of who emailed who even if both parties were inside the U.S. Because it is not always possible to separate domestic from foreign communications by automatic means, the NSA still captures some amount of purely domestic information, and it is allowed to do so by the Foreign Intelligence Surveillance Court.

Geography & No Foreign

Domestic means physically within the U.S. borders.

DOD 82 (Department of Defense, regulation sets forth procedures governing the activities of DoD intelligence components that affect United States persons, "PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS," December 1982, https://fas.org/irp/doddir/dod/d5240_1_r.pdf)//ghs-VA

C10.2.1. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization or person. C10.2.2. The term organization includes corporations and other commercial organizations, academic institutions, clubs, professional societies, associations, and any other group whose existence is formalized in some manner or otherwise functions on a continuing basis. C10.2.3. An organization within the United States means all organizations physically located within the geographical boundaries of the United States whether or not they constitute a United States persons. Thus, a branch, subsidiary, or office of an organization within the United States, **which is physically located outside the United States**, is not considered as an organization within the United States.

Surveillance includes ALL residents inside the U.S.

Donohue 6 (Laura, A.B., Dartmouth; M.A., University of Ulster, Northern Ireland; Ph.D., Cambridge University; J.D., Stanford, "Anglo-American privacy and surveillance," March 22, 2006, http://rocket.csusb.edu/~tmoody/F07%20362%20spy%20donahue.html)//ghs-VA

5. The Foreign Intelligence Surveillance Act As the extent of the domestic surveillance operations emerged, Congress attempted to scale back the Executive's power while leaving some flexibility to address national security threats. (183) The legislature focused on the targets of surveillance, limiting a new law to foreign powers, and agents of foreign powers--which included groups "engaged in international terrorism or activities in preparation therefor." (184) Congress distinguished between U.S. and non-U.S. persons, creating tougher standards for the former. (185) The Foreign Intelligence Surveillance Act ("FISA") considered any "acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication," as well as other means of surveillance, such as video, to fall under the new restrictions. (186) Central to the statute's understanding of surveillance was that, by definition, consent had not been given by the target. Otherwise, the individual would have a reasonable expectation of privacy and, under ordinary circumstances, the Fourth Amendment would require a warrant. (187) FISA provided three ways to initiate surveillance: Attorney General Certification, application to the Foreign Intelligence Surveillance Court ("FISC"), and emergency powers. Of these, the second serves as the principal means via which surveillance is conducted. (188) Under this mechanism, to open surveillance on a suspect, the executive branch applies to FISC, a secret judicial body, for approval. (189) The application must provide the name of the federal officer requesting surveillance and the identity of the target (if known), or a description of the target. (190) It must include a statement of facts supporting the claim that the target is a foreign power (or an agent thereof) and that the facilities to be monitored are currently, or expected to be, used by a foreign power or her agent. (191) Probable cause must be presented that the individual qualifies as a foreign power and will be using the facilities surveilled. (192) The application must describe the "nature of the information sought and the type of communications or activities to be subjected to the surveillance." Importantly, the court is not required to determine that probable cause exists as to whether any foreign intelligence information will be uncovered. (193) The application requires a designated national security or defense officer to certify that the information is related to foreign intelligence, and that "such information cannot reasonably be obtained by normal investigative techniques." (194) It must specify how the surveillance is to be affected (including whether physical entry is required). (195) It includes all previous applications involving the "persons, facilities, or places specified in the application,' and actions taken by the court on these cases must accompany the application. (196) The form includes an estimate of time required for surveillance and requires an explanation as to why authority should not terminate at the end of the requested period. (197) Finally, if more than one surveillance device is to be used, the applicant must address the minimization procedures and describe the range of devices to be employed. (198) In addition to this information, the judge may request additional data. (199) In 1994, Congress amended the statute to allow for warrantless, covert physical searches (not just electronic communications' intercepts) when targeting "premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers." (200) The statute requires that there be no substantial likelihood that the facilities targeted are

the property of a U.S. person. (201) Applications must include the same information as for electronic surveillance. (202) Twice a year the Attorney General informs Congress of the number of applications for physical search orders, the number granted, modified, or denied, and the number of physical searches that ensued. (203)

Footnote (185): The former included citizens and resident aliens, as well incorporated entities and unincorporated associations with a substantial number of U.S. persons. Non-U.S. persons qualified as an "agent of a foreign power" by virtue of **membership**--e.g., if they were an officer or employee of a foreign power, or if they participated in an international terrorist organization. Id. [section] 1801(i). U.S. persons had to engage knowingly in the collection of intelligence contrary to U.S. interests, the assumption of false identity for the benefit of a foreign power, and aiding or abetting others to the same. Id. [section] 1801(b).

Includes the Borders

Courts have decided domestic surveillance includes the area around the borders.

Stanley and Steinhardt 3 (Jay Stanley, Senior Policy Analyst with the American Civil Liberties Union's Speech, Privacy and Technology Project, Barry Steinhardt, Director of the ACLU's Program on Technology and Liberty, "Bigger Monster, Weaker Chains: The Growth of an American Surveillance Society," January 2003, https://www.aclu.org/files/FilesPDFs/aclu_report_bigger_monster_weaker_chains.pdf)//ghs-VA

Historically, the courts have been slow to adapt the Fourth Amendment to the realities of developing technologies. It took almost 40 years for the U.S. Supreme Court to recognize that the Constitution applies to the wiretapping of telephone conversations. (Erosion of the Fourth Amendment) "In recent years – in no small part as the result of the failed 'war on drugs' – Fourth Amendment principles have been steadily eroding. The circumstances under which police and other government officials may conduct warrantless searches has been rapidly expanding. **The courts** have allowed for increased surveillance and searches on the nation's highways and at our 'borders' (the legal definition of which actually extends hundreds of miles inland from the actual border). And despite the Constitution's plain language covering 'persons' and 'effects,' the courts have increasingly allowed for warrantless searches when we are outside of our homes and 'in public.' Here the courts have increasingly found we have no 'reasonable expectation' of privacy and that therefore the Fourth Amendment does not apply."

Prefer our interpretation – it cites the fourth amendment which is the a priori limit on domestic surveillance.

Cole and Lederman 6 (David Cole, B.A., J.D., Yale, Teaches Law at Georgetown University, Martin S. Lederman, A.B., University of Michigan; J.D., Yale, Deputy Assistant Attorney General in the Department of Justice's Office, "The National Security Agency's Domestic Spying Program: Framing the Debate," May 2006, https://www.acslaw.org/files/Microsoft%20Word%20-%2012_NSA_Debate.pdf)//ghs-VA

We do not dispute that, absent congressional action, the President might have inherent constitutional authority to collect "signals intelligence" about the enemy abroad. Nor do we dispute that, had Congress taken no action in this area, the President might well be constitutionally empowered to conduct domestic surveillance directly tied and narrowly confined to that goal—subject, of course, to Fourth Amendment limits. Indeed, in the years before FISA was enacted, the federal law involving wiretapping specifically provided that "[n]othing contained in this chapter or in section 605 of the Communications Act of 1934 shall limit the constitutional power of the President . . . to obtain foreign intelligence information deemed essential to the security of the United States." 18 U.S.C. § 2511(3) (1976).

U.S. Citizens Only

Domestic surveillance covers U.S. citizens only – our evidence is exclusive and draws a specific distinction.

Ross 12 (Jeffery Ian, Ph.D. is a Professor in the School of Criminal Justice, College of Public Affairs, and a Research Fellow of the Center for International and Comparative Law, "An Introduction Into Political Crime," 2012, https://books.google.com/books?id=c32GRo3zBdEC&printsec=frontcover#v=onepage&q&f=false)//ghs-VA

Domestic surveillance consists of a variety of information-gathering activities, conducted primarily by the state's coercive agencies (that is, police, national security, and the military). These actions are carried out against citizens, foreigners, organizations (for example, businesses, political parties, etc.), and foreign governments. Such operations usually include opening mail, listening to telephone conversations (eavesdropping and wiretapping), reading electronic communications, and infiltrating groups (whether they are legal, illegal, or deviant). Although a legitimate law enforcement /intelligence-gathering technique, surveillance is often considered unpalatable to the public in general and civil libertarians in particular. This is especially true when state agents break the law by conducting searches without warrants, collecting evidence (hat is beyond the scope of a warrant, or harassing and/or destabilizing their targets.1 These activities are illegal (because the Constitution, statutes, regulations, and ordinances specify the conditions under which surveillance may be conducted), and they violate individual rights to privacy. Not only should legitimate surveillance be distinguished from illegal domestic surveillance, but the latter practice should also be separated from espionage/ spying.2 In short, spying/espionage, covered in chapter four, is conducted against a foreign government, its businesses, and/or its citizens, and illegal domestic surveillance takes place inside a specific individuals country.

Limits on Surveillance Key

Defining domestic surveillance is a critical prerequisite to debate – takes out reasonability arguments as well.

Small 8 (Matthew, US Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis," 2008, http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf)//ghs-VA

Before one can make **any sort of assessment of domestic surveillance policies**, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

Limits regarding domestic and foreign surveillance is key to good policy.

Dyer 12 (William R, M.A. in Intelligence studies @ American University, "UNMANNED AERIAL VEHICLES: THE CHANGING ROLE FROM INTERNATIONAL TO DOMESTIC INTELLIGENCE," February 26, 2012, http://www.apus.edu/content/dam/online-library/masters-theses/Dyer-2012.pdf)//ghs-VA

Congress will need to review current laws in existence today and make adjustments as necessary to clearly draw the line between domestic surveillance and foreign intelligence and develop practical procedures for the performance of duties relating to agencies required to conduct surveillance. Having a **clear legal framework** as a foundation can assist other agencies such as the FAA, Customs and Border Patrol, FBI, and local law enforcement agencies to **establish policy governing** their respective organization, making it easy to utilize the flexibilities of RPA surveillance over current methods. By having well thought out legal guidance, larger agencies such as DOD and DHS will be able to participate in domestic programs that will assist in protecting the national security interests of the United States. In addition, the Federal Government will need to work closely with civil liberty organizations such as the ACLU to form a partnership that provide legislation that both parties can accept instead of more ambiguous language that continue to blur the lines between homeland security and personal privacy.

US Citizen & Non-Public

The agent being surveilled must be a US Citizen and the information must be non-public.

IT Law 15 (IT Law Wiki, Law network, "Domestic surveillance," http://itlaw.wikia.com/wiki/Domestic_surveillance)//ghs-VA

Domestic surveillance is the acquisition of nonpublic information concerning United **S**tates **persons**.

Domestic Surveillance finds non-public information about US Citizens.

Small 8 (Matthew, US Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis," 2008, http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf)//ghs-VA

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Applies to Foreign Soil

Domestic Surveillance applies to US Citizens in other countries.

Mayer 14 (Jonathan, Lawyer @ Stanford, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier," December 3, 2014, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/)//ghs-VA

Surveillance Targeting Americans Worldwide Much like Executive Order 12333 can operate on American soil, **FISA can operate on foreign soil. The first area that I'd like to flag is surveillance intentionally directed against Americans**. **If the NSA targets a U.S. person**, anywhere in the world, **that's covered by FISA**. And it generally requires a court order.17 There are two sources for this protection. U.S. persons inside the United States are covered by the traditional FISA "electronic surveillance" provisions, even if interception occurs outside the United States.18 U.S. persons outside the United States are protected by the FISA Amendments Act, which added new procedures for if the person or both the person and the interception are outside the United States.

Within US Borders

Domestic surveillance collects information of people within the border.

Avilez et al 14 (Marie Avilez, Catherine Ciriello, Christophe Combemale, Latif Elam, Michelle Kung, Emily LaRosa, Cameron Low, Madison Nagle, Rachel Ratzlaff Shriver, Colin Shaffer; Senior Capstone Students, "Ethics, History, and Public Policy," December 10, 2014, http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf)//ghs-VA

Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity **within national borders**; this can be carried out by federal, state and/or local officials

SURVEILLANCE

Must be Located in the U.S.

Domestic Surveillance means the person MUST be located in the U.S. even if the data is routed through a domestic server – it's grounded in the federal literature.

Seamon 7 (Richard Henry, Professor, University of Idaho College of Law, "Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits," 2007, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//ghs-VA

Congress responded in August 2007 by enacting the Protect America Act of 2007." The Act "clarifies" that FISA's definition of "electronic surveillance" **does not "encompass surveillance directed at a person reasonably believed to be located outside of the United States**., 56 This clarification at the very least frees the government from having to obtain a FISA warrant to intercept foreign-to-foreign communications. Some argue that the Act goes much farther-contending that it, in fact, authorizes the entire TSP and then some.57 Concern about the scope of the Act, compounded by the extraordinary speed with which it was enacted, led Congress to include a provision that causes the Act to sunset in six months. 8 Regardless of the scope and duration of the Act, as developed below, its authorization of some aspects of the TSP is relevant both to whether the TSP falls within the President's power and to whether the TSP violates the Fourth Amendment

Footnote (56): Protect America Act § 2 (provision entitled "Clarification of Electronic Surveillance of Persons Outside the United States") (to be codified as 50 U.S.C. § 1805a).

Info to Govern Behavior

Surveillance involves gathering info to influence future behavior.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

"**Surveillance involves the collection and analysis of information about populations in order to govern their activities**" (Haggerty and Ericson 2006, 3).

Surveillance regulates future behavior.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

Surveillance is "the garnering and processes **of personal information to regulate**, control, manage and enable human **individual and collective behaviour**"

General Info Gathering

Surveillance is general info gathering.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

"Surveillance involves the observation, recording and categorization of information about people, processes and institutions" (Ball and Webster 2003, 1). Ball and Webster (2003, 7f) identify besides **three negative forms of surveillance** (**categorical suspicion, categorical seduction, categorical exposure**) also a positive one, namely categorical care.

Surveillance gathers data and info about people.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

Dandeker (2006, 225) **identifies three meanings of** the term **surveillance**: **"(1) the collection and storage of information**, presumed to be useful, **about people or objects**; **(2) the supervision of the activities of people or objects through the issuing of instructions** or the physical design of the natural and built environments; and **(3) the application of information-gathering activities to the business of monitor-ing the behaviour of those under supervision** and, in the case of subject populations, their compliance with instructions, or with non-subject populations, their compliance with agreements, or simply monitoring their behaviour from which, as in the control of disease, they may have expressed a with to benefit".

Foucault General Watching

Surveillance isn’t static and can manifest itself in any relationship.

Shawki 9 (Sharif, Professor @ Illinois Western University "Surveillance and Foucault: Examining the Validity of Foucault's Notions Concerning Surveillance through a Study of the United States and the United Kingdom" (2009). Honors Projects. Paper 23. http://digitalcommons.iwu.edu/socanth_honproj/23)//ghs-VA

Before the application sections commence, Foucault's definition of surveillance will be given to provide a clear picture as to what the term encompasses. First of all, the French word that Foucault utilizes is surveiller. As the translator to Discipline and Punish notes, there is no proper English equivalent The English correspondent of surveiller, "surveillance," is too restricted and too technical.86 Thus, **Foucault defines surveillance as a potentially aggressive action. It is clearly not neutral and can be used by one side to subjugate another**. There are always motives behind surveillance and these motives are usually self-serving. **Foucault defines surveillance as a watch kept over a person or a group**. But one must realize that this simple definition contains several components. **Foucault considers surveillance in both a personal and complex manner. Surveillance can take place between two people such as neighbors. This type of surveillance is very simple and usually involves insignificant issues**. At the same time, **surveillance can involve many people as well as institutions.** Thus, commanders can surveille many soldiers because these commanders have been given the authority to do so. Therefore, **surveillance is not considered as one static entity**. This is a benefit because Foucault allows himself to consider personal self-surveillance as well as institutional surveillance.

AT: Foucault General

Foucault's wrong and outdated.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

Some scholars argue that Foucault's notion of surveillance is outdated because surveillance would today no longer be centralized, but **operate in a decentralized** and networked **form so that there is** not a central surveilling power, but **many disperse and heterogeneous agents of surveillance**. "Certainly, surveillance today is more decentralized, less subject to spatial and temporal constraints (location, tie of day, etc.), and less organized than ever before by the dualisms of observer and observed, subject and object, individual and mass. **The system of control is deterritorializing**" (Bogard 2006, 102). Lace (2005, 210) argues that "allusions to Big Brother scrutiny are becoming dated – instead, **we now are moving towards a society of 'little brothers'**" (see also Castells 2004, 342; Solove 2004, 32) that she terms a democratized surveillance society. Haggerty and Ericson (2000/2007) define surveillance based on Gilles Deleuze and Félix Guattari as assemblage. **The surveillant assemblage means "a rhizomatic levelling of the hierarchy of surveillance**, such that groups which were previously exempt from routine surveillance are now increasingly being monitored" (Haggerty and Ericson 2000/2007, 104). They argue that **one should conceive contemporary surveillance with analytical tools that are different from Foucault and Orwell**. **Haggerty** (2006) **calls for demolishing Foucault's notion of the panopticon**. Haggerty and Ericson (2000/2007) argue that contemporary surveillance is heterogeneous, involves humans and non-humans, state and extra-state institutions, "allows for the scrutiny of the powerful by both institutions and the general population" (Haggerty and Ericson 2000/2007, 112). **They interpret Mathiesen as saying that synopticism means "'bottom-up' forms of observation**" (Haggerty and Ericson 2000/2007, 113). Hier (2003/2007, 118) argues that the surveillant assemblage brings about "a partial democratization of surveillance hierarchies".

FISA Electronic Surveillance

Two requirements

1. The target cannot consent

2. Either the receiving or sending agent must be within the U.S.

FISA 78 (Foreign Intelligence Surveillance Act, Legal Document Outlining Electronic Surveillance Within The United States For Foreign Intelligence Purposes, "Foreign Intelligence Surveillance Act of 1978. 50 us e 1801," http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1783.pdf)//ghs-VA

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person •'• has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, **without the consent of any party thereto**, if such acquisition **occurs in the United States**; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Focused and Systematic

Surveillance is focused and systematic.

Richards 13 (NM Richards, Professor of Law, Washington University School of Law, "THE DANGERS OF SURVEILLANCE," 2013, http://harvardlawreview.org/wp-content/uploads/pdfs/vol126_richards.pdf)//ghs-VA

Reviewing the vast surveillance studies literature, Professor David Lyon concludes that **surveillance is** primarily about power, but it is also about personhood.8 Lyon offers a definition of surveillance as "**the focused, systematic and routine attention to** personal details for purposes of influence, management, protection or direction."9 **Four aspects** of this definition **are noteworthy**, as they expand our understanding of what surveillance is and what its purposes are. **First, it is focused on learning information** about individuals. **Second, surveillance is systematic; it is intentional rather than random** or arbitrary. **Third, surveillance is routine — a part of the ordinary administrative apparatus** that characterizes modern societies.10 **Fourth, surveillance can have a wide variety of purposes** — rarely totalitarian domination, but more typically subtler forms of influence or control.1

Surveillance is systematic and ongoing

(Tobacco Free Initiative **2003,** The **World Health Organization** Tobacco Free Initiative is part of the Noncommunicable Diseases and Mental Health cluster at WHO headquarters in Geneva, Switzerland. http://www.who.int/tobacco/surveillance/about_surveillance/en/)

Surveillance is systematic ongoing collection, collation and analysis of data and the timely dissemination of information to those who need to know so that action can be taken**.**

Surveillance is based on Data

(B. C. K. **Choi** and A. W. P. Pak, "Lessons for surveillance in the 21st century: a historical perspective from the past five millennia," Sozial- und Praventivmedizin, vol. 46, no. 6, pp. 361–368, **2001**. http://link.springer.com/article/10.1007/BF01321662)

Surveillance is based upon successful analysis of population-based, on-going data (e.g., death records). There are several basic principles of data analysis: reduce volumes of data to a few easy-to-understand tables, then interpret them, and prepare a few brief and precise paragraphs, so as to gain profit from the data analysis, in order to understand the increase and decrease of diseases [7].

Surveillance means watchfulness over trends

(A. D. **Langmuir**, "The surveillance of communicable diseases of national importance," The New England Journal of Medicine, vol. 268, pp. 182–192, 19**63**. http://www.nejm.org/doi/pdf/10.1056/NEJM196301242680405)

Surveillance, when applied to a disease, means the continued watchfulness over the distribution and trends of incidence through the systematic collection, consolidation and evaluation of morbidity and mortality reports and other relevant data. Intrinsic in the concept is the regular dissemination of the basic data and interpretations to all who have contributed and to all others who need to know" [67.

Specific People & Purpose

Surveillance isn't general but has a specific purpose.

Macnish 12 (Kevin, Professor @ the University of Leeds, "Surveillance Ethics," 2012, http://www.iep.utm.edu/surv-eth/)//ghs-VA

Surveillance involves paying close and sustained attention to another person. It is distinct from casual yet focused people-watching, such as might occur at a pavement cafe, to the extent that it is sustained over time. Furthermore **the design is not to pay attention to just anyone, but to pay attention to some entity** (a person or group) **in particular and for a particular reason. Nor does surveillance have to involve watching. It may also involve listening**, as when a telephone conversation is bugged, or even **smelling**, as in the case of dogs trained to discover drugs, **or hardware** which is able to discover explosives at a distance.

AT: Specific Purpose

Your interpretation is outdated.

Liscouski 14 (Bob, more then 30 years of experience in security and law enforcement, and he is the Executive Vice President of Integrated Strategies Group, "Changing the Definition of Surveillance in the Age of Converged Risk," March 1, 2014, http://www.securitymagazine.com/articles/85274-changing-the-definition-of-surveillance-in-the-age-of-converged-risk)//ghs-VA

Surveillance deals with the act of carefully watching someone or something **with the specific intent to prevent** or detect a **crime**. A couple of decades ago that would have been a true definition as it related to protecting an enterprise against threats with limited capabilities and limited access to the enterprise. "Watching one thing" was sufficient. However, **in our current technological state, that simple definition now involves more complexity and sophistication than ever before**. **The explosive growth of technological capabilities** and people that can use them to probe, prepare and perpetrate an attack or criminal act against a geographically dispersed enterprise from thousands of miles away, **undermines traditional surveillance strategies**.

Technologically Based

Surveillance only uses specific forms of tech.

Fuchs 10 (Christian, Department of Informatics and Media Studies, Uppsala University, "The Internet & Surveillance - Research Paper Series," October 1, 2010, http://www.sns3.uti.at/wp-content/uploads/2010/10/The-Internet-Surveillance-Research-Paper-Series-1-Christian-Fuchs-How-Surveillance-Can-Be-Defined.pdf)//ghs-VA

Surveillance is "the act of monitoring the behaviour of another either in real-time **using cameras, audio devices or key-stroke monitoring, or in** chosen time by data mining records of internet transactions" (Wall 2007, 230).

AT: XO 12333

Your interpretation is about foreign intelligence gathering – not domestic.

Mayer 14 (Jonathan, Lawyer @ Stanford, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier," December 3, 2014, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/)//ghs-VA

When the National Security Agency collects data inside the United States, it's regulated by the **F**oreign **I**ntelligence **S**urveillance **A**ct. There's a degree of court supervision and congressional oversight. **When the agency collects data outside the United States, it's regulated by Executive Order 12333**. That document embodies the President's inherent Article II authority to conduct foreign intelligence. There's no court involvement, and there's scant legislative scrutiny. So, that's the conventional wisdom. **American soil: FISA. Foreign soil: EO 12333.** Unfortunately, the legal landscape is more complicated.

FRAMEWORK/EDUCATION STUFF

Public Debate – Mimoso

Debates over meta-data and the NSA and uniquely key now – outweighs your education claims.

Mimoso 14 (Michael, award-winning journalist and former Editor of Information Security magazine, a two-time finalist for national magazine of the year. He has been writing for business-to-business IT websites and magazines for over 10 years, with a primary focus on information security, "NSA Reforms Demonstrate Value of Public Debate," March 26, 2014, https://threatpost.com/nsa-reforms-demonstrate-value-of-public-debate/105052)//ghs-VA

The president's proposal would end the NSA's collection and storage of phone data; those records would remain with the providers and the NSA would require judicial permission under a new court order to access those records. The House bill, however, requires no prior judicial approval; a judge would rule on the request after the FBI submits it to the telecommunications company. "**It's absolutely crucial to understand the details of how these things will work**," the ACLU's Kaufman said in reference to the "new court order" mentioned in the New York Times report. "There is no substitute for robust Democratic **debate** in the court of public opinion and in the courts. **The system of oversight is broke and issues like these need to be debated in public**." Phone metadata and dragnet collection of digital data from Internet providers and other technology companies is supposed to be used to map connections between foreigners suspected of terrorism and threatening the national security of the U.S. The NSA's dragnet, however, also swept up communication involving Americans that is supposed to be collected and accessed only with a court order. The NSA stood by claims that the program was effective in stopping hundreds of terror plots against U.S. interests domestic and foreign. Those numbers, however, quickly were lowered as they were challenged by Congressional committees and public scrutiny. "The president said the effectiveness of this program was one of the reasons it was in place," Kaufman said. "But as soon as these claims were made public, journalists, **advocates** and the courts **pushed back** and it could not withstand the scrutiny. It's remarkable how quickly [the number of] plots turned into small numbers. The NSA was telling FISC the program was absolutely necessary to national security, but the government would not go nearly that far in defending the program. That shows **the value of public debate and an adversarial process** in courts."

Education – Giroux

Political engagement is necessary – your ethical education absent concrete political reform is the exact reason the lefts progressivism fails.

Giroux 15 (Henry, currently holds the McMaster University Chair for Scholarship in the Public Interest in the English and Cultural Studies Department and the Paulo Freire Chair in Critical Pedagogy at The McMaster Institute for Innovation & Excellence, "Orwell, Huxley and the Scourge of the Surveillance State," 30 June 2015, http://www.truth-out.org/news/item/31639-orwell-huxley-and-the-scourge-of-the-surveillance-state)//ghs-VA

In this instance, the surveillance state is one that not only listens, watches and gathers massive amounts of information through data mining, allegedly for the purpose of identifying "security threats." It also acculturates the public into accepting the intrusion of commercial surveillance technologies - and, perhaps more vitally, the acceptance of privatized, commodified values - into all aspects of their lives. In other words, the most dangerous repercussions of a near total loss of privacy involve more than the unwarranted collecting of information by the government: We must also be attentive to the ways in which being spied on has become not only normalized, but even enticing, as corporations up the pleasure quotient for consumers who use new digital technologies and social networks - not least of all by and for simulating experiences of community. Many individuals, especially **young people**, now run from privacy and increasingly demand services in which they can share every personal facet of their lives. While Orwell's vision touches upon this type of control, there is a notable difference that he did not foresee. According to Pete Cashmore, while Orwell's "Thought Police tracked you without permission, some consumers are now comfortable with sharing their every move online." (17) The state and corporate cultural apparatuses now collude to socialize everyone - especially young people - into a regime of security and commodification in which their identities, values and desires are inextricably tied to a culture of commodified addictions, self-help, therapy and social indifference. Intelligence networks now inhabit the world of major corporations such as Disney and Bank of America as well as the secret domains of the NSA, FBI and 15 other intelligence agencies. As Edward Snowden's revelations about the PRISM program revealed, the NSA has also collected personal data from many of the world's largest internet companies, including Apple, Google, Yahoo and Facebook. According to a senior lawyer for the NSA, the internet companies "were fully aware of the surveillance agency's widespread collection of data." (18) The fact is that Orwell's and Huxley's ironic representations of the modern totalitarian state - along with their implied defense of a democratic ideal rooted in the right to privacy and the right to be educated in the capacity to be autonomous and critical thinkers - have been transformed and mutilated almost beyond recognition by the material and ideological registers of a worldwide neoliberal order. Just as we can envision Orwell's and Huxley's dystopian fables morphing over time from "realistic novels" into a "real life documentary," and now into a form of "reality TV," privacy and freedom have been radically altered in an age of permanent, nonstop global exchange and circulation. That is, in the current moment, the right to privacy and freedom has been usurped by the seductions of a narcissistic culture and casino capitalism's unending desire to turn every relationship into an act of commerce and to make all aspects of daily life subject to market forces under watchful eyes of both government and corporate regimes of surveillance In a world devoid of care, compassion and protection, personal privacy and freedom are no longer connected and resuscitated through their connection to public life, the common good or a vulnerability born of the recognition of the frailty of human life. Culture loses its power as the bearer of public memory, civic literacy and the lessons of history in a social order in which the worst excesses of capitalism are left unchecked and a consumerist ethic "makes impossible any shared recognition of common interests or goals." (19) With the rise of the punishing state along with a kind of willful amnesia taking hold of the larger culture, we see little more than a paralyzing fear and apathy in response to the increasing exposure of formerly private spheres to data mining and manipulation, while the concept of privacy itself has all but expired under a "broad set of panoptic practices." (20) With individuals more or less succumbing to this insidious cultural shift in their daily lives, there is nothing to prevent widespread collective indifference to the growth of a surveillance culture, let alone an authoritarian state. The worst fears of Huxley and Orwell merge into a dead zone of historical amnesia as more and more people embrace any and every new electronic device regardless of the risks it might pose in terms of granting corporations and governments increased access to and power over their choices and movements. Detailed personal information flows from the sphere of entertainment to the deadly serious and integrated spheres of capital accumulation and policing as they are collected and sold to business and government agencies that track the populace for either commercial purposes or for fear of a possible threat to the social order and its established institutions of power. Power now imprisons not only bodies under a regime of surveillance and a mass incarceration state but also subjectivity itself, as the threat of state control is now coupled with the seductions of the new forms of passivity-inducing soma: electronic technologies, a pervasive commodified landscape and a mind-numbing celebrity culture. The Growing Role of Private Security Companies Underlying these everyday conveniences of modern life, as Boghosian documents in great detail, is the growing Orwellian partnership between the militarized state and private security companies in the United States. Each day, new evidence surfaces pointing to the emergence of a police state that has produced ever more sophisticated methods for surveillance in order to enforce a mass suppression of the most essential tools for democratic dissent: "the press, political activists, civil rights advocates and conscientious insiders who blow the whistle on corporate malfeasance and government abuse." (21) As Boghosian points out, "By claiming that anyone who questions authority or engages in undesired political speech is a potential terrorist threat, this government-corporate partnership makes a mockery of civil liberties." (22) Nowhere is this more evident than in US public schools where young people are being taught that they are a generation of suspects, subject to the presence of armed police and security guards, drug-sniffing dogs and an array of surveillance apparatuses that chart their every move, not to mention in some cases how they respond emotionally to certain pedagogical practices. Whistleblowers are not only punished by the government; their lives are also turned upside down in the process by private surveillance agencies and major corporations that now work in tandem. For instance, Bank of America assembled 15 to 20 bank officials and retained the law firm of Hunton & Williams in order to devise "various schemes to attack WikiLeaks and [journalist Glenn] Greenwald whom they thought were about to release damaging information about the bank." (23) It is worth repeating that Orwell's vision of surveillance and the totalitarian state look mild next to the emergence of a corporate-state surveillance system that wants to tap into every conceivable mode of communication, collect endless amounts of metadata to be stored in vast intelligence storage sites around the country and potentially use that data to repress any vestige of dissent. (24) As Huxley anticipated, any critical analysis must move beyond documenting abuses of power to how addressing contemporary neoliberal modernity has created a social order in which individuals become complicit with authoritarianism. That is, how is unfreedom internalized? What and how do state- and corporate-controlled institutions, cultural apparatuses, social relations and policies contribute to making a society's plunge into dark times self-generating as Huxley predicted? Put differently, what is the educative nature of a repressive politics and how does it function to secure the consent of the US public? And, most importantly, how can it be challenged and under what circumstances? The nature of repression has become more porous, employing not only brute force, but also dominant modes of education, persuasion and authority. Aided by a public pedagogy, produced and circulated through a machinery of consumption and public relations tactics, a growing regime of repression works through the homogenizing forces of the market to support the widespread embrace of an authoritarian culture and police state. Relentlessly entertained by spectacles, people become not only numb to violence and cruelty but begin to identify with an authoritarian worldview. As David Graeber suggests, the police "become the almost obsessive objects of imaginative identification in popular culture ... watching movies, or viewing TV shows that invite them to look at the world from a police point of view." (25) But it is not just the spectacle of violence that ushers individuals into a world in which brutality becomes a primary force for mediating relations as well as the ultimate source of pleasure; there is also the production of an unchecked notion of individualism that both dissolves social bonds and removes any viable notion of agency from the landscape of social responsibility and ethical consideration. Absorbed in privatized orbits of consumption, commodification and display, Americans vicariously participate in the toxic pleasures of the authoritarian state. Violence has become the organizing force of a society driven by a noxious notion of privatization in which it becomes difficult for ideas to be lifted into the public realm. Under such circumstances, politics is eviscerated because it now supports a market-driven view of society that has turned its back on the idea that social values, public trust and communal relations are fundamental to a democratic society. This violence against the bonds of sociality undermines and dissolves the nature of social obligations as freedom becomes an exercise in self-development rather than social responsibility. This upending of the social and critical modes of agency mimics not just the death of the radical imagination, but also a notion of banality made famous by Hannah Arendt who argued that at the root of totalitarianism was a kind of thoughtlessness, an inability to think, and a type of outrageous indifference in which, "There's simply the reluctance ever to imagine what the other person is experiencing." (26) Confronting the Threat of Authoritarianism By integrating insights drawn from both Huxley and Orwell, it becomes necessary for any viable critical analysis to take a long view, contextualizing the contemporary moment as a new historical conjuncture in which political rule has been replaced by corporate sovereignty, consumerism becomes the only obligation of citizenship, and the only value that matters is exchange value. Precarity has replaced social protections provided by the state, just as the state cares more about building prisons and infantilizing the US public than it does about providing all of its citizens with quality educational institutions and health care. The United States is not just dancing into oblivion as Huxley suggested; it is also being pushed into the dark recesses of an authoritarian state. Orwell wrote dystopian novels but he

believed that the sheer goodness of human nature would in the end be enough for individuals to develop modes of collective resistance that he could only imagine in the midst of the haunting specter of totalitarianism. Huxley was more indebted to Kafka's notion of destabilization, despair and hopelessness. For Huxley, the subject had lost his or her sense of agency and had become the product of a scientifically manufactured form of idiocy and conformity. Progress had been transformed into its opposite, and science needed to be liberated from itself. As Theodor Adorno has pointed out, where Huxley fails is that he has no sense of resistance. According to Adorno, "The weakness of Huxley's entire conception is that it makes all its concepts relentlessly dynamic but nevertheless arms them against the tendency to turn into their own opposites." (27) Hence, the forces of resistance are not simply underestimated but rendered impotent. The authoritarian nature of the corporate-state surveillance apparatus and security system with its "urge to surveil, eavesdrop on, spy on, monitor, record, and save every communication of any sort on the planet" (28) can only be fully understood when its ubiquitous tentacles are connected to wider cultures of control and punishment, including security-patrolled corridors of public schools, the rise in supermax prisons, the hypermilitarization of local police forces, the justification of secret prisons and state-sanctioned torture abroad, and the increasing labeling of dissent as an act of terrorism in the United States. (29) This is part of Orwell's narrative, but it does not go far enough. The new authoritarian, corporate-driven state deploys more subtle tactics to depoliticize public memory and promote the militarization of everyday life. Alongside efforts to defund public and higher education and to attack the welfare state, a wide-ranging assault is being waged across the culture on all spheres that encourage the public to hold power accountable. If these public institutions are destroyed, there will be **few sites left** in which to nurture the critical formative cultures capable of **educating people to challenge the range of injustices** plaguing the United States and the forces that reproduce them. One particular challenge comes from the success of neoliberal tyranny to dissolve those social bonds that entail a sense of responsibility toward others and form the basis for political consciousness. Under the new authoritarian state, perhaps the gravest threat one faces is not simply being subject to the dictates of what Quentin Skinner calls "arbitrary power," but failing to respond with outrage when "my liberty is also being violated, and not merely by the fact that someone is reading my emails but also by the fact that someone has the power to do so should they choose." (30) The situation is dire when people no longer seem interested in contesting such power. It is precisely the poisonous spread of a broad culture of political indifference that puts at risk the fundamental principles of justice and freedom, which lie at the heart of a robust democracy. The democratic imagination has been transformed into a data machine that marshals its inhabitants into the neoliberal dream world of babbling consumers and armies of exploitative labor whose ultimate goal is to accumulate capital and initiate individuals into the brave new surveillance-punishing state that merges Orwell's Big Brother with Huxley's mind-altering soma. Nothing will change unless people begin to take seriously the subjective underpinnings of oppression in the United States and what it might require to make such issues meaningful in order to make them critical and transformative. As Charles Derber has explained, **knowing "how to express possibilities and convey them authentically and persuasively seems crucially important**." (31) if any viable notion of resistance is to take place The current regime of authoritarianism is reinforced through a new and pervasive sensibility in which people surrender themselves to both the capitalist system and a general belief in its call for security. It does not simply repress independent thought, but constitutes new modes of thinking through a diverse set of cultural apparatuses ranging from the schools and media to the internet. The fundamental question in resisting the transformation of the United States into a 21st century authoritarian society must concern the **educative nature of politics** - that is, what people believe and how their individual and collective dispositions and capacities to be either willing or resistant agents are shaped. I want to conclude by recommending five initiatives, though incomplete, that might help young people and others challenge the current oppressive historical conjuncture in which they along with other oppressed groups now find themselves. My focus is on higher education because that is the one institution that is under intense assault at the moment because it has not completely surrendered to the Orwellian state. (32) A Resource for Resistance: Reviving the Radical Imagination First, there is a need for what can be called a revival of the radical imagination. This call would be part of a larger project "to reinvent democracy in the wake of the evidence that, at the national level, there is no democracy - if by 'democracy' we mean effective popular participation in the crucial decisions affecting the community." (33) Democracy entails a challenge to the power of those individuals, financial elites, ruling groups and large-scale enterprises that have hijacked democracy. At the very least, this means refusing to accept minimalist notions of democracy in which elections become the measure of democratic participation. Far more crucial is the struggle for the development of public spaces and spheres that produce a formative culture in which the US public can imagine forms of democratic self-management of what can be called "key economic, political, and social institutions." (34) One step in this direction would be for young people, intellectuals, scholars and others to go on the offensive in defending higher education as a public good, resisting as much as possible the ongoing attempt by financial elites to view its mission in instrumental terms as a workstation for capital. This means fighting back against a conservative-led campaign to end tenure, define students as consumers, defund higher education and destroy any possibility of faculty governance by transforming most faculty into adjuncts. Higher education should be harnessed neither to the demands of the warfare state nor to the instrumental needs of corporations. In fact, it should be viewed as a right rather than as an entitlement. Nowhere is this assault on higher education more evident than in the efforts of billionaires such as Charles and David Koch to finance academic fields and departments, and to shape academic policy in the interest of indoctrinating the young into the alleged neoliberal, free market mentality. It is also evident in the repressive policies being enacted at the state level by right-wing politicians. For instance, in Florida, Gov. Rick Scott's task force on education has introduced legislation that would lower tuition for degrees friendly to corporate interests in order to "steer students toward majors that are in demand in the job market." (35) In Wisconsin, Gov. Scott Walker drew up a proposal to remove the public service philosophy focus from the university's mission statement, which says that the university's purpose is to solve problems and improve people's lives. He also scratched out the phrase "the search for truth" and substituted both ideas with a vocabulary stating that the university's goal is to meet "the state's work force needs." (36) But Walker's disdain for higher education as a public good can be more readily understood given his hatred of unions, particularly those organized for educators. How else to explain his egregious comparison of union protesters to the brutal terrorists and thugs that make up ISIS and his ongoing attempts to eliminate tenure at Wisconsin's public universities as well as to eviscerate any vestige of shared governance. (37) Another egregious example of neoliberalism's Orwellian assault on higher education can be found in the policies promoted by the Republican Party members who control the North Carolina Board of Governors. Just recently it has decimated higher education in that state by voting to cut 46 academic degree programs. One member defended such cuts with the comment: "We're capitalists, and we have to look at what the demand is, and we have to respond to the demand." (38) The ideology that drives this kind of market-driven assault on higher education was made clear by the state's Republican governor, Pat McCrory, who said in a radio interview, "If you want to take gender studies, that's fine, go to a private school and take it. But I don't want to subsidize that if that's not going to get someone a job." (39) This is more than an example of crude economic instrumentalism; it is also a recipe for instituting an academic culture of thoughtlessness and a kind of stupidity receptive to what Hannah Arendt once called totalitarianism. Crafting Educational Counternarratives Second, **young people and progressives need to create the institutions and public spaces in which education becomes central as a counternarrative that serves to both reveal, interrogate and overcome the common sense assumptions that provide the ideological and affective webs that tie many people to forms of oppression**. Domination is not just structural and its subjective roots and pedagogical mechanisms need to be viewed as central to any politics that aims to educate, change individual and collective consciousness, and contribute to broad-based social formations. Relatedly, a coalition of diverse social movements, from unions to associations of artists, educators and youth groups, needs to develop a range of alternative public spheres in which young people and others can become cultural producers capable of writing themselves back into the discourse of democracy while bearing witness to a range of ongoing injustices from police violence to the violence of the financial elite. Rejecting Criminalization Third, the United States has become a society in which the power at the state and national levels has become punitive for most Americans and beneficial for the financial and corporate elite. Punishment creep now reaches into almost every commanding institution that holds sway over the US public and its effects are especially felt by poor people, Black people, young people and the elderly. Millions of young men are held in prisons and jails across the United States, and most of them for nonviolent crimes. Working people are punished after a lifetime of work by having their pensions either reduced or taken away. Poor people are denied Medicaid because right-wing politicians believe the poor should be financially responsible for their health care. And so it goes. The United States is one of the few countries that allows teenagers to be tried as adults, even though there are endless stories of such youth being abused, beaten and in some cases committing suicide as a result of such savage treatment. Everywhere we look in US society, routine behavior is being criminalized. If you owe a parking ticket, you may end up in jail. If you violate a dress code as a student, you may be handcuffed by the police and charged with a criminal offense. A kind of mad infatuation with violence is matched by an increase in state lawlessness. In particular, young people have been left out of the discourse of democracy. They are the new disposables who lack jobs, a decent education, hope and any semblance of a future better than the one their parents inherited. In addition, an increasing number of youth suffer mental anguish and overt distress, even, perhaps especially, among the college-bound, debt-ridden and unemployed whose numbers are growing exponentially. Many reports claim that "young Americans are suffering from rising levels of anxiety, stress, depression and even suicide." For example, "One out of every five young people and one out of every four college students ... suffers from some form of diagnosable mental illness." (40) According to one survey, "44 percent of young aged 18 to 24 say they are excessively stressed." (41) One factor may be that there are so few jobs for young people. In fact the jobless rate for Americans aged 15 to 24 stands at 15.8 percent, more than double the unemployment rate of 6.9 percent for all ages, according to the World Bank. (42) Facing what Richard Sennett calls the "specter of uselessness," the war on youth serves as a reminder of how finance capital has abandoned any viable vision of democracy, including one that would support future generations. The war on youth has to be seen as a central element of state terrorism and crucial to critically engaging the current regime of neoliberalism. Reclaiming Emancipatory Morality Fourth, as the

claims and promises of a neoliberal utopia have been transformed into an Orwellian and Dickensian nightmare, the United States continues to succumb to the pathologies of political corruption, the redistribution of wealth upward into the hands of the 1%, the rise of the surveillance state and the use of the criminal legal system as a way of dealing with social problems. At the same time, Orwell's dark fantasy of an authoritarian future continues without enough massive opposition as students and low-income and poor youth of color are exposed to a low-intensity war in which they are held hostage to a neoliberal discourse that translates systemic issues into problems of individual responsibility. **This individualization of the social is one of the most powerful ideological weapons used by the current authoritarian regime and must be challenged**. Under the star of Orwell, morality loses its emancipatory possibilities and degenerates into a pathology in which misery is denounced as a moral failing. Under the neo-Darwinian ethos of survival of the fittest, the ultimate form of entertainment becomes the pain and humiliation of others, especially those considered disposable and powerless, who are no longer an object of compassion, but of ridicule and amusement. This becomes clear in the endless stories we are now hearing from US politicians disdaining the poor as moochers who don't need welfare but stronger morals. This narrative can also be heard from conservative pundits, such as New York Times columnist David Brooks, who epitomize this view. According to Brooks, poverty is a matter of the poor lacking virtue, middle-class norms and decent moral codes. (43) For Brooks, the problems of the poor and disadvantaged **can be solved "through moral education** and self-reliance ... high-quality relationships and strong familial ties." (44) In this discourse, soaring inequality in wealth and income, high levels of unemployment, stagnant economic growth and low wages for millions of working Americans are ignored. What Brooks and other conservatives conveniently disregard are the racist nature of the drug wars, the strangle hold of the criminal legal system on poor Black communities, police violence, mass unemployment for Black youth, poor quality education in low-income neighborhoods, and the egregious effect of mass incarceration on communities of color. Paul Krugman gets it right in rebutting the argument that all the poor need are the virtues of middle-class morality and a good dose of resilience. (45) He writes: So it is ... disheartening still to see commentators suggesting that the poor are causing their own poverty, and could easily escape if only they acted like members of the upper middle class.... Shrugging your shoulders as you attribute it all to values is an act of malign neglect. **The poor don't need lectures** on morality, **they need more resources** - which we can afford to provide - and better economic opportunities, which we can also afford to provide through everything from training and subsidies to higher minimum wages. (46) Developing a Language of Critique and Possibility Lastly, any attempt to make clear the massive misery, exploitation, corruption and suffering produced under casino capitalism must develop both a language of critique and possibility. **It is not enough to simply register what is wrong with US society**; it is also crucial to do so in a way that enables people to recognize themselves in such discourses in a way that both inspires them to be more critical and energizes them to do something about it. In part, this suggests a politics that is capable of developing a comprehensive vision of analysis and struggle that "does not rely on single issues." (47) It is only through an understanding of the wider relations and connections of power that the US public can overcome uninformed practice, isolated struggles and modes of singular politics that become insular and self-sabotaging. This means developing modes of analyses capable of connecting isolated and individualized issues to more generalized notions of freedom, and developing theoretical frameworks in which it becomes possible to translate private troubles into broader more systemic conditions. In short, this suggests developing modes of analyses that connect the dots historically and relationally. It also means developing a more comprehensive vision of politics and change. The key here is the notion of translation, that is, the need to translate private troubles into broader public issues and understand how systemic modes of analyses can be helpful in connecting a range of issues so as to be able to build a united front in the call for a radical democracy. This is a particularly important goal given that the fragmentation of the left has been partly responsible for its inability to develop a wide political and ideological umbrella to address a range of problems extending from extreme poverty, the assault on the environment, the emergence of the permanent warfare state, the rollback of voting rights, the assault on public servants, women's rights and social provisions, and a range of other issues that erode the possibilities for a radical democracy. The dominating mechanisms of casino capitalism in both their symbolic and material registers reach deep into every aspect of US society. Any successful movement for a radical democracy will have to wage a struggle against the totality of this new mode of authoritarianism rather than isolating and attacking specific elements of its anti-democratic ethos.

Metadata Education Good

Metadata is going to define privacy in the 21st century – education over it is important.

Latamore 11 (G. Berton, Editor in Chief of Wikibon, "Storage Peer Incite," Jan 17, 2011, http://wikibon.org/wiki/v/Cloud_Meta_Data:_Driving_New_Business_Model)//ghs-VA

Traditionally, **metadata** has been fairly simple and low-level. In the age of cloud services, however, it **is taking on a much more important role**, and it is becoming more complex. If you buy books on Amazon.com, for instance, you are familiar with the suggestions it provides based on your past purchases. Those are based on an analysis of metadata showing the relationships between books you buy and other purchasers and other books like those you buy that they purchased. That is getting reasonably complex. But that, we believe, is only the beginning. In **the future metadata** will span the cloud to link data entities on different computers, in different databases, on different services, to provide services that **will become an important part of our lives in the 21st Century**. Today that is impossible, because the basic tools and standards do not yet exist. In their paper "Angels in our Midst: Associative Metadata in Cloud Storage", Dr. Tom Coughlin and Mike Alvarado present a model architecture based on automated tools they call "Guardian Angels" that watch over data relationships and create metadata and a mechanism for managing and securing that metadata, the "Invisible College." They presented this paper at Wikibon's Nov. 2 Peer Incite Meeting. The recording is available in the Wikibon Peer Incite Archive. All this may sound pretty esoteric, the area of academics and techies in large cloud service providers. But in fact **it is important to every organization doing business over the Internet, which today is practically every organization in existence**. **Complex metadata is the basis for targeted Internet advertising and other automated** customer, employee, constituent, and donor management **services**. Therefore, every organization has a stake in the issue of developing effective standards and management tools for metadata. This means that you need to push your vendors to develop and use open metadata standards.

Metadata creates the distinction between what the government can and cannot collect – it will define privacy in the 21st century.

Wagner 13 (David, holds English and Political Science B.A.s from UC Berkeley, "Why Metadata Is Shaping The Future of Privacy," June 7, 2013, http://www.kpbs.org/news/2013/jun/07/why-metadata-shaping-future-privacy/)//ghs-VA

But what exactly is metadata? What can the government learn from it? And why has the term suddenly appeared at the center of so many debates on the future of privacy? To get answers on those questions, I called Pam Dixon, director of the San Diego-based think tank World Privacy Forum. "Metadata, very simply put, is everything around the conversation but not including the conversation," says Dixon. "For example, the phone numbers of both parties. Where you were when you made the call and where that person who you called was. How long your call was. When you called them." Put another way: No, the government can't eavesdrop on your late-night pizza delivery orders. They'd need a warrant for that. But metadata gives them access to nearly everything else, like your location, your number, and how long the conversation lasted. They can use that information to paint a very detailed picture of your life. We know for sure that Verizon records have been hauled in for the last three months, and probably a lot longer. Senator Feinstein admitted as much when she told MSNBC, "There is nothing new in this program. The fact of the matter is, that this was a routine three-month approval under seal that was leaked." The order requiring Verizon to turn over records on all their customers didn't come from a typical court. It was handed down from the FISA court, a secretive judicial entity authorized by the Foreign Intelligence Surveillance Act of 1978 and expanded under the post-9/11 Patriot Act. "The way that the FISA court collected this information is through what's called a business records provision," says Dixon. In the wake of the Patriot Act, this so-called transactional information is not protected as private information. That's why metadata is such a significant term — if separates what the government can and can't obtain without a warrant. Dixon thinks the terms currently attached to metadata, words like "business" and "transactional," are misnomers. "These are actually very personal records." Dixon says we should get used to hearing the word metadata. Going forward, **the question of what is and**

what isn't metadata will shape American privacy law. "That exact question is under discussion by some of the best minds in privacy," says Dixon. In fact, the line between non-private metadata and content protected by the Fourth Amendment is already forming important distinctions in another facet of the government's surveillance program. On Thursday, The Washington Post revealed that the NSA has also been tapping into the servers of giant tech companies like Google, Apple, and Facebook since 2007. That probing, undertaken by a previously covert NSA program called PRISM, is different from the Verizon case because it accesses actual content, like emails and online search histories, not just the metadata. "Metadata is a very important thing to watch out for," says Dixon. Government officials say that sifting through metadata helps them track down terrorists and foil potential attacks. They insist that this information doesn't breech any one person's privacy. But Dixon thinks metadata gives government agents more than enough clues to hone in on specific individuals. She says, "It is absolute computer child's play."

Metadata controls the conversation about information risk.

Vellante 11 (David, Co-founder & co-CEO SiliconANGLE Media, industry analyst, entrepreneur, co-host of theCUBE, "Metadata in the Cloud: Creating New Business Models," Jan 17, 2011, http://wikibon.org/wiki/v/Cloud_Meta_Data:_Driving_New_Business_Model)//ghs-VA

As more valuable personal and corporate information is stored in both public and private clouds, **organizations will increasingly rely on an expanded view of metadata to both create new value streams and mitigate information risk**. By its very nature, cloud architectures allow greater degrees of sharing and collaboration and present new opportunities and risks for information professionals. Incremental value from cloud metadata will be created by leveraging "associative context" created by software that observes users and their evolving relationships with content elements that are both internal and external to an organization. This software will create metadata that allows individuals and organizations to extract even more value from information. These were the ideas put forth by Dr. Tom Coughlin and Mike Alvarado, who presented these concepts to the Wikibon community from a new paper: Angels in our Midst: Associative Metadata in Cloud Storage. What is Metadata and Why is it Important? **Metadata is data about data**. It is high-level information that includes when something was done, where it was done, the file type and format of the data, the original source, etc. The notion of metadata can be expanded to include information about how content is being used, who is using the content, and when multiple pieces of content are being used can relevant and valuable associations be observed? According to the authors, users should think about the different types and levels of metadata - low-level metadata that provide (for example) information about physical location of blocks, all the way to higher level metadata that can go beyond descriptive to include judgemental information. In other words, what does this content mean and is it relevant to a particular objective or initiative? For example, will I like how it tastes? Will it be cosmetically appealing to me? **By leveraging metadata** more intelligently, **organizations can begin to extract new business value from information and potentially introduce new business models for value creation**. Underpinning this opportunity is the relationships between content elements, which the authors refer to as associative metadata. What's Needed to Exploit Associative Metadata? According to Alvarado and Coughlin, if we're going to create associative metadata we need an agent that can be an objective observer. Since individual humans often create many of those relationships, software that is intelligent enough to create new metadata around those interactions and relationships is needed to watch what users are doing. The authors refer to this agent as a "Guardian Angel." Further, to extend the notion of metadata to an even higher, more rich and complex level, the paper puts forth the notion of "The Invisible College," which is a tool for managing the relationships between Guardian Angels and a useful framework for creating a more intricate system of data systems. What Different Types of Metadata Exist? On the call, Todd, an IT practitioner put forth a simple metadata model that included three layers: Basic metadata - low level data - e.g. block level information about where data is stored and how often it is accessed. File-level metadata - more complex data from file systems. Content-level metadata - metadata that might be found in content management systems such as file type and other more meaningful data such as: "Is this email from the CEO?" or "Is the mammogram positive?" Each metadata type is actionable. For example, basic metadata can be used to automate tiering; file-system data can be used to speed performance, and high-level metadata can be used to take business actions. The key challenge is how to capture, process, analyze, and manage all this metadata in an expedient manner. How Will these Metadata be Managed? The authors have put forth in their paper a taxonomy for metadata that is very granular but broken down along two high levels: Meaning Metadata, Basic Metadata. The paper defines an OSI-like model with a physical layer through operational into semantic and contextual layers. The definition of these layers, their interaction and management, will be vital to harnessing the power of this metadata. A key limiting factor is the raw power of systems and the ability to keep pace not only with user interactions but machine-to-machine (M2M) communications. The community discussed the possibility of a Hadoop-like framework, Hadoop itself or other semantic web technologies to be applied to evolving metadata architectures. Rather than shoving the data into a big data repository, the idea is to distribute the metadata and allow parallel processing concepts to operate in tandem. By allowing the metadata to remain distributed, massive volumes of data can be managed and analyzed in real or near-real time,

thereby providing a step function in metadata exploitation. Does such a framework exist today specifically designed for cloud metadata management? To the community's knowledge, not per se, but there are numerous open source initiatives such as Hadoop that have the potential to be applied to solving this problem and creating new opportunities for metadata management in cloud environments. What about Privacy and Security in the Cloud? Cloud information storage is accomplished by providing access to stored assets over TCP/IP networks, whether public or private. **Cloud computing increases the need to protect content** in new ways specifically because the physical perimeter of the organization and its data are fluid. The notion of building a moat to protect the queen in her castle is outmoded in the cloud, because sometimes the queen wants to leave the castle. **Compounding the complexity of privacy and data protection is the idea that associations and interactions will dramatically increase between users, users-and-machines, and machines themselves**. According to Alvarado and Coughlin, not surprisingly, **one answer to this problem is metadata**. New types of **metadata**, according to the authors, **will evolve to ensure data integrity, security, and privacy with content that is shared and created by individuals, groups, and machines**. For example, metadata could evolve to monitor the physical location of files and ensure that the physical storage of that data complies with local laws that might require that data is not stored outside a particular country. Location services is currently one of the hottest areas in business but it lacks a mechanism to enable the levels of privacy users desire. The services in the Internet world are often being introduced under conditions where they are outstripping the ability of infrastructure to provide a mature framework for issues like corporate policy or effective policy. Mechanism that are described in the paper can make infrastructure more predisposed to keep new service ideas in sync with necessary protection and other mechanisms which are being added after the fact. If developers had access to a toolkit before they deploy that is easily accessible, we would be ahead of the game. The authors state the following: "Whatever data system solutions arise, they will have identifiable characteristics such as automated or semi-automated information classification and inventory algorithms with significance and retention bits, automated information access path management, information tracking and simulated testing access (repeated during the effective life time of information for quality assurance), and automated information metadata reporting." A key concern in the Wikibon community is the notion of balancing information value with information risk. Specifically, **business value constricts as organizations increasingly automate the policing of data and information, and striking a risk reduction/value creation balance is an ongoing challenge for CIOs**. The bottom line is that the degree of emphasis on risk versus value will depend on a number of factors, including industry, regulatory requirements, legal issues, past corporate history, culture, company status (i.e. private versus publicly traded), and other issues. When will Architectures and Products Emerge? Clearly the authors ideas are futuristic in nature, however the value of this exercise is that Alvarado and Coughlin are defining an end point and helping users and vendors visualize the possibility of cloud computing in the context of creating new business models. The emphasis on metadata underscores the importance of defining, understanding and managing metadata to create new business opportunities and manage information risk. The role of metadata in this regard is undeniable and while solutions on the market are limited today, they are beginning to come to fruition in pockets. Key developments are occurring within standards communities to address this opportunity, and the authors believe that these efforts are beginning to coalesce around the Angel and Invisible College notion. Specifically they cite the evolution of Intel's work on Fodor. As well, clearly mashups using Google mapping capabilities with GPS triangulation extensively use metadata to create new value. Frameworks like Hadoop could be instrumental in providing fast analytics for big data and other semantic web technologies are emerging to address these issues. From a storage perspective, few suppliers are actively talking about this opportunity in their marketing, but several have advanced development projects to better understand how to exploit metadata for classification, policy automation, collaboration, and the like. Action item: Initial cloud computing deployments have been accelerated due to the economic crisis, and many have focused on reducing costs. At the same time, numerous organizations are enabling new business models using cloud platforms. These initiatives are creating truckloads of data and metadata, and users and vendors must identify opportunities to both harness and unleash metadata to mitigate information risks and at the same time create new value pathways. The degree to which this is possible will be a function of an organization's risk tolerance, its culture, regulatory compliance edicts, and a number of other factors. Whatever the path, **metadata exploitation will be fundamental to managing data in the 21st century**.

McArthur 11 (John, President of Cameron University in Lawton-Fort Sill, Oklahoma with a branch in Duncan, Oklahoma. Cameron University is a public, master's degree, "Metadata Helping Organizations Say Yes to Cloud Services," Jan 17, 2011, http://wikibon.org/wiki/v/Cloud_Meta_Data:_Driving_New_Business_Model)//ghs-VA

Well-functioning organizations have developed structures to balance requirements for revenue creation, cost containment, and risk management to deliver predictable profit and growth. Within most organizations, the IT department is often charged with many of the cost-reduction initiatives, legal, audit, security, and compliance departments are charged with risk reduction, and the line-of-business is charged with driving increased value and revenue. The development and evolution of private- and public-cloud services promise decreased costs for the IT department through super-consolidation and the efficiency of shared infrastructure services. Business units see cloud-based services enabling increased revenue and value, not only by offering a more scalable and flexible infrastructure but also by leveraging the combined data of the organization and the knowledge gleaned from other users of the cloud. Those charged with risk management will be appropriately concerned about data privacy, data security, data loss, and legal and regulatory compliance for both public and private clouds. That said, companies that fail to embrace private and public cloud approaches run the risk of revenue stagnation and high costs, which promises certain, if slow, death. Cloud **metadata is the key to satisfying the concerns of risk managers**, while enabling IT and revenue-producing business units to fully embrace and exploit these new service-delivery models. Such a model of cloud metadata is detailed in a document created by Tom Coughlin and Mike Alvarado entitled "Angels in our Midst: Associative Metadata in Cloud Storage." For risk managers concerned about placing data in a shared infrastructure, the "Basic Data Levels" of metadata, described in the first four layers of the model, can be used to control access, determine which files and data should be encrypted, and control where data is allowed to move and be shared both within and outside the walls of the corporation. For risk managers concerned about compliance with security and privacy laws, the "Meaning Levels" of metadata, described in the top three layers of the model, can enable the analysis of customers and their relationships while ensuring that customer-unique identifying information is protected. Organizations need to consider all three dimensions: revenue and value creation, cost control, and risk management. Organizations will have differing views of the appropriate balance among revenue, cost, and risk, depending upon their industry, company history, financial position, and extent of regulatory oversight, but all three constituencies must have a seat at the table. It's always easy to kill something by saying it's too risky. The inherent risk, however, lies in not finding ways to say 'yes' and being left behind. Action item: With the increased availability of private- and public-cloud infrastructure and applications, organizations should bring together the key stakeholders for revenue growth, cost containment, and risk management. The priority of the stakeholders should be to establish and leverage a new hierarchy of metadata to enable organizations to manage risk while exploiting the cost benefits and value creation of cloud-based infrastructure.

Floyer 11 (David, Wikibon's resident CTO. Floyer spent more than twenty years at IBM holding positions in research, "Metadata for Big Data and the Cloud," Jan 17, 2011, http://wikibon.org/wiki/v/Cloud_Meta_Data:_Driving_New_Business_Model)//ghs-VA

You are driving with the family on a long journey at 7p.m. Your dashboard computer displays a selection of restaurants and hotels that meet your budget, culinary preferences, and location, with a special offer for a family room. There is an attractive offer from a hotel if you drive another 20 miles. Behind this display is derived from a large amount of data put into context – and the only way to provide such information cost effectively is to use metadata inferences in real or next-to-real time. Metadata, the data that describes data, becomes an imperative in the world of "Big Data" and the cloud. As more of the data is distributed in the cloud and across the enterprise, the model of holding central databases becomes less relevant, especially for unstructured and semi-structured data. Moving vast amounts of data from one place to another within or outside the enterprise is not economically viable. It is faster and more efficient to select the data locally by shipping the code to the data, the Hadoop model. Good metadata is a key enabler of this approach. There is already some metadata in place; files have a date created/modified and file size, JPEGs have data about the camera settings and location, and there are many other examples. But metadata standards are fragmented and incomplete, and cracking open files to investigate properties requires too much compute and elapsed time. A paper by Tom Coughlin and Mike Alvarado entitled "Angels in our Midst: Associative Metadata in Cloud Storage" is an interesting attempt to put a framework model (Figure 1) in place for metadata. The authors have taken an OSI-like layered model, split into to major components:- Basic Data Levels – four layers that focus on traditional metadata Meaning Data Levels – three layers that focus on meaning and context IT organizations and vendors should recognize that completely new models of doing business are evolving that are enabled by an effective metadata model that has industry acceptance. Within IT, metadata can be used to assist in deleting data, as well as enabling more effective utilization of data value. Current methods of inferring metadata retrospectively are inadequate.

Nawotka 11 (Edward, Editor-in-Chief of Publishing Perspectives, "Why Metadata is the Key to Your Digital Future," July 29, 2011, http://publishingperspectives.com/2011/07/why-metadata-is-the-key-to-your-digital-future/)//ghs-VA

Q: What is Metadata and why is it so important for publishing? Metadata might still sound like something intimidating for some, but it is actually very simple. Metadata is all of the information associated with a book or publication that is used to produce, publish, distribute, market, promote and sell the book. This includes very simple things, such as the title, author of a book, cover and format, to much more complicated data, such as the terms of the publishing contract, rights information, print run, sales data, reviews, etc. It usually takes the form of a file contained in a database that will contain information for all the publishers books. This file can then be output into a digital file or spreadsheet that can be used by search engines, retailers and other digital media to display and sell your book. Q: Why is it important for publishers to continually educate themselves and update their knowledge about Metadata? **Metadata is**, essentially, **the story of the book**. It tells people everything they need to know about about the book and how to work with it. **Without good metadata in place**, every person who comes in contact with the book — from the editor to the printer to the bookseller — **will have to recreate the metadata for the book**, which can introduce errors. If one person accidentally spells the author's name wrong, to take one example, that might never be fixed and people looking for the book in a computer database would never be able to find book in the system. The book — and all that investment in time, money and effort — would essentially be lost as well. Formats and devices may change — and we honestly don't know what the publishing landscape will look like in five to ten years — but **metadata is the one thing you can confidently take control of now, no matter what happens in the future**. Q: What are the benefits of developing better metadata? The good news is that getting the metadata right will ensure that people who are looking for your book — whether it's a novel or a textbook on biochemistry — will be able to find it when they search for it online. **Search engines, social networks, e-book retailers all depend on metadata** to help users find their book. **Get it wrong and they'll never find it and you'll lose the sale**; get it right and it is going to be the first book that will pop up after a search query. **That's just good sales and marketing**. It's also all-important for libraries who want to be able to manage their collections and help patrons. Q: How can publishers incorporate a better metadata strategy into their digital workflow? It is essentially the same as what you do for print, only instead of doing it for a physical book, you're doing it for a digital file. The important thing to remember is metadata changes as it moves through the system as different people at the publishing house work on it. The editor might make revisions to the description of the book's content, the marketing department would add details about sales, as would the publicity department after the book goes out into the world. **Metadata** also allows you to revise and refine the information as new taxonomies, standards and practices emerge, thus ensuring that your book is futureproofed. Q: Isn't metadata just something the digital departments of publishers need to worry about? Simply put, it **needs to be a part of everyone's job description**. The problem comes when a house instills a "digital director" and everyone else starts to think "well, that's not my job anymore." **Metadata is a tool that everyone can use** to help make a book a success and keep it alive in the marketplace much longer. Many people outsource their metadata for e-books to the service providers who also convert and/or distribute their e-books, which can also work very well — provided they are one in the same. **Having different sets of metadata spread across too many companies gets complicated when you want to change something and makes fixing problems when they arise all the more complicated**.

Topicality Addendum- Northwestern

Consent Definition

Redone T- Consent 1nc

Interpretation - Surveillance means monitoring without express consent

FISA 78 (Foreign Intelligence Surveillance Act, Legal Document Outlining Electronic Surveillance Within The United States For Foreign Intelligence Purposes, "Foreign Intelligence Surveillance Act of 1978. 50 us e 1801," http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1783.pdf)//ghs-VA

(f) "Electronic surveillance" means— (1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person •'• has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, **without the consent of any party thereto**, if such acquisition **occurs in the United States**; (3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or (4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Violation - Handing Info over to the government as part of a license or application process is not surveillance because express consent is provided

The Law Dictionary 1910 (The law dictionary is based off the second edition of Black's Law Dictionary published in 1910: the definitive legal dictionary as defined by scholars, lawyers, and students. http://thelawdictionary.org/consent/ //HS)

What is CONSENT? A concurrence of wills. Express consent is that directly given, either lira voce or in writing. Implied consent is that manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given. Cowen v. Paddock, 62 Hun, 022, 17 N. Y. Supp. 3SS. Consent in an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. 1 Story, Eq. Jur.

Standards -

1) Limits – There are an infinite number of ways people and organizations can apply for licenses/permits from the government. Allowing their aff allows all those affs as well

2) Ground – Generic counterplans and disads don't link to licensing/permits/regulation affs, we lose core generic ground

3) Topic Education – shifts the topic from government surveillance to government licensing/permitting/regulation processes- excludes education over privacy issues and instead focuses on minor government functions

4) Extra Topicality – even if they are some surveillance- they go beyond the scope of the resolution by reading a plan about processes of licensing/permit/regulation that are external to the topic

Voting Issue - fairness and education

Neg

Consent is permitting the nsa to take an action and knowing the consequences of that action

NSA 11 (From "Minimization Procedures Used by the National Security Agency in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, As Amended" Approved by the Attorney General.
http://www.dni.gov/files/documents/Minimization%20Procedures%20used%20by%20NSA%20in%20Connection%20with%20FISA%20SECT%20702.pdf //HS)

(d) Consent is the agreement by a person or organization to permit the NSA to take particular actions that affect the person or organization. To be effective, consent must be given by the affected person or organization with sufficient knowledge to understand the action that may be taken and the possible consequences of that action. Consent by an organization Will be deemed valid if given on behalf of the organization by an official or governing body determined by the General Counsel, NSA, to have actual or apparent authority to make such an agreement. (U)

Consent is to permit

Dictionary.com (http://dictionary.reference.com/browse/consent)

verb (used without object) 1. to permit, approve, or agree; comply or yield (often followed by to or an infinitive): He consented to the proposal. We asked her permission, and she consented.

Topicality- Samford

T—Surveillance isn't supervision

A. **SURVEILLANCE MEANS MONITORING PEOPLE TO REGULATE BEHAVIOR.**

John **Gilliom**, 20**13** (Prof., Political Science, Ohio U.), SUPERVISION: AN INTRODUCTION TO THE SURVEILLANCE SOCIETY, 2013, 2.

Why do we call this a surveillance society? Because virtually all significant social, institutional, or business activities in our society now involve the systematic monitoring, gathering, and analysis of information in order to make decisions, minimize risk, sort populations, and exercise power. We define surveillance as monitoring people in order to regulate or govern their behavior.

B) Violation: Plan isn't monitoring to regulate behavior.

C) Standards:

1) Fair Limits: Allowing for the affirmative to merely decrease supervision allows them to decrease supervision over anything the federal government supervises, from Native American lands, to federal parks, to welfare policy, to education, etc. Only requiring the affirmative to decrease the monitoring of people preserves a fair limit on the topic.

2) Disad and counterplan ground: They make the terrorism disadvantage obsolete by making surveillance meaningless.

D) Voting Issue: Fairness, Education & Ground

T--Surveillance Means People Violation

A) Surveillance requires the monitoring of people.

William **Staples, 2014** (Prof., Sociology, U. Kansas), EVERYDAY SURVEILLANCE: VIGILANCE AND VISIBILITY IN POSTMODERN LIFE, 2014, xiii.

The word surveillance, in the most general sense, refers to the act of keeping a close watch **on people.**

B) Violation: Plan doesn't curtail monitoring of people.

C) Standards:

1) Fair limits: Millions of cases deal with monitoring of natural resources, the environment, arms control, or species. The negative interpretation fairly limits the topic by focusing on people.

2) Disad and counterplan ground: They avoid the core controversies of the topic like terrorism disadvantages and political disadvantages.

D) Voting Issue: Fairness, Education, & Ground

T--Curtail Means Congress or Courts

A) Curtail means to impose a restriction upon.

Angus **Stevenson, 2010** (Editor), NEW OXFORD AMERICAN DICTIONARY, 3rd Ed., 2010, 425.

Curtail: Impose a restriction on.

B) Violation: The plan is self-restraint, not a curtailment.

C) Standards:

1) Fair Limits: They explode the topic by allowing for any variety of executive actions like executive orders, presidential memorandums, or even executive self-restraint. The topic should be limited to the Congress or the Supreme Court putting a limit on the president's powers.

2) Fair Ground: They ignore the presidential powers disadvantage and the executive self-restraint counterplan, gutting the negative options on the topic.

D) Voting Issue: Fairness & Ground.

T--Curtail Doesn't Mean to Abolish

A) Curtail means to shorten or lessen, but not abolish.

BLACK'S LAW DICTIONARY, 1990. Retrieved May 28, 2015 from

http://archive.org/stream/BlacksLaw6th/Blacks%20Law%206th_djvu.txt

Curtail. To cut off the end or any part of; hence to shorten, abridge, diminish, lessen, or reduce; and term has no such meaning as abolish. State v. Edwards, 207 La. 506, 21 So.2d 624, 625.

B) Violation: Plan abolishes domestic surveillance.

C) Standards

1) Fair limits: They explode the topic by allowing for cases that place any limit on domestic surveillance AND cases that abolish domestic surveillance, doubling the size of the topic.

2) Resolutional context: They ignore the unique meaning of the term curtail in the resolution. If the resolution were meant to allow cases that abolished, a phrase like ban would have been included in the resolution.

Its means USFG surveillance

A) "Its" is the possessive form—"its surveillance" is referring to surveillance by the federal government of the United States.

Carol-June **Cassidy, 2008** (Managing Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 464.

Its: Belonging to or connected with the thing or animal mentioned; **the possessive form of it.**

B) Violation: Plan deals with states or localities, not the federal government.

C) Standards:

1) Limits: Thousands of cases deal with state or local governments or even private corporations that spy on people, but the resolution limits the affirmative to domestic surveillance by the federal government.

2) Fair ground: The affirmative team explodes the topic to include states and localities that negative disadvantages and counterplans will not refute.

D) Voting Issue: Fairness, Education, and Ground.

T--Domestic Means in the US

A) DOMESTIC IS LIMITED TO ONE'S OWN COUNTRY.
MERRIAM WEBSTER DESK DICTIONARY, 19**95**, 164. Domestic: Relating or limited to one's own country or the country under consideration.

B) Violation: The plan deals with foreign countries.

C) Standards:

1) Fair Limits: The affirmative interpretation allow surveillance on any other nation on the planet, which would explode the topic.

2) Disad and counterplan ground: The affirmative case avoids disadvantages premised off of domestic surveillance such as terrorism and presidential powers.

D) Voting issue: Fairness, education & ground.

T--Substantially Means 20%

A) The federal government spies on everyone in America.

Jason **Reed, 2012** (staff writer) REUTERS. July 24, 2012. Retrieved May 28, 2015 from http://rt.com/usa/nsa-whistleblower-binney-drake-978/

The TSA, DHS and countless other security agencies have been established to keep America safe from terrorist attacks in post-9/11 America. How far beyond that does the feds' reach really go, though? The attacks September 11, 2001, were instrumental in enabling the US government to establish counterterrorism agencies to prevent future tragedies. Some officials say that they haven't stopped there, though, and are spying on **everyone in America** — all in the name of national security.

2. "Substantially" means at least twenty percent.

Words & Phrases, 67, 758. "'Substantial' number of tenants engaged in production of goods for commerce means that at least 20 per cent of the building be occupied by tenants so engaged. Ullo vs. Smith, D.C.N.Y., 62 F. Supp. 757, 760."

B) Violation: AFF does less than 20%.

C) Standards:

1) Fair limits: Potentially thousands of cases could curtail domestic surveillance for a small group or category of Americans, from immigrants to environmental groups, to even members of the Tea Party. The negative interpretation requires that the affirmative case curtail domestic surveillance 20% while creating a fair limit and eliminating "squirrel cases."

2. The Negative interpretation draws a bright line:

It is easy to determine which cases this interpretation makes topical and which cases are non-topical. As long as the affirmative plan can show a curtailment of domestic surveillance by at least 20% of the population, the plan is topical. If the affirmative curtails by less than that amount, the plan is not topical.

D) Fairness, Education & Ground.

T--Substantially Means Without Qualification

A) Substantially means "without qualification"

DON **BLEWETT, 1976** (Chairperson California Unemployment Insurance Appeals Board, Young v. Laura Scudder's Pet, Inc. January 29, 1976. www.cuiab.ca.gov/precedent/pb181.doc.)

"Substantially. Essentially; without material qualification; in the main; in substance; materially; in a substantial manner. Kirkpatrick v. Journal Pub. Co., 210 Ala. 10, 97 So. 58, 59; Gibson v. Glos, 271 I11. 368, I11 N.E. 123, 124; McEwen v. New York Life Ins. Co., 23 Cal. App. 694, 139 P. 242, 243. About, actually, competently, and essentially. Gilmore v. Red Top Cab Co. of Washington, 171 Wash. 346, 17 P. 2d 886, 887."

B) Violation: the plan places a condition on the decrease in surveillance.

C) Standards:

1) The Negative Interpretation provides a clear meaning to the word substantially:

The affirmative quantitative interpretation makes substantially meaningless, as percentage based definitions exist for almost any amount with the word substantially. The negative interpretation draws a clear meaning to the word substantially, by making the affirmative unconditionally curtail domestic surveillance.

2) Fair Ground: Potentially thousands of cases exist to curtail domestic surveillance. However, by requiring that such curtailments be unconditional, the negative team can be prepared to debate the unconditional nature of such actions.

D) Topicality is a voting issue: Fairness, Education & Ground.

Federal Government Means Central Government in DC

A) The federal government is the central government of the United States.

Elizabeth **Jewell, 2001** (Editor), OXFORD AMERICAN DICTIONARY, 01, 620.

Federal: Of, relating to, or denoting the central government of the United States.

2) The federal government is not referring to the states.

Henry **Black, 1990** (Ed.), Black's Law Dictionary, 90, 695.

"Federal government. The government of the United States of America, as distinguished from the governments of the several states."

A) Violation: the plan isn't done through the federal government.

C) Standards:

1. The negative interpretation preserves predictability: By requiring the affirmative team to defend action from the central government, the negative is not forced to research disadvantages against every state in the United States, but rather action by the federal government.

2. The negative interpretation is more precise than the affirmative interpretation: The affirmative interpretation blurs the meaning of a federal form of government (one that has divided powers) with the federal government—referring to the central government in Washington, D.C. The negative interpretation best preserves precision of the term's meaning.

3. The negative interpretation allows for the best division of ground between the affirmative and negative teams: This interpretation allows the affirmative to defend the relative advantages of federal action, while the negative can defend the relative advantages of state action. This creates a clear division of ground between the two sides.

D) Voting Issue: Fairness, Education, Ground.

Framework

A) The Negative Interpretation of the Resolution

1. The federal government is the central government in Washington D.C.

Elizabeth **Jewell. 2007** (Editor), OXFORD AMERICAN DICTIONARY, 2007, 620.

Federal: Of. relating to. or denoting the central government as distinguished from the separate units constituting a federation.

2. Should is an obligation to act.

American Heritage Dictionary of the English Language, 1992 (4ed); pg. 1612

Usage Note Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are largely ignored in modern American practice. Either should or would can now be used in the first person to express conditional futurity: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or he) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should 've. See Usage Notes at if, rather, shall.

3. Resolved means fixed in purpose or intention.

Collins English Dictionary, 2009. Retrieved May 20, 2013 from http://dictionary.reference.com/browse/resolved?s=t

— n resolved (rɪˈzɒlvd) — adj fixed in purpose or intention; determined B. The Affirmative plan violates the Negative Interpretation of the Resolution

B. Violation: The affirmative does not defend topical action by the United States federal government.

C) Standards:

1. There must be meaningful agreement to basic terms in order for debate to take place—this is critical to create protest and resistance movements.

Ruth Lessl **Shively, 2000** (Assistant Prof Political Science – Texas A&M), POLITICAL THEORY AND PARTISAN POLITICS, 2000, 181-182.

The requirements given thus far are primarily negative. The ambiguists must say "no" to—they must reject and limit—some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational persuasion. This means, first that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake the abmiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest—that consensus kills debate. But this is true only if the agreement is perfect—if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on

others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the starting condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not communicating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if one's target audience simply thinks everyone is resting or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators, and debaters must have some shared ideas about the subject and/or the terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator's audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony.

2. Predictable ground is different than some ground. Predictable ground comes from the resolution—the fact that there may be arguments against the affirmative does not mean we have adequately researched all those ideas to compete fairly.

3. They put the cart before the horse. Fairness must precede education because without fairness you cannot determine whether or not their advocacy is productive. The only way to know that is if the negative has the ability to predictably research answers to their advocacy.

D) Voting Issue: Fairness, Education, and Ground.

Topicality- UTNIF

Substantially

Drones Not Substantial Shell 1NC

A. Interpretation: A substantial increase is at least 30%

FOLEY & LARDNER LLP 2004 http://www.freepatentsonline.com/20060057593.html

A substantial increase in the amount of a CFTR target segment identified means that the segment has been duplicated while a substantial decrease in the amount of a CFTR target segment identified means that the target segment has been deleted. The term "substantial decrease" or "substantial increase" means a decrease or increase of at least about 30-50%**.** Thus, deletion of a single CFTR exon would appear in the assay as a signal representing for example of about 50% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene. Conversely, amplification of a single exon would appear in the assay as a signal representing for example about 150% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene.

B. Violation: Domestic drone use is very minor

Roberts 13 (Dan Roberts, staff, 19 June, 2013, Accessed 7/6/15, http://www.theguardian.com/world/2013/jun/19/fbi-drones-domestic-surveillance)

The FBI has admitted it sometimes **uses** aerial surveillance **drones over US soil**, and suggested further political debate and legislation to govern their domestic use may be necessary. Speaking in a hearing mainly about telephone data collection, **the bureau's director, Robert Mueller, said it used drones** to aid its investigations **in a "very, very minimal way, very seldom".** However, the potential for growing drone use either in the US, or involving US citizens abroad, is an increasingly charged issue in Congress, and the FBI acknowleged there may need to be legal restrictions placed on their use to protect privacy. "It is still in nascent stages but it is worthy of debate and legislation down the road," said Mueller, in response to questions from Hawaii senator Mazie Hirono. Hirono said: "I think this is a burgeoning concern for many of us." Dianne Feinstein, who is also chair of the Senate intelligence committee, said the issue of drones worried her far more than telephone and internet surveillance, which she believes are subject to sufficient legal oversight**. "Our footprint is very small," Mueller told the Senate judiciary committee. "We have very few and have limited use."** He said the FBI was in "the initial stages" of developing privacy guidelines to balance security threats with civil liberty concerns.

C. Vote neg -

1. Limits: There are 3,984 organizations for domestic surveillance, allowing small affs explodes limits and vastly increases neg research burden. This hurts fairness.

Quigley, 12 (Bill Quigley, professor at Loyola University New Orleans, Associate Director of the Center for Constitutional Rights, Accessed 7/7/17, Published 9 Apr, 2012)

Privacy is eroding fast as technology offers government increasing ways to track and spy on citizens. The Washington Post reported there **are 3,984 federal, state and local organizations working on domestic counterterrorism. Most collect information on people in the US.** Here are thirteen examples of how some of the biggest government agencies and programs track people.

2. That destroys education – the scope of the topic makes research impossible

Associated Press 4/8/15, "Senate creating secret encyclopedia of U.S. spy programs" 4/8/2015, http://www.chicagotribune.com/news/nationworld/chi-us-spy-programs-20150408-story.html ||

Sen. Dianne Feinstein launched the review in October 2013, after a leak by former National Security Agency systems administrator Edward Snowden disclosed that the NSA had been eavesdropping on German Chancellor Angela Merkel's cellphone. Four months earlier, Snowden had revealed the existence of other programs that vacuumed up Americans' and foreigners' phone call records and electronic communications. "We're trying right now to look at every intelligence program," Feinstein told The Associated Press. "There are **hundreds of programs** we have found ... sprinkled all over. Many people in the departments **don't even know** (they) are going on." Feinstein and other lawmakers say they were fully briefed about the most controversial programs leaked by Snowden, the NSA's collection of American phone records and the agency's access to U.S. tech company accounts in targeting foreigners through its PRISM program. Those programs are conducted under acts of Congress, supervised by a secret federal court. But when it comes to surveillance under Executive Order 12333, which authorizes foreign intelligence collection overseas without a court order, there are **so many programs** that **even the executive branch** has trouble keeping track of them, Feinstein said. Many are so sensitive that only a handful of people are authorized to know the details, which complicates the management challenge. L**awmakers** who serve on the intelligence committee sometimes have difficulty **making sense** of the information they receive, some of which can't be shared even with some of their own staff. Director of National Intelligence James Clapper has joked that **only one entity in the universe has complete visibility over all the U.S. government's secret intelligence programs — "That's God."**

Behavior Detection Not substantial Shell 1nc

A. Substantial is 90%

FOLEY & LARDNER LLP 2004 http://www.freepatentsonline.com/20060057593.html

A substantial increase in the amount of a CFTR target segment identified means that the segment has been duplicated while a substantial decrease in the amount of a CFTR target segment identified means that the target segment has been deleted. The term "substantial decrease" or "substantial increase" means a decrease or increase of at least about 30-50%. Thus, deletion of a single CFTR exon would appear in the assay as a signal representing for example of about 50% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene. Conversely, amplification of a single exon would appear in the assay as a signal representing for example about 150% of the same exon signal from an identically processed sample from an individual with a wildtype CFTR gene.

B. They don't even meet in their OWN category - Only 2.6% of total TSA

Stelter 11/19/13 Leischen Stelter is the social media coordinator with the public safety team at American Military University. She writes about issues and trends relevant to professionals in law enforcement, fire services, emergency management and national security. Stelter is the former managing editor of Security Director News, an online business publication for physical security practitioners, where she spent four years writing articles, blogs and producing video segments on best practices in the private security industry. http://amusecurityinfo.com/are-tsa-behavior-detection-officers-bdos-an-integral-layer-of-airport-security-gao-doesnt-think-so/

Pistole also stated that the BDO program has been scientifically proven to be more effective than random screening. He cited a 2011 independently conducted study that included over 70,000 random samples at 41 airports. The validation study found that TSA's behavior detection identifies high-risk travelers at a significantly higher rate than random screening and concluded that a high-risk traveler is nine times more likely to be identified using behavioral detection versus random screening.

When it comes down to it, it's all about the money. According to my (rough) calculations, **TSA has not spent that much on this program**. Pistole said the TSA spends $200 million to train these specialized officers and the TSA budget for FY2013 was $7.6 billion. The agency spent **2.6 percent of its annual budget** on this program, which doesn't seem like that much of an investment.

C. Vote neg -

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2. That destroys education – the scope of the topic makes research impossible

Associated Press 4/8/15, "Senate creating secret encyclopedia of U.S. spy programs" 4/8/2015, http://www.chicagotribune.com/news/nationworld/chi-us-spy-programs-20150408-story.html ||

Sen. Dianne Feinstein launched the review in October 2013, after a leak by former National Security Agency systems administrator Edward Snowden disclosed that the NSA had been eavesdropping on German Chancellor Angela Merkel's cellphone. Four months earlier, Snowden had revealed the existence of other programs that vacuumed up Americans' and foreigners' phone call records and electronic communications. "We're trying right now to look at every intelligence program," Feinstein told The Associated Press. "There are **hundreds of programs** we have found ... sprinkled all over. Many people in the departments **don't even know** (they) are going on." Feinstein and other lawmakers say they were fully briefed about the most controversial programs leaked by Snowden, the NSA's collection of American phone records and the agency's access to U.S. tech company accounts in targeting foreigners through its PRISM program. Those programs are conducted under acts of Congress, supervised by a secret federal court. But when it comes to surveillance under Executive Order 12333, which authorizes foreign intelligence collection overseas without a court order, there are **so many programs** that **even the executive branch** has trouble keeping track of them, Feinstein said. Many are so sensitive that only a handful of people are authorized to know the details, which complicates the management challenge. L**awmakers** who serve on the intelligence committee sometimes have difficulty **making sense** of the information they receive, some of which can't be shared even with some of their own staff. Director of National Intelligence James Clapper has joked that **only one entity in the universe has complete visibility over all the U.S. government's secret intelligence programs — "That's God."**

Ext: Behavior Detection not substantial

TSA budget is 8 billion annually

Rogers 3/28/12 http://homeland.house.gov/sites/homeland.house.gov/files/03-28-12%20Rogers%20Open.pdf Chairman Mike Rogers (R - AL) Subcommittee on Transportation Security

Given the challenging economic climate we are facing, TSA sho uld be making personnel decisions and any decisions that impact spending with a keen eye towards their impact on enhancing and improving security. Any dollar that does not enhance security should not be spent by TSA . **With an annual budget approaching $ 8 billion**, we need to ask the question of whether TSA's staffing model is efficient and effective. We all need to learn to do more with less, and I believe TS A is capable of doing just that without compromising security.

Behavior detection is much smaller – 1 billion over 5 years

Chapman 11/25/13 Michael joined CNSNews.com in 2007. He has worked as a writer for The McLaughlin Group; associate editor of Consumers' Research magazine; associate editor of Human Events; editorial page editor of The Lima News; journalism fellow for The Phillips Foundation; editorial writer and national issues reporter for Investor's Business Daily; and editorial director of the Cato Institute. http://cnsnews.com/news/article/michael-w-chapman/tsa-spent-900-million-behavior-detection-officers-who-detected-0

The Transportation Security Administration (TSA) spent approximately $900 million over the last 5 years for behavior detection officers to identify high-risk passengers but, so far, according to the General Accountability Office (GAO), only 0.59% of the passengers flagged were arrested and among those not one was charged with terrorism – zero.

Small number of people stopped

Frank 15 USA Today staff http://abcnews.go.com/Travel/story?id=6276841

Fewer than 1% of airline passengers singled out at airports for suspicious behavior are arrested, Transportation Security Administration figures show, raising complaints that too many innocent people are stopped.

Surveillance = Targeted

1nc Shell: Drones aren't targeted

A. Interpretation –

1. Surveillance must be INDIVIDUALLY TARGETED

Firmino 10 (Rodrigo José Firmino, phD in Urban Planning, "ICTs for Mobile and Ubiquitous Urban Infrastructures: Surveillance, Locative Media and Global Networks", October 2010, pg.131)

We shall define surveillance as actions that imply control and monitoring in accordance with Gow, for whom surveillance "implies something quite specific as the **intentional observation** of someone's actions or **the intentional gathering** of personal information in order to observe actions taken in the past or future" (Gow, 2005, p.8). According to this definition, surveillance actions presuppose monitoring and control, but **not all forms of control and/or monitoring can be called surveillance**. It could be said that all forms of surveillance require two elements: intent with a view to avoiding/causing something **and identification of individuals or groups by name.** It seems to me to be difficult to say that there is surveillance if there is no identification of the person under observation (anonymous) and no preventive intent (avoiding something). To my mind it is an exaggeration to say, for example, that the system run by my cell phone operator that controls and monitors my calls is keeping me **under surveillance**. Here there is identification, but no intent. However, it can certainly be for that purpose. The federal police can requires wiretaps and disclosure of telephone records to monitor my telephone calls. The same can be said about the control and monitoring of users by public transport operators. This is part of the administrative routine of the companies involved. Once again, however, the system can be used for surveillance activities (a suspect can be kept under surveillance by the companies' and/or police's safety systems). Note the example further below of the recently implemented "Navigo" card in France. It seems to me that the social networks, collaborative maps, mobile devices, wireless networks and countless different databases that make up the information society do indeed control and monitor and offer a real possibility of surveillance. The question I would pose is whether **the term surveillance** can be generalized to cover ALL these actions and systems. I do not believe that when I use Facebook I am under surveillance (the information is protected and there is not intent). But Facebook can be used for surveillance (if there is unauthorized access to my personal data and intent) with a view to avoiding or causing something I am not convinced that control, monitoring and surveillance are the same thing or that systems (social networks) that collect non-nominal data and cross these with other non-nominal data in databases in other systems inherently constitute surveillance. To my mind **these systems monitor and control, which is dangerous precisely because such monitoring and control can give rise**, a poste-riori, **to a form of individual or group surveillance**

2.Must be intentional not accidental

Friedman 2(Jeremy, Prying Eyes in the Sky: Visual Aerial Surveillance of Private Residences as a Tort, Jeremy Friedman-- Candidate for J.D., Columbia University School of Law, http://stlr.org/download/volumes/volume4/friedman.pdf) n14 See Black's Law Dictionary 14659 (7th ed. 1999)

(definition of "surveillance" as "Close observation or listening of a person or place in the hope of gathering evidence") (emphasis added).¶ n15 Where conversations are accidentally overheard, no "surveillance" has taken place--see definition of "surveillance," supra note 14. See also Com. v. Louden, 536 Pa. 180, 192, 638 A.2d 953, 959 (Pa. 1994) (refusing to find a justifiable privacy expectation on the part of day care center providers, regarding conversations that were audible next door).

B. Violation – ONLY domestic surveillance with drones is UNTARGETTED and INCIDENTAL

Aftergood 5/8/12 http://fas.org/blogs/secrecy/2012/05/usaf_drones/ Staff Steven Aftergood directs the FAS Project on Government Secrecy. The Project works to reduce the scope of national security secrecy and to promote public access to government information. He writes Secrecy News, which reports on new developments in secrecy policy for readers in media, government and among the general public. In 1997, Mr. Aftergood was the plaintiff in a Freedom of Information Act lawsuit against the Central Intelligence Agency which led to the declassification and publication of the total intelligence budget for the first time in fifty years ($26.6 billion in FY 1997). In 2006, he won a FOIA lawsuit against the National Reconnaissance Office for release of unclassified budget records. Mr. Aftergood is an electrical engineer by training (B.Sc., UCLA, 1977). His work on challenging government secrecy has been recognized with the Pioneer Award from the Electronic Frontier Foundation (2010), the James Madison Award from the American Library Association (2006), the Public Access to Government Information Award from the American Association of Law Libraries (2006), and the Hugh M. Hefner First Amendment Award from the Playboy Foundation (2004).

U.S. Air Force policy permits the incidental collection of domestic imagery by unmanned aerial systems (drones), but ordinarily would not **allow targeted surveillance** of a U.S. person. The Air Force policy was restated in a newly reissued instruction on oversight of Air Force intelligence.

"Air Force Unmanned Aircraft System (UAS) operations, exercise and training missions will not conduct nonconsensual surveillance on **specifically identified US persons**, unless expressly approved by the Secretary of Defense, consistent with US law and regulations," the instruction stated.

On the other hand, "Collected imagery may i**ncidentally** include US persons or private property without consent."

"Collecting information on specific targets inside the US raises policy and legal concerns that require careful consideration, analysis and coordination with legal counsel. Therefore, Air Force components should use domestic imagery only when there is a justifiable need to do so, and then only IAW [in accordance with] EO 12333, the National Security Act of 1947, as amended, DoD 5240.1-R, and this instruction," it said.

C. Impacts – vote neg

1. **Explodes the topic – any act of observation is "surveillance" without intention – their interpretation could ban Obama from seeing stressful movies, or avoid Secret Service agents staring into the sun**
2. **Drones debate is huge – vast array of non-surveillance applications**

Hines 9/17/13 http://www.thedailybeast.com/articles/2013/09/17/learn-to-stop-worrying-and-love-the-drones.html Pierre Hines is a Defense Council member of the Truman National Security Project. After graduating from West Point, Pierre served as an Army intelligence officer. He is now a law student at Georgetown University Law Center, where he serves as a member of the National Security Law Society and The Georgetown Law Journal.

The Federal Aviation Administration estimates that there will be 30,000 drones in U.S. airspace within the next 20 years (PDF). The news of future drone proliferation has sparked controversy and among many Americans who have legitimate safety and privacy concerns, but narrowly view drones as either spying or overseas killing machines. Although legislative and regulatory oversight is warranted, an onslaught of drone regulation isn't, and it could cause setbacks in an industry that has the potential to usher in significant benefits to the economy and everyday lives of Americans.

As a former Army intelligence officer who frequently utilized drones, I originally shared the same narrow concerns about their dangers and potential menace. I mainly viewed them as counterterrorism and law-enforcement tools that were used in one of two ways: for surveillance purposes or for lethal affects. However, it's clear that drones have other applications. Private parties have been authorized to use drones for experimental purposes, including some universities that are developing new methods of monitoring agriculture. Another use involves conducting missions that serve the public interest—e.g., search-and-rescue, Border Patrol, and firefighting missions. In fact, NASA has used already drones to monitor hurricanes, and during the recent fire at Yosemite National Park in California, a drone was used to track the blaze's path.

It's currently illegal to fly drones over major urban areas or use them for commercial purposes, but if and when that changes, drones might be used for everyday tasks like transporting equipment, people, and possibly your online Amazon purchases.

3. **Extratopicality's a voter – extratopical portions of the plan allow many unpredictable advantages at zero risk, and lets them spike disads with random specifications like plan covertness**

1nc Shell: Xo 12333

A. Interpretation –

1. Surveillance must be INDIVIDUALLY TARGETED

Firmino 10 (Rodrigo José Firmino, phD in Urban Planning, "ICTs for Mobile and Ubiquitous Urban Infrastructures: Surveillance, Locative Media and Global Networks", October 2010, pg.131)

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2. Must be intentional not accidental

Friedman 2(Jeremy, Prying Eyes in the Sky: Visual Aerial Surveillance of Private Residences as a Tort, Jeremy Friedman-- Candidate for J.D., Columbia University School of Law, http://stlr.org/download/volumes/volume4/friedman.pdf) n14 See Black's Law Dictionary 14659 (7th ed. 1999)

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B. Violation - XO 12333 doesn't apply to targeted surveillance

Tye 7/18/14 John Napier Tye served as section chief for Internet freedom in the State Department's Bureau of Democracy, Human Rights and Labor from January 2011 to April 2014. He is now a legal director of Avaaz, a global advocacy organization. http://www.washingtonpost.com/opinions/meet-executive-order-12333-the-reagan-rule-that-lets-the-nsa-spy-on-americans/2014/07/18/93d2ac22-0b93-11e4-b8e5-d0de80767fc2_story.html

Issued by President Ronald Reagan in 1981 to authorize foreign intelligence investigations, 12333 is not a statute and has never been subject to meaningful oversight from Congress or any court. Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Select Committee on Intelligence, has said that the committee has not been able to "sufficiently" oversee activities conducted under 12333.

Unlike Section 215, the executive order authorizes collection of the content of communications, not just metadata, even for **U.S. persons.** Such persons c**annot be individually targeted under 12333** without a court order. However, if the contents of a U.S. person's communications are "incidentally" collected (an NSA term of art) in the course of a lawful overseas foreign intelligence investigation, then Section 2.3(c) of the executive order explicitly authorizes their retention. It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained.

C. Impact – vote neg

1. **Explodes the topic – any act of observation is "surveillance" without intention – their interpretation could ban Obama from seeing stressful movies, or avoid Secret Service agents staring into the sun**
2. **The scope of INCIDENTAL data gathering under 12333 is both HUGE and UNKNOWABLE**

Bedoya 14 http://justsecurity.org/16157/executive-order-12333-golden-number/ Alvaro M. Bedoya is the founding Executive Director of the Center on Privacy and Technology at Georgetown Law. Prior to joining Georgetown Law, he served as Chief Counsel to the Senate Judiciary Subcommittee on Privacy, Technology and the Law and to its Chairman, Senator Al Franken (D-Minn.). Having joined Senator Franken's staff on his first day in office, Alvaro helped the Senator draft legislation and conduct hearings and investigations on mobile location

privacy, health data privacy, NSA transparency and biometric technology like facial recognition and fingerprint readers. Alvaro also advised Senator Franken on immigration, civil and LGBT rights, and intellectual property, and served as the Senator's lead staffer in two Supreme Court confirmation hearings. He is a graduate of Harvard College and Yale Law School, where he received the Paul & Daisy Soros Fellowship for New Americans and was an editor of the Yale Law Journal.

These arguments about the proper scope of minimization are important and valid, but they do not address the core of Tye's complaint. As he told Ars Technica: "My complaint is not that [the NSA is] using [Executive Order 12333] to target Americans. My complaint is that the volume of incidental collection on US persons is unconstitutional." Too few people are focusing on the simple question that Tye is challenging us to ask: How many Americans' communications are caught up in 12333 collection in the first place? That number matters – **a lot**. It matters from a policy perspective: It may not make sense for Congress to allow a more lax set of collection and minimization standards for 12333 collection if those programs collect as much if not more Americans' data than FISA collection. The number matters from a democratic perspective: Americans, and their elected officials, cannot reach an informed opinion of these programs if they don't know how broadly they impact Americans. Most critically, that number matters for the Fourth Amendment. Americans' Fourth Amendment rights don't stop at the border. Even where the acquisition of foreign intelligence information abroad is found to fall within the foreign intelligence exception to the warrant requirement, that acquisition must still satisfy the Fourth Amendment's reasonableness requirement. (See Laura Donohue's forthcoming Harvard Journal of Law and Policy article on section 702 for an in-depth discussion of the application of the reasonableness requirement abroad.) If an "incidental" collection of an Americans' data is too substantial, that collection may be rendered unreasonable by that fact alone. As Judge Bates wrote in his October 2011 opinion on section 702 collection: [T]he acquisition of non-target information is not necessarily reasonable under the Fourth Amendment simply because its collection is incidental to the purpose of the search or surveillance. […] There surely are circumstances in which incidental intrusions can be so substantial as to render a search or seizure unreasonable. Bates went on to clarify that an incidental collection of Americans' data can be particularly problematic for Fourth Amendment purposes if the data are entirely unrelated to the targeted facility. "The distinction is significant and impacts the Fourth Amendment balancing," he wrote. Based on this reasoning, Judge Bates found that the NSA's October 2011 proposed targeting and minimization procedures were not consistent with the Fourth Amendment. Judge Bates did not reach this ruling because he discovered that the targeting procedures would result in the discovery of millions, or even hundreds of thousands of Americans' communications. No, the offending acquisition collected "roughly two to ten thousand discrete wholly domestic communications […] as well as tens of thousands of other communications that are to or from a United States person or a person in the United States but that are neither to, from, nor about a targeted selector." This bears repeating: Judge Bates found the 702 targeting procedures unconstitutional because they collected tens of thousands of U.S. person communications. We need to know approximately how many Americans' communications are collected under 12333. That's the golden number. But **we don't know it.** Apparently, **neither does the NSA**. In a December 2013 Washington Post article on the use of 12333 to collect cellphone location records, the NSA demurred an attempt to estimate how many Americans were swept up in that program: "It's **awkward** for us to try to provide any specific numbers," one intelligence official said in a telephone interview. An NSA spokeswoman who took part in the call cut in to say **the**

agency has no way to calculate such a figure. Yet in that same story, a "senior collection manager, speaking on the condition of anonymity but with permission from the NSA," appears to have told the Post that "**data are often collected from the tens of millions of Americans** who travel abroad with their cellphones every year." In a separate Post story in October 2013 on the use of 12333 to collect address books globally, two U.S. senior intelligence officials told Bart Gellman and Ashkan Soltani that that program sweeps in the contacts of many Americans. "They declined to offer an estimate but did not dispute that **the number is likely to be in the millions or tens of millions**," wrote Gellman and Soltani. Behind closed doors, **the intelligence community seems to acknowledge a scale of 12333 collection on Americans that far outstrips the collection that Judge Bates found unconstitutional** under section 702.

3. Extratopicality's a voter – extratopical portions of the plan allow many unpredictable advantages at zero risk, and lets them spike disads with random specifications like plan covertness

Def ext: must be targeted

General observation isn't topical

OCC 14 (Oxford City Council, Februrary 14,2014,"Page 1 of 9 OXFORD CITY COUNCIL Regulation of Investigatory Powers Act 2000", pg.4)

General observation, not forming part of any investigation into suspected breaches of the law and not directed against any specific person or persons is not directed surveillance e.g. CCTV cameras in Council car parks are readily visible and if they are used to monitor the general activities of what is happening within the car park, it falls Page 5 of 9 outside the definition. If, however, the cameras are targeting a particular known individual, the usage will become a specific operation, which will require authorization

Drones ext : violates

Drones are exclusively incidental

Ackerman 5/8/12 http://www.wired.com/2012/05/air-force-drones-domestic-spy/ Spencer Ackerman is an American national security reporter and blogger. He began his career at The New Republic and wrote for Wired magazine's national security blog, Danger Room. He is now the national security editor for the Guardian US.

The Air Force, like the rest of the military and the CIA, isn't supposed to conduct "nonconsensual surveillance" on Americans domestically, according to an Apr. 23 instruction from the flying service. But should the drones taking off over American soil a**ccidentally** keep their cameras rolling and their sensors engaged, well … that's a different story.

"Collected imagery may incidentally include US persons or private property without consent," reads the instruction (.pdf), unearthed by the secrecy scholar Steven Aftergood of the Federation of American Scientists. That kind of "incidental" spying won't be immediately purged, however. The Air Force has "a period not to exceed 90 days" to get rid of it — while it determines "whether that information may be collected under the provisions" of a Pentagon directive that authorizes limited domestic spying.

XO 12333 ext: violates

12333 is entirely incidental

Bedoya 14 http://justsecurity.org/16157/executive-order-12333-golden-number/ Alvaro M. Bedoya is the founding Executive Director of the Center on Privacy and Technology at Georgetown Law. Prior to joining Georgetown Law, he served as Chief Counsel to the Senate Judiciary Subcommittee on Privacy, Technology and the Law and to its Chairman, Senator Al Franken (D-Minn.). Having joined Senator Franken's staff on his first day in office, Alvaro helped the Senator draft legislation and conduct hearings and investigations on mobile location privacy, health data privacy, NSA transparency and biometric technology like facial recognition and fingerprint readers. Alvaro also advised Senator Franken on immigration, civil and LGBT rights, and intellectual property, and served as the Senator's lead staffer in two Supreme Court confirmation hearings. He is a graduate of Harvard College and Yale Law School, where he received the Paul & Daisy Soros Fellowship for New Americans and was an editor of the Yale Law Journal.

To date, the intelligence community has responded to criticisms of 12333 with two principal rebuttals: (1) **We cannot target Americans' electronic communications under these authorities**, and (2) To the extent we inevitably collect Americans' electronic communications through Executive Order 12333, those data are subject to strict minimization requirements.

AT “overlimits”

Surveillance must limit by purpose to maintain meaning

Botan and Vorvoreanu 1(CARL BOTAN MIHAELA VORVOREANU¶ both of the¶ CENTER FOR EDUCATION AND RESEARCH IN INFORMATION ASSURANCE AND SECURITY (CERIAS), “What Are You Really Saying To Me?” Electronic Surveillance In The Workplace, http://www.antoniocasella.eu/nume/Botan_2000.pdf)

Botan and McCreadie (1993) began with the distinction between monitoring and surveillance made by Attewell (1987) and concluded that the term monitoring is generic and can be applied to all automated collecting of information about work, regardless of purpose. Monitoring produces information that can be used for everything from setting bonuses and keeping track of inventory to controlling individual employees. Surveillance, on the other hand, more narrowly refers to a relationship between some authority and those whose behavior it wishes to control (Rule & Brantley, 1992). Monitoring generates the information used in surveillance. All surveillance incorporates monitoring, but not all monitoring is used for surveillance.

Surveillance = Technology

Shell vs. Welfare Aff

A. Surveillance must involve the use of technological monitoring devides

Odoemelam 15(Chika Ebere, June, Adapting to Surveillance and Privacy Issues in the Era of

Technological and Social Networking, was born in Ehime-Mbano, Imo State Nigeria. He obtained higher national diploma in mass communication of the Institute of Management And Technology (IMT), Enugu 1997 and a diploma in computer science and information technology from Goon Institute (St. Clement University, United Kingdom) in 2002., International Journal of Social Science and Humanity, Vol. 5, No. 6, June 2015, pp. 572-577)

According to an article by the United Nations Office on Drugs and Crime, (2009) [3], "Surveillance is the collection or monitoring of information about a person or persons **through the use of technology**". Thus, from the above definition, one can see that surveillance involves a wide range of technology and practices aimed at monitoring the activities of people possibly without their knowledge and permission. For instance, there is audio surveillance which involves phone-tapping and listening devices, visual surveillance which involves in-car video devices, hidden video surveillance, and closed-circuit television camera (CCTV), tracking surveillance which includes global positioning systems (GPS) and mobile phones and data surveillance which involves computer, internet and keystroke monitoring. The majority of the above devices are constantly¶ used to monitor people without their prior permission.

B. Violation – no TECHNOLOGICAL surveillance – welfare systems may use computers to TRACK data, but don't GET the data through technological means

C. Vote negative

1. **Limits – opening the topic up to simple observation or any act of knowing means any constraint on police movement or personal viewing becomes topical. Only a bright between surveillance and "seeing some stuff" maintains any topic integrity.**

2. **Ground – the best disads about surveillance are in the context of growing cyber-surveillance – cyberterror, protection against hacks, establishing global Internet standards; they strip this**

Ext: Definition

Surveillance requires the use of technology—things like unaided senses aren't t

Marx 2(Gary T., ,Gary T. Marx—Professor Emeritus, Massachusetts Institute of Technology, What's New About the "New Surveillance"? Classifying for Change and Continuity., http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/viewFile/3391/3354)

The term "close observation" also fails to capture contemporary practices. Surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and work. Nor need it be close as in detailed – much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail.¶ The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in "observation". The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (e.g., saying "I see" for understanding or being able to "see through people").4 Indeed "seeing through" is a convenient short hand for the new surveillance.¶ To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (e.g., written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to "observe" a text or a printout is in many ways different from a detective or supervisor directly observing behavior. The eye as the major means of direct surveillance is increasingly joined or replaced by hearing, touching and smelling.5 The¶ use of multiple senses and sources of data is an important characteristic of much of the new surveillance.¶ A better definition of the new surveillance is the use of technical means to extract or create personal data. This may be taken from individuals or contexts. In this definition the use of "technical means" to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples extend the senses by using material artifacts or software of some kind, but the technical means for rooting out can also be deception, as with informers and undercover police. The use of "contexts" along with "individuals" recognizes that much modern surveillance also looks at settings and patterns of relationships. Meaning may reside in cross classifying discrete sources of data (as with computer matching and profiling) that in and of themselves are not of revealing. Systems as well as persons are of interest.¶ This definition of the new surveillance excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a cooperative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.6

Requires a device

Barnes '12 (Beau: J.D. Candidate, Boston University School of Law, 2013; M.A. Law and Diplomacy Candidate, The Fletcher School of Law and Diplomacy at Tufts University, 2013; B.A. International Affairs and Foreign Languages & Literatures, 2006, Lewis & Clark College/ Boston University Law Review, Vol. 92, No. 1613, 2012/ CONFRONTING THE ONE-MAN WOLF PACK: ADAPTING LAW ENFORCEMENT AND PROSECUTION RESPONSES TO THE THREAT OF LONE WOLF TERRORISM)

Law enforcement agencies also collect significant amounts of intelligence on domestic terrorist plots from electronic and physical surveillance. In general, surveillance "includes monitoring, observing, listening to, and recording persons' conversations, movements, activities and communications with the aid of a surveillance device."119 Electronic surveillance – also known as "signals intelligence" – comprises "wiretapping, Internet monitoring and other forms of communications interception."120 Domestic physical surveillance has few constitutional restrictions; police may observe and record the actions of an individual with any technology that is "in general public use."121 While the National Security Agency may adopt a broad and systematic "dragnet" approach to electronic surveillance abroad, the federal government must

operate domestically within the confines of the Fourth Amendment and may only conduct electronic surveillance after a showing of probable cause.122

Surveillance is Continuous not episodic

Shell Vs. Aerial (drones)

A. Interpretation - Surveillance requires continuous measurement—it's distinct temporally from monitoring

Hoinville et al 13(Preventive Veterinary Medicine 112 (2013) 1–12, Proposed terms and concepts for describing and evaluating animal-health surveillance systems, L.J. Hoinville a,∗, L. Alban b, J.A. Drewe c, J.C. Gibbensa, L. Gustafson d, B. Häslerc, C. Saegerman e, M. Salman f, K.D.C. Stärkc¶ a Animal Health and Veterinary Laboratories Agency, Weybridge, New Haw, Addlestone KT15 3NB, United Kingdom b Danish Agriculture & Food Council, Axeltorv 3, DK-1609 Copenhagen V, Denmark¶ c Royal Veterinary College, Hawkshead Lane, North Mymms, Hatfield, Hertfordshire AL9 7TA, UK¶ d National Surveillance Unit, USDA APHIS VS, 2150 Centre Avenue, Fort Collins, CO 80526, USA¶ e Research Unit of Epidemiology and Risk Analysis Applied to Veterinary Sciences (UREAR-ULg), Department of Infectious and Parasitic Diseases, Faculty of Veterinary Medicine, University of Liege, Boulevard de Colonster 20, B42, B-4000 Liege, Belgium¶ f Animal Population Health Institute, College of Veterinary Medicine and Biomedical Sciences, Colorado State University, Fort Collins, CO 80523-1644, USA,)

The definition of 'surveillance' (Table 1) developed during these discussions is consistent with other definitions of health-related surveillance (German et al., 2001; OIE, 2012) in that **it requires continuous or repeated measurement, provides descriptive information and is linked with action to mitigate risk. These characteristics distinguish surveil- lance activities from other related and complementary activities (such as "one-off" surveys or analytical stud- ies) which do not involve continuous or repeated data collection and are not necessarily linked to a predefined action plan.** However, some activities that do not meet these criteria for classification as "surveillance activities" can contribute to achieving the surveillance purposes listed in Table 2. It is therefore sometimes necessary to con- sider the information provided by surveillance activities together with the information provided by other types of activity (particularly surveys). It has also been suggested that a distinction should be made between surveillance activities and intervention activities (Dufour and Hendrikx, 2009). Surveillance and intervention are two distinct, but closely linked activities that are part of strategies to reduce or avoid the negative effects of disease (in other words "risk mitigation") (Häsler et al., 2011). This joint consideration of surveillance and intervention is particularly relevant for economic assessments of surveillance because the value of surveillance can only be assessed in the wider context of mitigation. Economic principles show that mitigation (defined as loss reduction achieved by surveillance and intervention) must be assessed with¶ regard to the substitution possibilities between surveillance and intervention (Howe et al., 2013). For optimal economic efficiency, surveillance and intervention activities should be combined to provide the level of mitigation (i.e. loss avoidance) that maximises social welfare.

B. Violation Aerial surveillance isn't t—it's a "one-time fly-over"

Fakhouri 12/23/13 https://www.eff.org/deeplinks/2013/12/eff-amicus-brief-video-surveillance-home-month-without-warrant-violates-fourth Hanni Fakhoury is a Senior Staff Attorney on the Electronic Frontier Foundation's civil liberties team, focusing on criminal law. He's represented clients in criminal and civil government investigations, argued in federal court on the constitutionality of surveillance technologies, and written numerous amicus briefs in federal and state courts throughout the country on electronic searches and cybercrime. A frequent speaker and lecturer at domestic and international legal conferences on law enforcement surveillance technologies, Hanni has a particular focus on educating and working with the criminal defense bar. In addition to speaking at numerous criminal defense legal conferences and seminars, he regularly advises other lawyers on electronic surveillance issues in criminal cases, and still represents indigent federal criminal defendants on appeal as a member of the Northern District of California's Criminal Justice Act appellate panel. Regularly interviewed and quoted by news media organizations, including the Associated Press, CBS Evening News, CNN, Fox News, NPR, the Wall Street Journal and the Washington Post, his writings have been published in the New York Times, Slate and Wired. Before joining EFF, Hanni was a federal public defender in San Diego where he handled all aspects of criminal litigation including trial and appeal. Hanni graduated from the University of California, Berkeley with a degree in political science and an honors degree in history, and received his law degree with distinction from Pacific McGeorge School of Law, where he was elected to the Order of Barristers for his excellence in written and oral advocacy.

Although the U.S. Supreme Court in the 1980s previously authorized warrantless aerial surveillance in California v. Ciraolo, Dow Chemical Co. v. United States and Florida v. Riley, **all of those cases involved one-time fly-overs, not continuous surveillance**. Like GPS and cell phone tracking, **prolonged video**

surveillance of a person's home raises much more significant Fourth Amendment problems than a one-time observation. Non-stop video surveillance -- especially of a person's home -- allows the police to determine a person's associations and patterns of movements, information that can be extremely revealing.

C. Impact – vote neg

1. **Limits—their interpretation justifies affs that prevent any one time event – this shits the topic from continuing major programs to single abuses**

2. **Ground – occasional actions by government agencies can be curtailed or stopped without legislative action or even internal directives – affs to just avoid errors or events don't allow adequate disad ground**

Extensions: Must be Continuous

Surveillance must be continuous—one shot monitoring isn't the same

Noah 1(Norman, Surveillance of Meningococcal Disease in Europe, Norman Noah— Position In Public Health Expert¶ School of Hygiene and Tropical Medicine¶ Professor of Infectious Disease Epidemiology¶ London School of Hygiene and Tropical Medicine,Meningococcal Disease¶ Methods in Molecular Medicine™ Volume 67, 2001, pp 313-332)

2. Definition of Surveillance¶ The definition of surveillance is continuous analysis, interpretation, and¶ feedback of systematically collected data, generally using methods distin-¶ guished by their practicality, uniformity, and rapidity rather than by accuracy¶ or completeness. By observing trends in time, place, and persons, changes can¶ be observed or anticipated and appropriate action, including investigative or¶ control measures, can be taken (5).¶ This definition is useful because it illustrates the rough and ready approach¶ that can still work in surveillance. Useful information can often emerge from¶ the intelligent use of what may appear to be unpromising data. Nevertheless¶ constant efforts must be made to improve scope, accuracy and detail as the¶ surveillance develops.

Surveillance has to be continuous

Mata 11(Elida, EVALUATION OF SURVEILLANCE SYSTEM OF INFECTION DISEASES AND VACCINATION COVERAGE IN ALBANIA, Elida Mata—phD candidate at Universita Degli Studi Di Milano, https://air.unimi.it/retrieve/handle/2434/169570/169049/phd_unimi_R08236.pdf)

Epidemiological surveillance is the "continuous, systematic collection, analysis and interpretation of data for the improvement and evaluation of health systems, tightly integrated the timely dissemination of information collected, to all those who are devoted to interventions for prevention and control of diseases ".¶ By this definition, Alexander D. Langmuir, a well-known American epidemiologist, explained the concept of epidemiological surveillance for the first time and it was the first step towards a progressive development of surveillance systems (1).

There is a distinction between surveillance and monitoring—you have to be continuous to be t

Porta et al 14(Dictionary of Epidiomology, Miquel Porta is a Catalan physician, epidemiologist and scholar, Sander Greenland is an American statistician and epidemiologist known for his contributions to epidemiologic methods, meta-analysis, Bayesian inference and causal inference, among other topics, Miguel Hernan—proffessor of epidiomology at Harvard, Isabel dos santos Silva—London School of Hygine and tropical medicine, John Murray Last is an Emeritus Professor at the University of Ottawa, is a preeminent Canadian public health scholar, pp.274)

Surveillance¶ Systematic and continuous collection. analysis. and interpretation of data.¶ closely integrated with the timely and coherent dissemination of the results and ¶ assessment to those who have the right to know so that action can be taken. It is¶ an essential feature of epidemiological and public health practice.'l11c final phase¶ in the surveillance chain is the application of information to health promotion¶ and to disease prevention and control. A surveillance system includes a functional¶ capacity for data collection. analysis. and dissemination linked to public health¶ programs. lt is often **distinguished from MONITORING** by the¶ notion that **surveillance is continuous and ongoing** whereas monitoring tends to be¶ more **intermittent or episodic**.

Surveillance is continuous

Oxford Reference no date(Oxford University Press, http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100205753)

Monitoring Routine, often episodic measurement, performance analysis, or supervision of a process, activity, or function with the aim of detecting and correcting change or deviation from desirable levels. Data are usually collected, analyzed, and recorded. The monitor or monitoring agent may or may not have the role and responsibility to fine-tune the process, activity, or function aimed at correcting departures from desired levels. The distinction between monitoring and surveillance is that the former is often episodic or intermittent, whereas the latter is ongoing and continuous, and implies a greater commitment to interpret and disseminate the information obtained.

AT “we’re close enough”

ANY INTERRUPTIONS establish that surveillance isn’t’ continuous

Kearse 86 Circuit Judge Second Circuit Court of Appeals 04 F.2d 239 UNITED STATES of America, Appellee, v. Marilyn BUCK, Defendant-Appellant. No. 33, Docket 86-1200. United States Court of Appeals, Second Circuit. Argued Sept. 8, 1986. Decided Nov. 3, 1986. http://openjurist.org/804/f2d/239/united-states-v-buck

The government's proof, however, showed not continuous surveillance but surveillance that was significantly interrupted twice, once for 20-30 minutes and again for 1 1/2 hours, and it was physically possible for Buck to have obtained a weapon in either of these intervals. Nonetheless, while these gaps might have made the surveillance testimony insufficient in the absence of any other evidence to sustain the conviction, there was in fact other evidence from which the jury could rationally infer that Buck's acquisition of the weapon did not occur after she passed through Connecticut into Golden's Bridge, i.e., Buck's thousand-word description of the period extending from their 6:00 p.m. departure from the Bronx until their capture the next morning.

Continuous means NO INTERRUPTION – this distinguishes it from CONTINUAL

American Heritage Dictionary 11 http://www.thefreedictionary.com/continual

These adjectives mean occurring without stopping or occurring repeatedly over a long period of time. Continual is often restricted to what is intermittent or repeated at intervals: The continual banging of the shutter in the wind gave me a headache. But it can also imply a lack of interruption, the focus of continuous and ceaseless: The fugitive was living in a state of continual fear. The police put the house under continuous surveillance.

No breaks – continuous/continual distinction

CollinsCoBuild English Usage Dictionary 11

http://www.thefreedictionary.com/continuous ontinuous. (n.d.) American Heritage® Dictionary of the English Language, Fifth Edition. (2011). Retrieved July 7 2015 from http://www.thefreedictionary.com/continuous

Continual is usually used to describe something that happens often over a period of time. If something is continuous, it happens all the time without stopping, or seems to do so. For example, if you say 'There was continual rain', you mean that it rained often. If you say 'There was continuous rain', you mean that it did not stop raining.

AT no aff meets

Continuous surveillance now possible because of tech

Cavoukian 6/3/13 https://www.privacybydesign.ca/content/uploads/2013/06/pbd-surveillance.pdf Ann Cavoukian, Ph.D. Information and Privacy Commissioner Ontario, Canada

Unthinkable as it may be, the prospect of close and continuous surveillance is no longer simply the stuff of science fiction. Governments now have access to precise and affordable technologies capable of facilitating broad programs of indiscriminate monitoring. The unfettered use of these technologies raises the spectre of a true surveillance state.

Very predictable – USFG has already shifted to continuous internal monitoring

Jackson 6/5/11 http://gcn.com/articles/2011/06/15/continuous-monitoring-not-yet-mature.aspx William Jackson is freelance writer and the author of the CyberEye blog.

Federal IT security policy is shifting from a snapshot model of certification and accreditation of information systems to continuous monitoring of their security status.¶ Vendors already are providing the tools for this type of monitoring, but a lack of standardization has left administrators "drowning in noise," said Tony Sager, chief of the vulnerability analysis and operations group in the National Security Agency's Information Assurance Directorate.¶ "Solving cybersecurity is all information management," Sager said June 15 at the Symantec government security conference in Washington. "The vast majority of things facing us are known problems with known solutions," but agencies spend too much time and manpower handling remedial tasks that are not being automated because a lack of standardization makes correlating, analyzing and sharing data difficult.

Continuous programs now

Nicks 3/10/14 http://time.com/18317/nsa-leaks-edward-snowden-dni-james-clapper/Denver Nicks is a U.S. journalist and photographer and a staff writer for Time (New York City).[1] Hailing from Oklahoma, now based in New York, Nicks' work has appeared in The Nation, The Huffington Post, This Land, and The Daily Beast. He is the author of Private: Bradley Manning, WikiLeaks, and the Biggest Exposure of Official Secrets in American History (2012).[2]

The costly new program will watch for insider threats to prevent leaks and rogue agents¶ Rougly five million federal employees with security clearances are about come under much closer scrutiny, under a new internal continuous surveillance system designed to root out troublemakers in the intelligence community.

Its

Its Shell vs. Bitcoin

A. Interpretation –

1. Its is possessive

Webster No date (Meridan-Webster Online Dictionary http://www.merriam-webster.com/dictionary/its)

: Of or relating to it or itself especially as possessor, agent, or object of an action <going to *its* kennel> <a child proud of *its* first drawings> <*its* final enactment into law>

2. Surveillance is watching not number crunching

Greene and Rodriguez '14 (David: Senior Staff Attorney and Civil Liberties Director, Katitza: International Rights Director, May 28, 2014, Unnecessary and Disproportionate: How the NSA Violates International Human Rights Standards, https://www.eff.org/deeplinks/2014/05/unnecessary-and-disproportionate-how-nsa-violates-international-human-rights)

More broadly, the United States justifies the lawfulness of its communications surveillance by reference to distinctions that, considering modern communications technology, are irrelevant to truly protecting privacy in a modern society. The US relies on the outmoded distinction between "content" and "metadata," falsely contending that the latter does not reveal private facts about an individual. The US also contends that the collection of data is not surveillance—it argues, contrary to both international law and the Principles, that an individual's privacy rights are not infringed as long as her communications data are not analyzed by a human being. It's clear that the practice of digital surveillance by the United States has overrun the bounds of human rights standards. What our paper hopes to show is exactly where the country has crossed the line, and how its own politicians and the international community might rein it back.

B. Violation – The surveillance they describe isn't conducted by the USFG –

1. Fincen is under the BSA

Fincen 2015 http://www.fincen.gov/about_fincen/wwd/

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the "**Bank Secrecy Act**" (BSA). The BSA is the nation's first and most comprehensive Federal anti-money laundering and counter-terrorism financing (AML/CFT) statute.

2. Bank Secrecy Act enlists THIRD PARTIES – institutions do the surveillance for us

Bushouse 3/3/5 Kathy Bushouse Business Writer
http://counterterrorismblog.org/2008/02/the_bank_secrecy_act_for_begin.php

The Bank Secrecy Act (BSA) is actually a misnomer. It does not promote the sanctity of bank records as its name suggests. Rather, **the statute enlists banks as the eyes and ears of the government** in its efforts to prevent criminals from availing themselves of the civilized world's financial system. It does this by defining the circumstances in which banks are required to report customer activity to the government, spontaneously and without a request. The reports take the form of official BSA-mandated filings, like "currency transactions reports" (CTRs), which banks and car dealers file whenever they are party to a transaction involving over $10,000 in the hands of their customers. The government entity that receives BSA-required reports is the Financial Crimes Enforcement Network (FinCEN). It is the U.S. financial intelligence unit, an entity mandated by international law. This much is clear: banks do not have a privileged relationship with their customers, akin to lawyers or psychotherapists or priests. If they observe their customers involved in crime, they have an obligation to snitch on them

C. Impacts – vote neg

1. Limits– Financial surveillance is huge and surveys way different stuff

Bovard 15 The Bush Betrayal James Bovard (/bəˈvɑrd/; born 1956) is a libertarian author and lecturer whose political commentary targets examples of waste, failures, corruption, cronyism and abuses of power in government. He is the author of Attention Deficit Democracy, and eight other books. He has written for the New York Times, Wall Street Journal, Washington Post, New Republic, Reader's Digest, The American Conservative, and many other publications. His books have been translated into Spanish, Arabic, Japanese, and Korean.

The Patriot Act, in the name of antiterrorism, greatly increased the feds' power to investigate Americans financial affairs. As Newsweek reported, "Law-en- forcement agencies can submit the name of **any suspect** to the Treasury De- partment, which then orders financial institutions across the country to search their records for any matches. If they get a 'hit'—evidence that the person has an account—the financial institution is slapped with a subpoena for the per- son's records."1' Most of the warrantless financial searches the feds have or- dered under the Patriot Act have had no connection to terrorism. The Electronic Frontier Foundations Kevin Bankston observed: "There is no prob- able cause here. There is no judicial oversight. Yet the government can imme- diately query financial institutions across the nation to find out where you have an account or who you've done business with. It's not just if you have an account there, but **any record of a financial transaction**."18 The feds used Pa- triot Act financial sweep search powers in 2003 in "**Operation G-String**," an investigation of bribes involving **Las Vegas strip clubs.** Rep. Shelley Berkley (D-Nev.) complained: "It was never my intent to have the Patriot Act used as a **kitchen sink** for all of the law enforcement tool goodies that the FBI has been trying to get for the last decades. ... It is Patriot Act creep."19 Though the Patriot Act vastly increased the feds' financial surveillance pow- ers, the feds are not concentrating their artillery on the gravest threats to Amer- ican security. The Treasury Department's Office of Foreign Assets Control has a lead role in tracking down supposedly dangerous money. Unfortunately, this office has ten times more agents assigned to track violators of the U.S. embargo on Cuba as it has tracking Osama Bin Laden's money. Since 1994, it has col- lected almost a thousand times as much in fines for violations of the Cuban em- bargo as it has for terrorism financing violations ($8+ million vs. $9,425).20 Rep.

William Delahunt (D-Mass.) complained: "We're chasing **old ladies on bi- cycle trips in Cuba** when we should be concentrating on using a significant tool against shadowy terrorist organizations."21 Treasury spokeswoman Molly Millerwise responded: "There is no question where the administration stands on Cuba policy. We are equally dedicated to fighting the financial terrorism network." But to be equally dedicated to spiking Cuban bicycle tours and to thwarting an organization that knocks down American skyscrapers seems a bit demented. Millerwise stressed: "We do focus on Cuba. They are our nearest neighbor."22 This raises questions of whether maps used by the Bush adminis- tration have expunged both Mexico and Canada. However, neither Mexicans nor Canadians will be large voting blocs in Florida in Novembers presidential election. (Many Cuban-Americans avidly support the embargo on Castro.)

2. Ground – disad links stem from national security programs – shifting into financial regulation implicates an entirely different set of administrative challenges and policy effects

Its shell Vs. Welfare Surveillance

A. Interpretation - Its is possessive, so the US must be the possessor or agent of surveillance

Merriam Webster No date (http://www.merriam-webster.com/dictionary/its its AWEY)

Full Definition of ITS¶ : of or relating to it or itself especially as **possessor**, **agent**, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

B. Violation - States adminster actual welfare surveillance

Gilliom 7 ohn Gilliom is a Professor of Political Science and Associate Dean in the College of Arts and Sciences at Ohio University. Gilliom's research centers on the political and cultural dynamics surrounding the emergence of new forms of surveillance. With Torin Monahan, he is the author of SuperVision: An Introduction to the Surveillance Society (Chicago 2013), which develops an overview of contemporary practices of surveillance while working to reframe the ways in which people imagine and discuss surveillance. Gilliom's past books include, Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy (Chicago 2001)whichexplores how the words and actions of those who live under intensive monitoring challenge our prevailing ways of thinking about surveillance and privacy; and Surveillance, Privacy and the Law: Employee Drug Testing and the Politics of Social Control (Michigan 1994). He has written numerous articles on law, legal theory, and the politics of surveillance, serves on the Editorial Advisory Board of Surveillance and Society, and is active in professional associations. Gilliom's teaching on law, surveillance, and politics has earned him the University Professor Award, the College of Arts and Sciences Outstanding Teacher Award, and the Grasselli-Brown Outstanding Teaching Award. Since the Summer of 2012, has been working in the office of the College of Arts and Sciences, serving as Associate Dean with responsibility for financial management and strategic planning. Gilliom received his Ph D in 1990 at the University of Washington.

As with the workplace drug-testing movement of the 1980s (Gilliom 1994), the con- temporary changes in welfare surveillance came about through a fusion of political climate and technological innovation. In this ease, the computer revolution made possible, for the first time, comprehensive sweeps of huge bodies of data on main- frame computers. Later, the spread of networked desktop computers made it possible for individual caseworkers to be directly connected to the results of those sweeps. The computerization of welfare administration also enabled states to compile their entire caseloads into comprehensive statewide systems, to compare their caseload to that of other states and programs, and to evaluate the performance of individual case- workers or particular work units. In short, computerization brought an unprecedented level of bureaucratic transparency to welfare administration and facilitated levels and types of surveillance that were simply impossible under previous technologies. The politics of welfare administration arc almost indescribably complex. With some federal funding and guidance, some state funding and guidance, and some local funding and guidance, welfare administration is a **chaotic federalism** or, perhaps, **simply chaos**. Although states differ in how they run their AFDC programs, the general scenario is a poorly paid caseworker, in an office or cubicle in a **local welfare agency,** in the context of a county system, under the guidance of a state-level depart- ment, taking leadership from the state legislature, the Congress, the courts, and the federal bureaucracies. Needless to say, guidelines and directives, from whatever the source, arc unlikely to How smoothly through the system (Gardiner and Lyman 1984). Further, before Client Information Systems (CIS) revolutionized welfare administration, immense physical

barriers were created by an administrative and record-keeping system based entirely on paperwork and oral exchanges. Because of this, the older systems simply precluded much in the way of cost-effective scrutiny and review of local performance. Gardiner and Lyman describe it as ‘organized anarchy’ (1984, 55) and Florence Zeller’s 1981 study of efforts to reduce AFDC overpayments argued that the welfare system was ‘so much like a Chinese wooden puzzle’ that the effects of actions or techniques could not even be assessed. Unless, that is, there were ’major changes, such as a computer system’ (1981,84-85, quoted in Gardiner and Lyman 1984, emphasis added).

C. Impacts mean vote neg

1. Limiting to federal SURVEILLANCE is crucial - federal CURTAILMENT isn’t good enough – it would explode the topic because the federal government can restrict a vast array of PRIVATE actors or even PERSON to PERSON surveillance, like banning REVENGE PORN or school policies.

2. The welfare bureaucracy specifically is huge – 80 programs and a trillion dollars

Marshall Rector and Sheffiled 14 http://solutions.heritage.org/welfare/ Jennifer Marshall Director, Domestic Policy Studies Robert Rector Senior Research Fellow Rachel Sheffield Policy Analyst

Since the beginning of the War on Poverty in the 1960s, the federal welfare system has grown dramatically. Today, the federal government operates 80 different **means-tested welfare programs** that provide cash, food, housing, medical care, and social services to poor and lower-income Americans, and total government welfare is now nearly $1 trillion annually.

Its Shell Violation vs. NSA

A. Interpretation - Its is possessive, so the US must be the possessor or agent of surveillance

Merriam Webster No date (http://www.merriam-webster.com/dictionary/its its AWEY)

Full Definition of ITS¶ : of or relating to it or itself especially as **possessor**, **agent**, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

B. Violation - They restrict NSA surveillance, which is almost entirely PRIVATIZED

Hirsh 13 (http://www.nationaljournal.com/nationalsecurity/our-privatized-national-security-state-20130610)

Some of America's biggest social media and tech companies have been denying in recent days that they were aware of the National Security Agency's recently-exposed "PRISM" and telephone monitoring programs. But these denials obscure a larger truth: The government's massive **data collection and surveillance system** was largely built not by professional spies or Washington bureaucrats but by Silicon Valley and private defense contractors. So says Michael V. Hayden, the retired Air Force general who as director of the NSA from 1999 to 2006 was a primary mover behind the agency's rebirth from Cold War dinosaur into a post-9/11 terror-detection leviathan with sometimes frightening technical and legal powers. After many false starts, that transformation was achieved largely by drafting private-sector companies that had far more technical know-how than did the NSA, and contracting with them to set up and administer the technical aspects of these surveillance programs, Hayden toldNational Journal in an interview Sunday. "There isn't a phone or computer at Fort Meade [NSA headquarters] that the government owns" today, he says. That doesn't quite square with the popular image of the NSA as a shadowy confection of Big Brother and Big Government. Nor with the description of PRISM as merely "an internal government computer system," as Director of National Intelligence James Clapper called it over the weekend. Among these contributing companies reportedly is Palantir Technologies, the Palo Alto, Calif., company that several news outlets have identified as a close associate of the NSA's. Another is Eagle Alliance, a joint venture of Computer Sciences Corp. and Northrup Grumman that runs the NSA's IT program and describes itself on its website as "the Intelligence Community's premier Information Technology Managed Services provider." ("We made them part of the team," says Hayden.) Another is Booz Allen Hamilton, the international consultancy for which the reported whistleblower in the NSA stories, contractor Edward Snowden, began working three months ago. In 2002, Booz Allen Hamilton won a $63 million contract for an early and controversial version of the current data-mining program, called Total Information Awareness, which was later cancelled after congressional Democrats raised questions about invasion of privacy in the early 2000s. The firm's current vice-chairman, Mike McConnell, was DNI in the George W. Bush administration and, before that, director of the NSA. Clapper is also a former Booz Allen executive. In its outreach to private industry, the NSA occasionally overreached. The most notorious example was the $1.2 billion "Trailblazer" program developed

in the early-to-mid-2000s by SAIC and other companies, which led to the notorious attempted prosecution of another whistleblower, an NSA career employee, who sought to expose the program as a wasteful failure. "One of the things we tried to do with Trailblazer was to hire out a solution to our problems," Hayden says. "It was kind of a moonshot." Afterwards, Hayden said, "we began to do this in increments," still employing private-sector firms. "It's the companies responding to your requests… You look for a Palantir, and you make them part of our team." It's questionable whether any of the nine major U.S. Internet companies named in the PRISM stories were, like some of these contractors, also willing parts of the NSA "team." For the tech industry, especially the social-media companies, the controversy over the extent of the NSA's domestic data gathering has become an acute embarrassment. The NSA is said to have tapped into servers of the nine companies, but the heads of two of the biggest, Facebook founder Mark Zuckerberg and Google co-founder Larry Page, issued near-identical statements late last week saying neither of them had ever heard "of a program called PRISM" until the press reports. Yet for Hayden, who was one of the longest-serving NSA directors ever, remaking the stodgy Cold War spy agency into a **private-tech-sector enterprise** was a logical outgrowth of dramatic changes in the nature of both threats and technology. Well before 9/11, he says, he realized that as the Internet era was taking off, the NSA was failing in its mission to collect signals intelligence, or sigint, and effectively "going deaf," in the critique of the time. Hayden admitted this, surprisingly, in an open session of the House Permanent Select Committee on Intelligence in 2000, telling the members what he thought needed to happen if the NSA was going to get in front of the data. "This agency grew up in the Cold War. We came from the world of ENIGMA [the Nazi encryption device whose code was broken by the allies], for God's sakes. There were no privacy concerns in intercepting German communications to their submarines, or Russian microwave transmissions to missile bases," he says. "But now, I told them, all the data you want to go for is coexisting with your stuff. And the trick then, the only way NSA succeeds, is to get enough power to be able to reach that new data but with enough trust to know enough not to grab your stuff even though it's whizzing right by." That is still the issue today, Hayden says. And while he admits that critics have raised some legitimate concerns about proper monitoring and intrusions into privacy, inadvertent or not, he believes there are now adequate safeguards against undue intrusion into citizens' records. Hayden adds: "If we weren't doing this, there would be holy hell to raise." He notes that the 2002 joint Senate-House inquiry into 9/11 criticized the NSA for being "far too cautious." And as controversial as they might seem, programs such as PRISM were always intended to resolve the conflict he had laid out in 2000: how to monitor overseas conversations that are often routed through servers in the United States. "This is a home game for us," says Hayden. "Are we not going to take advantage that so much of it goes through Redmond, Washington?" During most of the Cold War, he says, the NSA was the cutting-edge innovator, helping to create the Internet and American computer industry back in the 1950s and '60. "We were America's Information-Age enterprise during America's Industrial Age. We had the habit of saying if we need it, we're going to have to build it," Hayden says. "But in the outside world there was a technological explosion in the two universes that had been at the birth of the agency almost uniquely ours: telecommunications and computers." By the time 9/11 arrived, the American tech industry was building the best stuff and had the best minds, so the NSA no longer had any choice but to enlist Silicon Valley's help. Signals intelligence "has to look like its target. We have to master whatever technology the target is using to turn his beeps and squeaks into something humanly intelligible," Hayden says. Not only was much of this traffic being routed through the United States, but the tech sector knew how to penetrate and "mine" it. He concludes: "Why would we not turn the most powerful telecommunications and computing management structure

on the planet to our use?" The NSA did. But now some of these companies may come to regret what is emerging as a public relations

C.Vote Negative:

1. Ground – this is bad because there's no literature because it's entirely covert

Canning 6/11/13 http://www.bradblog.com/?p=10057 Ernest A. Canning has been an active member of the California state bar since 1977. Mr. Canning has received both undergraduate and graduate degrees in political science as well as a juris doctor.

But what Senators Feingold and Church do not seem to have anticipated was that this Orwellian level of **surveillance** capabilities would be placed into the hands of **private cyber security contractors,** and their billionaire benefactors, whose financial interests lie in an exaggerated state of fear and secrecy. The merger between the NSA and private corporate power raises the specter that this never-ending "war on terror" has given rise to a national security apparatus whose real purpose is to protect wealth and privilege against the threat democracy poses to our increasingly stark levels of inequality. So, is it terrorism or democracy which is the real target of an omnipresent NSA surveillance capability? Or is it something else entirely?... Profitable surveillance One intriguing feature in Snowden's revelations is that he reportedly left his position at the CIA, where the average salary for a counterintelligence analyst is $75,000/year, to take a similar position with Booz Allen as an NSA analyst for $200,000/year. That point led Jeffrey Carr, author of Inside Cyber Warfare: Mapping the Cyber Underworld to Tweet on Sunday night: "For those of you wondering how a 29 yr old was earning $200K/yr, imagine what Booz Allen was billing him out for." As revealed in the above-cited New York Times article, "Booz Allen earned $1.3 billion, 23 percent of the company's total revenue, from intelligence work during its most recent fiscal year." It was hardly alone. According to Daniel Brian, the executive director of the Project on Government Oversight there are "a million private contractors" that have been "cleared to handle highly sensitive matters." NYT goes on to report: Companies like Booz Allen, Lockheed Martin and the Computer Sciences Corporation also engage directly in gathering information and providing analysis and advice to government officials. Booz Allen employees work inside the facilities at the N.S.A. And it's not just on U.S. soil and not just inside NSA. NextGov's Aliya Sternstein reported on Monday that a full "One-third of the 1,000 personnel slated to handle cyber weapons for Marine Corps troops overseas will be contractors, according to the chief of the service's cyber command." The problem entails not only greater expenditures of public monies for the profit-margins of private contractors, but a conflict-of-interest in which those who are profiting from the activity have a vested interest in seeing that perceptions of terrorist threats are omnipresent and unending so as to maximize the profits to be derived from an all-encompassing surveillance state. To seal the deal, by law, **almost complete secrecy** masks the profits derived from our insecurity.

2.Limits – huge number of private actors in surveillance

Amoore 6 Louise Amoore researches and teaches in the areas of global geopolitics, security, and political theory. She has particular interests in how contemporary forms of data, analytics and risk management are changing the techniques of border control and security. Louise is currently ESRC Global Uncertainties leadership fellow (2012-2015). Her fellowship project 'Securing Against Future Events' (SaFE): Preemption, Protocols and Publics' examines how inferred futures become the basis for new forms of security risk calculus. Louise's most recent book, The Politics of Possibility: Risk and Security Beyond Probability (2013) is published with Duke University Press. The book maps out the politics of possibility that has come to characterize contemporary life, tracing its genesis into the diverse worlds of risk consulting, computer science, commercial logistics, and data mining and visualization. The book depicts the coalescence of two distinctive orientations to the uncertain future: one, derived from the worlds of economy and commerce, that conceives of harnessing the economic possibilities and opportunities of risk; and the other, characteristic of sovereign security, that seeks to act upon low probability high impacty events via the arraying of multiple paths of possibility. In the coming together of these worlds, decisions are made on the basis of possible associations between people, objects, places and events. Louise Amoore's previous projects include two ESRC projects on the techniques and technologies of biometric and data-driven border: 'Contested Borders' (2007-2009) is a project within the ESRC's non-governmental public action programme. The work has produced new insights into how contemporary security practices enter and reconfigure public space. 'Data Wars: New Spaces of Governing in the European War on Terror' is a three year ESRC bilateral project in collaboration with Marieke de Goede at the University of Amsterdam. Researchers at Durham and Amsterdam investigated how data elements from the mobilities of people and money become redeployed for preemptive security.
http://www.sscqueens.org/sites/default/files/surveillance_society_appendices_06-1.pdf

IBM is one example of a **vast array** of companies who now have a designated **'homeland security practice'** offeri ng data management, biometric and identity services to governments. Other notable players are Accenture who lead the $10 billion Smart Borders Alliance in the US; Or acle, whose ubiquitous identity management systems are now being used by the UK and US as 'homeland secu rity solutions'; consumer electronics and telecoms companies such as Ericcson, who ar e contractors for the US Strategic Border Initiative (SBI); and Unisys and Microsoft, whose databases for the Schengen Information System (SYSII) were due to be implemented in 2006. The outsourcing of border surveillance practices to the private commercial sector raises a number of challenges for everyday privacy.

3.Value of education – debating privatization removes the potential for surveillance debate to activate AGENCY

Monahan 6 Surveillance and Security: Technological Politics and Power in Everyday Life Torin Monahan is a Professor of Communication Studies at The University of North Carolina at Chapel Hill. His research focuses on institutional transformations with new technologies, with a particular emphasis on surveillance and security

Naturally, an **informed public debate** about the merits of public surveillance should precede any community-watching scenario. Part of this should include asking questions of how to provide adequate oversight of surveillance practices, identifying—in advance—specific criteria for "successful" surveillance interventions, and specifying when and under what conditions the

systems will be disabled. **Absent such discussions**, this recommendation could easily fold into a "snitch" or "tattling" culture, where community members spy on each other and contribute to a society of widespread suspicion, discrimination, and social control (see Marx, Chapter 3, this volume). Unfortunately, efforts at achieving **transparency and democracy** are not only absent from the current surveillance landscape but being pushed further **beyond the horizon**, making them harder to imagine, let alone attain, with every passing moment. As the example of the EBT system for welfare recipients demonstrates, **the privatization of surveillance**, security, and public services delegates technical decisions to companies with **profit imperatives** rather than social equality agendas.

Ext – NSA violation

Interpretation – NSA data collection is not “surveillance”

Lewis 13 (Paul Lewis, Bevins prize winner “Feinstein defends NSA data collection and insists program is 'not surveillance”, 21 October 2013, http://www.theguardian.com/world/2013/oct/21/dianne-feinstein-defends-nsa-data-collection)

"The call-records program is not surveillance. It does not collect the content of any communication, nor do the records include names or locations," Feinstein wrote. "The NSA only collects the type of information found on a telephone bill: phone numbers of calls placed and received, the time of the calls and duration."

Ext – third party doesn't count

Third party data acquisition isn't surveillance

Redmond '14 (Valerie: J.D. Candidate at Fordham University School of Law, Fordham International Law Journal, Volume 37, Issue 3, 2014, Article 3, I Spy with My Not So Little Eye: A Comparison of Surveillance Law in the United States and New Zealand)

In the United States, the current state of surveillance law is a product of FISA, its amendments, and its strictures. An evaluation of US surveillance law proves that inherent loopholes undercut FISA's protections, which allows the US Government to circumvent privacy protections.182 The main problems are the insufficient definition of surveillance, the ability to spy on agents of foreign powers, the lack of protection against third party surveillance, and the ability to collect incidental information.183 First, a significant loophole arises in the interpretation of the term "surveillance."184 In order for information collection to be regulated by FISA, it must fall under FISA's definition of surveillance.185 This definition does not apply to certain National Security Letters, which are secret authorizations for the Federal Bureau of Investigation ("FBI") to obtain records from telephone companies, credit agencies, and other organizations if they merely certify that the information is relevant to an international terrorism investigation.186 National Security Letters are regularly used to circumvent FISA's warrant procedures.18

Domestic

1nc shell – xo 12333 not domestic

A-Interpretation

Domestic surveillance is anything means of gathering intelligence on U.S. persons

Small 8, Matthew L. Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf ||

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

B- Violation XO 12333 primarily searches for targets outside of the US

Domestic surveillance means that it must target US persons – not just be collected within the US

McCarthy, 6 – former assistant U.S. attorney for the Southern District of New York. (Andrew, "It's Not "Domestic Spying"; It's Foreign Intelligence Collection" National Review, 5/15, Read more at: http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

Eggen also continues the mainstream media's propagandistic use of the term "domestic surveillance [or 'spying'] program." In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not "domestic." A call is not considered "domestic" just because one party to it happens to be inside the U.S., just as an investigation is not "domestic" just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been "domestic spying." The calls NSA eavesdrops on are "international," not "domestic." If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating **both within and without** the U.S. That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence.

That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has

never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not “domestic surveillance.”

C- Limits:

Foreign Surveillance is too broad for even congress

Shoemaker 4/8, Tim Shoemaker, writer for Campaign for Liberty, “Can Congress Effectively Oversee the Vast Surveillance State?” April 8, 2015, http://www.campaignforliberty.org/can-congress-effectively-oversee-vast-surveillance-state ||

According to a new report from the Associated Press, the Senate Intelligence Committee is creating a sort of "secret encyclopedia" of America's surveillance programs. Surprisingly, this hasn't picked up as much media attention as it should. What the report actually tells us, without directly saying so, is Congress isn't capable of conducting informed, effective oversight of the surveillance state. Despite calling Snowden's actions "treason" at the time, it's clear that Feinstein and other members of Congress were completely unaware of the foreign surveillance being conducted under Executive Order 12333 -- and would never have learned of the programs being carried out by a small number of Executive Branch employees without his whistleblowing activities. Of course, what ought to upset us all is how the Intel Committee members HAD been briefed on some of the most controversial intelligence programs such as the surveillance of American's phone records and the PRISM program and other than Ron Wyden and Mark Udall, none of them seemed to be overly concerned about how Americans' civil liberties were being routinely violated. It should be clear to honest observers, the Church Committee reforms adopted in the 1970's to restrain the surveillance state have failed to do so.

1NC shell Drones not Domestic

A. Interpretation

Domestic surveillance means gathering info on US persons

Small 8, Matthew L. Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf ||

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B. Violation - the affirmative conducts surveillance those who cross the border not US citizens

U.S. persons do not include illegal aliens

Elsea and Bazan 06, Elizabeth B. Bazan and Jennifer K. Elsea, Legislative Attorneys, American Law Division, Congressional Research Service, "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information", 1/5/2006, http://nsarchive.gwu.edu/NSAEBB/NSAEBB178/surv36.pdf ||

"United States person" is defined in 50 U.S.C. § 1801(i) to mean: 77 (i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

Domestic surveillance means that it must target US PERSONS – not just be collected within the US

McCarthy, 6 – former assistant U.S. attorney for the Southern District of New York. (Andrew, "It's Not "Domestic Spying"; It's Foreign Intelligence Collection" National Review, 5/15, Read more at: http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

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Violation – Domestic surveillance is gathering intelligence on U.S. persons and the aff calls for the reduction of surveillance on non-U.S. persons

C- Limits:

Foreign Surveillance is too broad for even congress

Shoemaker 4/8, Tim Shoemaker, writer for Campaign for Liberty, "Can Congress Effectively Oversee the Vast Surveillance State?" April 8, 2015, http://www.campaignforliberty.org/can-congress-effectively-oversee-vast-surveillance-state ||

According to a new report from the Associated Press, the Senate Intelligence Committee is creating a sort of "secret encyclopedia" of America's surveillance programs. Surprisingly, this hasn't picked up as much media attention as it should. What the report actually tells us, without directly saying so, is Congress isn't capable of conducting informed, effective oversight of the surveillance state. Despite calling Snowden's actions "treason" at the time, it's clear that Feinstein and other members of Congress were completely unaware of the foreign surveillance being conducted under Executive Order 12333 -- and would never have learned of the programs being carried out by a small number of Executive Branch employees without his whistleblowing activities. Of course, what ought to upset us all is how the Intel Committee members HAD been briefed on some of the most controversial intelligence programs such as the surveillance of American's phone records and the PRISM program and other than Ron Wyden and Mark Udall, none of them seemed to be overly concerned about how Americans' civil liberties were being routinely violated. It should be clear to honest observers, the Church Committee reforms adopted in the 1970's to restrain the surveillance state have failed to do so.

XO Vio Ext –

XO is explicitly the opposite of domestic surveillance

Tracy, 15-(Sam, "NSA WHISTLEBLOWER JOHN TYE EXPLAINS EXECUTIVE ORDER 12333" 3/18, http://warrantless.org/2015/03/tye-12333/) Sam Tracy is a civil liberties activist focused on drug policy reform, technology law, and criminal justice. He works in Boston as a cannabis consultant at 4Front Advisors, where he is part of a team dedicated to ending prohibition and reducing harms by creating a responsible cannabis industry. He also works as the Social Media & Activism Director for TechFreedom, a technology policy think tank based in DC. A Connecticut native, Sam spent time in DC and now lives in Somerville, MA. He is also a Young Voices Advocate, and has previously served as Student Body President at UConn (2011-12), on the board of directors for the ACLU of Connecticut (2011-13), and as Chairman of Students for Sensible Drug Policy (2012-14).

It's been widely reported that the NSA, under the constitutionally suspect authority of Section 215 of the PATRIOT Act, collects all Americans' phone metadata. Congress has not yet passed any reforms to this law, but there have been many proposals for changes and the national debate is still raging. Yet Americans' data is also being collected under a different program that's entirely hidden from public oversight, and that was authorized under the Reagan-era Executive Order 12333.

That's the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled "Why I spoke out against the NSA." Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 governs data collected overseas, as opposed to domestic surveillance which is authorized by statute. However, because Americans' emails and other communications are stored in servers all over the globe, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

Domestic = in US borders

Domestic surveillance has to be confined within the national borders as to the definition

Avilez et al, 14 – (Ethics, History, and Public Policy Senior Capstone Project at Carnegie Mellon University (Marie, "Security and Social Dimensions of City Surveillance Policy" 12/10, http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf)

Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity within national borders; this can be carried out by federal, state and/or local officials

T vs. K affs: “Framework”

General Shell

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

1. "Resolved" before a colon reflects a legislative forum

Army Officer School '04 (5-12, "# 12, Punctuation – The Colon and Semicolon", http://usawocc.army.mil/IMI/wg12.htm)

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

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

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

Ericson '03 (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater's Guide, Third Edition, p. 4)

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

B. They claim to win the debate for reasons other than the desirability of topical action

C. You should vote negative:

1. debate is PROCESS not PRODUCT – the ONLY spillover is a particular set of DECISIONMAKING skills best acquired by SIMULATION

Hanghoj 8
http://static.sdu.dk/mediafiles/Files/Information_til/Studerende_ved_SDU/Din_uddannelse/phd_hum/afhandlinger/2009/ThorkilHanghoej.pdf Thorkild Hanghøj, Copenhagen, 2008 Since this PhD project began in 2004, the present author has been affiliated with DREAM (Danish Research Centre on Education and Advanced Media Materials), which is located at the Institute of Literature, Media and Cultural Studies at the University of Southern Denmark. Research visits have taken place at the Centre for Learning, Knowledge, and Interactive Technologies (L-KIT), the Institute of Education at the University of Bristol and the institute formerly known as Learning Lab Denmark at the School of Education, University of Aarhus, where I currently work as an assistant professor.

Joas' re-interpretation of Dewey's pragmatism as a "theory of situated creativity" raises a critique of humans as purely rational agents that navigate instrumentally through meansends-schemes (Joas, 1996: 133f). This critique is particularly important when trying to understand how games are enacted and validated within the realm of educational institutions that by definition are inscribed in the great modernistic narrative of "progress" where nation states, teachers and parents expect students to acquire specific skills and competencies (Popkewitz, 1998; cf. chapter 3). However, as Dewey argues, the actual doings of **educational gaming** cannot be reduced to rational means-ends schemes. Instead, the situated interaction between teachers, students, and learning resources are played out as contingent re-distributions of means, ends and ends in view, which often make classroom contexts seem "messy" from an outsider's perspective (Barab & Squire, 2004). 4.2.3. **Dramatic rehearsal** The two preceding sections discussed how Dewey views play as an imaginative activity of educational value, and how his assumptions on creativity and playful actions represent a critique of rational means-end schemes. For now, I will turn to Dewey's concept of dramatic rehearsal, which assumes that social actors deliberate by **projecting** and **choosing between** various scenarios for future action. Dewey uses the concept dramatic rehearsal several times in his work but presents the most extensive elaboration in Human Nature and Conduct: Deliberation is a dramatic rehearsal (**in imagination**) of various competing possible **lines of action**… [It] is an experiment in finding out what the various lines of possible action are really like (...) Thought runs ahead and foresees outcomes, and thereby avoids having to await the instruction of actual failure and disaster. An act overtly tried out is irrevocable, its consequences cannot be blotted out. An act tried out in imagination is not final or fatal. It is retrievable (Dewey, 1922: 132-3). This excerpt illustrates how Dewey views the process of decision making (deliberation) through the lens of an imaginative drama metaphor. Thus, decisions are made through the imaginative projection of outcomes, where the "**possible competing lines of action" are resolved through a thought experiment**. Moreover, Dewey's compelling use of the drama metaphor also implies that decisions cannot be reduced to utilitarian, rational or mechanical

exercises, but that they have emotional, creative and personal qualities as well. Interestingly, there are relatively few discussions within the vast research literature on Dewey of his concept of dramatic rehearsal. A notable exception is the phenomenologist Alfred Schütz, who praises Dewey's concept as a "fortunate image" for understanding **everyday rationality** (Schütz, 1943: 140). Other attempts are primarily related to overall discussions on moral or ethical deliberation (Caspary, 1991, 2000, 2006; Fesmire, 1995, 2003; Rönssön, 2003; McVea, 2006). As Fesmire points out, dramatic rehearsal is intended to describe an important phase of deliberation that does not characterise the whole process of making moral decisions, which includes "duties and contractual obligations, short and long-term consequences, traits of character to be affected, and rights" (Fesmire, 2003: 70). Instead, dramatic rehearsal should be seen as the process of "crystallizing possibilities and transforming them into directive hypotheses" (Fesmire, 2003: 70). Thus, deliberation can in no way guarantee that the response of a "**thought experiment**" will be successful. But **what it can do** is make the **process** of choosing more **intelligent** than would be the case with "blind" trial-and-error (Biesta, 2006: 8). The notion of dramatic rehearsal provides a valuable perspective for understanding educational gaming as a simultaneously real and imagined inquiry into domain-specific scenarios. Dewey defines dramatic rehearsal as the capacity to stage and evaluate "acts", which implies an "irrevocable" difference between acts that are "tried out in imagination" and acts that are "overtly tried out" with real-life consequences (Dewey, 1922: 132-3). This description shares obvious similarities with games as they require participants to **inquire into** and resolve **scenario-specific problems** (cf. chapter 2). On the other hand, there is also a **striking difference** between moral deliberation and educational game activities in terms of the **actual consequences** that follow particular actions. Thus, when it comes to educational games, acts are both imagined and tried out, but without all the real-life consequences of the practices, knowledge forms and outcomes that are being simulated in the game world. Simply put, there is a difference in realism between the dramatic rehearsals of everyday life and in games, which only "play at" or **simulate** the stakes and risks that characterise the "serious" nature of moral deliberation, i.e. a real-life politician trying to win a parliamentary election experiences more personal and emotional risk than students trying to win the election scenario of The Power Game. At the same time, the lack of real-life consequences in educational games makes it possible to design a relatively safe learning environment, where teachers can stage particular game scenarios to be enacted and validated for educational purposes. In this sense, educational games are able to provide a safe but meaningful way of letting teachers and students make mistakes (e.g. by giving a poor political presentation) and dramatically rehearse particular "**competing** possible **lines of action"** that are relevant to particular educational goals (Dewey, 1922: 132). Seen from this pragmatist perspective, the educational value of games is not so much a question of learning facts or giving **the "right" answers, but** more a question of exploring the **contingent outcomes** and **domain-specific processes** of **problem-based scenarios.**

2.The TOPICAL version of the aff that engages BOTH critique and INSTITUTIONAL SOLUTION is most liberatory in this context

Rice 2015, Rebecca Rice is a Graduate Student from the University of Montana, "Resisting NSA Surveillance: Glenn Greenwald and the public sphere debate about privacy", University of Montana Scholar Works 2015
(http://scholarworks.umt.edu/cgi/viewcontent.cgi?article=5439&context=etd)

The resistive subject Greenwald calls into being **would be an active public sphere participant who questions the surveillance state through public discussion**. Though this subject would take small steps to preserve online privacy, Greenwald spends much of NPTH explaining broader solutions to surveillance. **NPTH constitutes an attempt to use the public sphere to resist NSA surveillance. Resistance literature has often focused on small ways to resist surveillance power. Foucault focuses on personal, transversal struggles against surveillance power**, because surveillance power stems from compartmentalization and control over the body. The body is "approached as an object to be analyzed and separated into its constituent parts," forging the creation of a docile, useful subject (Dreyfus & Rabinow, 1983, p. 153). **As a result, struggles against this control are often anarchistic**, immediate, and focused on the individual (Foucault, 1983). Greenwald acknowledges this effect, and argues that **surveillance leads to the internal suppression of dissenting thoughts as a result. However, Greenwald does not advocate for just a small, personal solution** to this control over the body. **Greenwald's appeals are an example of using the public sphere as a form of resistance to surveillance.** Though this idea differs from acts of microresistance**, Greenwald's suggestions still fit with Foucauldian ideas of resistance, and show how the public sphere can play a part in that resistance.** Greenwald argues that **citizens can engage in public deliberation to negotiate with the surveillance state.** This echoes Foucault's idea of "not being governed quite so much," or critique (1997, p. 45). Foucault (1997) says that critique is based on several anchoring points, including universal rights. The act of critique asserts that the subject does not want to accept laws because they are unjust. Critique asks "What are the limits of the right to govern?" (Foucault, 1997, p. 46). People may engage in critique to negotiate the way they are being governed if they find the rules of governance to be contrary to natural rights. **Greenwald encourages critique through public deliberation about the limits of the surveillance state. He draws on American values like political freedom and freedom of expression, thus using American rights as a basis for critiquing surveillance.** Greenwald's call to action echoes Foucault's idea of critique.

3. NEGATIVE and PRECISE definitions political crucial in surveillance debate – blurring the definition of surveillance risks passivity

Fuchs 12, Christian Fuchs is a Professor of Social Media at the University of Westminster, "Web 2.0 Surveillance and Art", 2012, (https://books.google.com/books?id=4ujJXOoTQMQC&pg=PA121&dq=%22neutral+concepts+of+surveillance%22&hl=en&sa=X&ei=vc2aVZzBG4L8oQSGt6og&ved=0CCYQ6AEwAA#v=onepage&q=121&f=false)

"Living in 'surveillance societies' may throw up challenges of a fundamental—ontological—kind." Social theory is a way of clarifying such ontological questions that concern the basic nature and reality of surveillance. An important **ontological question** is how to **define surveillance**. One can distinguish **neutral concepts** and **negative concepts**. Neutral approaches define surveillance as the systematic collection of data about humans or non-humans. They argue that surveillance is a characteristic of all societies. An example for a well-known neutral concept of surveillance is that of Anthony Giddens. For Giddens, surveillance is "the coding of information relevant to the ad subject populations, plus their direct supervision by officials and administrators of all sorts." Surveillance means "the collation and integration of information put to administrative purposes." For Giddens, all forms of organization are in need of surveillance in order to work. "Who says surveillance says organization." As a consequence of his general

surveillance concept, Giddens says that all modern societies are information societies. Basic assumptions of neutral surveillance concepts are: There are positive aspects of surveillance: Surveillance has two faces, it is enabling and constraining Surveillance is a fundamental aspect of all societies. Surveillance is necessary for organization. Any kind of systematic information gathering is surveillance. For Max Horkheimer, neutral theories "define universal concepts under which all facts in the field in question are to be subsumed."Negative approaches see surveillance as a form of systemaric information gathering that is connected to **domination, coercion, the threat of using violence, or the actual use of violence** in order to attain certain goals and accumulate power; in many cases against the will of those who are under surveillance. Horkheimer says that the 'method of negation" means 'the denunciation of everything that mutilates mankind and impedes its free development." For Herbert Marcuse, negative concepts "are an indictment of the totality of the existing order?" The best-known negative concept of surveillance is that of Michel Foucault. For Foucault, surveillance is a form of disciplinary power. Disciplines are "general formulas of domination." They enclose, normalize, punish, hierarchize, homogenize, differentiate, and exclude." The "means of coercion make those on whom they are applied clearly visible."" A person that is under surveillance 'is seen, but he does not see; he is the object of information, never a subject in communication."" The surveillant panopticon is a "machine of power." Neutral concepts of surveillance put phenomena such as taking care of a baby and the electrocardiogram of a myocardial infarction patient on one analytical level with pre- emptive state-surveillance of personal data of citizens for fighting terrorism, economic surveillance of private data, or online behavior by Internet companies such as Facebook, Google, and so on, for accumulating capital by targeted advertising, Neutral concepts might therefore be used for legitimizing coercive forms of surveillance by arguing that surveillance is ubiquitous and therefore unproblematic. **If everything is surveillance**, it becomes difficult to criticize coercive surveillance **politically**. Given these drawbacks of neutral surveillance concepts, I prefer to define surveillance as a **negative concept:** surveillance is the collection of data on individuals or groups that are used so that control and discipline of behavior can be exercised by the threat of being targeted by violence. A negative conceit of surveillance allows drawing a clear distinction of what is surveillance and what is not

Ext: Institutional engagement key

Deliberative model interrupt emergency, restoring a viable public sphere

Rice 15, Rebecca Rice is a Graduate Student from the University of Montana, "Resisting NSA Surveillance: Glenn Greenwald and the public sphere debate about privacy", University of Montana Scholar Works 2015 (http://scholarworks.umt.edu/cgi/viewcontent.cgi?article=5439&context=etd)

Journalists play an important role in the display of leaked information, and Greenwald's case contributes to rhetorical scholars' limited studies of this process. Other scholars have found that "new media" or data dumps are framed as reckless breaches of national security (Cloud, 2014; Hindman & Thomas, 2014). Greenwald represents the most successful and high profile reporting of leaked information after 9/11. His navigation of common accusations against leakers has been successful for several reasons: 1) the debunking of the national emergency, 2) an emphasis on journalistic discretion, and 3) a careful portrayal of the agent who leaked information. First, Greenwald spends much time demonstrating that **the public sphere has time to deliberate about national security.** Previous scholarship demonstrates that **an emphasis on exigency has given the state great control of national security information** (Davis & Albert, 2011; Domke et al., 2006; Hasian, 2006; Taylor, 2007). **Fear appeals have controlled public deliberation** during times of war, including nontraditional conflicts like The Cold War and The War on Terror. Greenwald's **refutations of the need for secrecy are essential for public deliberation.** However, his reporting may also be more successful simply because of timing, and this limitation is important to note. **The NSA leaks are the most recent leaks and therefore have occurred the longest after the 9/11 terrorist attacks. Greenwald (2014) notes that "Americans now consider the danger of surveillance of greater concern than the danger of terrorism" for the first time since 9/11 (p. 197)**. Second, an emphasis on journalistic judgment differentiates the NSA leaks from past "data dumps" of large amounts of information. Greenwald calls for journalistic discretion in the leak of classified information, but goes beyond that to encourage journalists to use their judgment to actively report this information to the public. Greenwald demonstrates a concern about the role of journalists in the public sphere. This concern contributes to the ongoing discussion of journalism by public sphere scholars. Greenwald supports the idea of journalists as special actors within the public sphere who should supply information to the public for debate (Bitzer, 1987; Hauser, 1987). On an activist level, this finding could help future journalists and whistleblowers to judge and release information in a way which does not harm national security and promotes robust public discussion. Third, portraying Snowden carefully and with transparency contributed to the effectiveness of the NSA leaks. This study complements Cloud's 2014 examination of Chelsea Manning. Cloud (2014) found that the media depicted Manning as sexually confused or an enemy of the state. Manning's case differs from Snowden's because Manning did not employ a reporter to cover her leaked information. From a critical perspective, unfortunately, Snowden may have also reaped the benefits of being cisgender. Greenwald worked tirelessly to portray Snowden as a "normal guy," and accusations of sexual deviance did not gain much traction (though, notably, were still attempted to discredit Snowden, see footnote). Along with this advantage, Greenwald's coverage of Snowden was able to introduce some more successful narratives for leakers, for example that Snowden was courageous and patriotic. Greenwald's case is one of many instances of resistance to security measures post-9/11, an area which warrants greater study by rhetorical scholars. Much work has focused on security and government rhetoric, but less is focused on critical examination of and resistance to

state surveillance. Scholars should continue to ask why some resistive messages gain traction and others do not. Ultimately, Greenwald started a successful conversation about US surveillance, but this conversation has been slow to turn into reform. The documents Snowden leaked shocked many Americans and received ample news coverage from journalists worldwide, but few have taken up Greenwald's call to activism against the US surveillance state. Though American public opinion has changed slightly, no major legal reforms or social movements have occurred as a result of the NSA leaks. This inactivity reflects a flaw in Greenwald's rhetoric— which provides an extensive analysis of the problem, but vague solutions. However**, Greenwald's solutions provide an important critique of surveillance, by pointing out that personal acts of resistance do not resolve systemic harms caused by mass surveillance, especially the control that surveillance creates over freedom of expression.** Greenwald's **focus on harms caused to democracy leads to a call to action for the public sphere, and a taking back of surveillance power from isolated technical communities. By highlighting the conflicting values of the public and the NSA, he demonstrates how the public sphere can be used to resist surveillance.**

Institutional engagement hrough debate crucial to resist surveillance

Rice 15, Rebecca Rice is a Graduate Student from the University of Montana, "Resisting NSA Surveillance: Glenn Greenwald and the public sphere debate about privacy", University of Montana Scholar Works 2015 (http://scholarworks.umt.edu/cgi/viewcontent.cgi?article=5439&context=etd)

Greenwald links this solution to personal control, however, by explaining how surveillance impacts our individual thoughts and actions. In these ways, his solution does fit with some of Foucault's ideas of a transversal struggle, namely that his solution struggles with state control over the individual and critiques power for its effects (Foucault, 1983). Greenwald (2014) says that "people radically change their behavior when they know they are being watched" (p. 173) as he demonstrates the effects of surveillance power. He then links these behavioral changes to the suppression of free speech, saying that "mass surveillance kills dissent in a deeper and more important place as well: in the mind" (2014, p. 177-178). Greenwald argues that surveillance power controls the individual and critiques power for its effects. Though **Greenwald is encouraging a public debate,** he claims that **this debate will help negotiate surveillance power that creates control over individual bodies,** thus drawing on some of Foucault's ideas of resistance as he talks about the public sphere. This solution demonstrates the tension between the surveillance state and the democratic republic, as Greenwald wrestles with the US as both a security state and a democracy. He ponders this contradiction as he explains the panopticon, saying **Democracy requires accountability and consent of the government, which is only possible if citizens know what is being done in their name.** The presumption is that, with rare exception, they will know everything their political officials are doing...conversely the presumption is that the government, with rare exception, will not know anything that law-abiding citizens are doing. That is why we are called private individuals, functioning in our private capacity. Transparency is for those who carry out public duties and exercise public power. Privacy is for everyone else (2014, p. 209). **The fact that the NSA knows more about US citizens than citizens know about the agency poses challenges to this model of government.** As a result, **Greenwald encourages the exercise of democratic rights to combat surveillance. The public sphere has the capability to put pressure on government officials and demand surveillance reform.** Greenwald asks us to **resist using the public sphere. This** solution arises as a result of the rhetorical situation, which pits privacy against security. Greenwald encourages

the audience to select privacy. He spends time deescalating the permanent emergency of terrorism to demonstrate that NSA surveillance is abusive and unnecessary, and then appeals to values which support public deliberation. Public deliberation can be viewed as a form of resistance through Greenwald's rhetoric. Though many scholars have looked at microresistance to surveillance power**, Greenwald asks the public to resist through deliberation, which he considers an antidote to surveillance. This solution grapples with the contradiction of the US as surveillance state and the US as a democracy. The public sphere will continue to discuss these competing values**, sharing in alternative projections of the future (Goodnight, 2012a). Greenwald encourages the public **to create a shared vision of a state with transparency in the public sphere and privacy for citizens**.

Topicality- Wake

Definitions

Curtail

Curtail = To reduce/limit

Curtail means to reduce or limit

Merriam-Webster No Date (No Date, "Curtail", http://www.merriam-webster.com/dictionary/curtail)

Curtail: to reduce or limit (something)

Curtail (Drones) = self-restriction

Curtailing drones has happened through self-restriction—we're T Baker '13 (Peter Baker, "Pivoting From a War Footing, Obama Acts to **Curtail Drones**", New York Times, http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html, May 23rd, 2013)

WASHINGTON – Nearly a dozen years after the hijackings that transformed America, President Obama said Thursday that it was time to narrow the scope of the grinding battle against terrorists and begin the transition to a day when the country will no longer be on a war footing.

Declaring that "America is at a crossroads," the president called for redefining what has been a global war into a more targeted assault on terrorist groups threatening the United States. As part of a realignment of counterterrorism policy, he said he would **curtail the use of drones**, recommit to closing the prison at Guantanamo Bay, Cuba, and seek new limits on his own war power.

Domestic

Domestic = own country

Domestic means your own country
Merriam-Webster No Date (No Date, “Domestic”, http://www.merriam-webster.com/dictionary/domestic)

Domestic: of, relating to, or made in your own country: relating to or involving someone's home or family: relating to the work (such as cooking and cleaning) that is done in a person's home

Surveillance

Surveillance = watching something/someone

Surveillance means the act of watching someone or something
Merriam-Webster No Date (No Date, "Surveillance", http://www.merriam-webster.com/dictionary/surveillance)

Surveillance: the act of carefully watching someone or something especially in order to prevent or detect a crime

Domestic Surveillance

AT Domestic Surveillance = about Terrorism

Domestic surveillance is categorized by *means of communication or surveillance not content*—their T interp that domestic surveillance is only about terrorism distorts the literature

Stray '13 (Jonathan Stray, "FAQ: What You Need to Know About the NSA's Surveillance Programs", http://www.propublica.org/article/nsa-data-collection-faq, August 5th, 2013)

There have been a lot of news stories about NSA surveillance programs following the leaks of secret documents by Edward Snowden. But it seems the more we read, the less clear things are. We've put together a detailed snapshot of what's known and what's been reported where.

What information does the NSA collect and how?

We don't know all of the different types of information the NSA collects, but several secret collection programs have been revealed:

A record of most calls made in the U.S., including the telephone number of the phones making and receiving the call, and how long the call lasted. This information is known as "metadata" and doesn't include a recording of the actual call (but see below). This program was revealed through a leaked secret court order instructing Verizon to turn over all such information on a daily basis. Other phone companies, including AT&T and Sprint, also reportedly give their records to the NSA on a continual basis. All together, this is several billion calls per day.

Email, Facebook posts and instant messages for an unknown number of people, via PRISM, which involves the cooperation of at least nine different technology companies. Google, Facebook, Yahoo and others have denied that the NSA has "direct access" to their servers, saying they only release user information in response to a court order. Facebook has revealed that, in the last six months of 2012, they handed over the private data of between 18,000 and 19,000 users to law enforcement of all types -- including local police and federal agencies, such as the FBI, Federal Marshals and the NSA.

Massive amounts of raw Internet traffic The NSA intercepts huge amounts of raw data, and stores billions of communication records per day in its databases. Using the NSA's XKEYSCORE software, analysts can see "nearly everything a user does on the Internet" including emails, social media posts, web sites you visit, addresses typed into Google Maps, files sent, and more. Currently the NSA is only authorized to intercept Internet communications with at least one end outside the U.S., though the domestic collection program used to be broader. But because there is no fully reliable automatic way to separate domestic from international communications, this program also captures some amount of U.S. citizens' purely domestic Internet activity, such as emails, social media posts, instant messages, the sites you visit and online purchases you make.

AT Domestic Surveillance = about Terrorism

Domestic surveillance includes electronic surveillance *independent* of the content

Small '8 (Matthew Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis", cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small, 2008)

This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Adhering to the above definition allows for a focused analysis of **one part of** President Bush's **domestic surveillance policy** as its implementation relates to the executive's ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis

Domestic Surveillance = Too Broad

Narrowing the scope of "domestic surveillance" is a prerequisite to evaluating whether or not the policies are good or bad—current understandings are overly broad which proves the necessity of our interp

Small '8 (Matthew Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis", cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small, 2008)

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). **With this definition domestic surveillance remains an overly broad concept.**

T Shells

Domestic Surveillance = for Human Terrorism (Ag aff)

1NC T

A. Definition—domestic surveillance is only for human terrorism

DOJ '6 (U.S. Department of Justice, "The NSA Program to Detect and Prevent Terrorist Attacks Myth v. Reality", justice.gov/.../nsa_myth_v_reality.pdf, January 27th, 2006)

Myth: The NSA program is a domestic eavesdropping program used to spy on innocent Americans.

Reality: The NSA program is **narrowly focused**, aimed only at international calls and **targeted at al Qaeda and related groups.** Safeguards are in place to protect the civil liberties of ordinary Americans.

The program only applies to communications where one party is located outside of the United States.

The NSA terrorist surveillance program described by the President is **only focused** on members of Al Qaeda and affiliated groups. Communications are only intercepted if there is a reasonable basis to believe that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda.

The program is designed to target a key tactic of al Qaeda: infiltrating foreign agents into the United States and controlling their movements through electronic communications, just as it did leading up to the September 11 attacks.

B. Violation—they don't curtail related to human terrorism, they eliminate the Animal Disease Traceability Program

C. Standards—

Limits—infinite number of things tangentially related to surveillance only crafting the topic around the question of human terrorism creates a predictable stasis

Ground—core negative offense revolves around questions of human terrorism

D. Voting Issue—topicality at camp sets a precedent and deters bad aff's

***2NC Arguments to Integrate

---OV/Interp

Our interpretation is that domestic surveillance is only for human terrorism—that's DOJ—prefer our interpretation of the topic

Evidence quality—only the DOJ has the authority to craft a legal opinion of domestic surveillance which a topicality debate on this topic requires and their opinion is by far more important on this question than [whoever wrote the 2AC interp ev]**—we should emulate their vision**

Our vision includes aff's that curtail wiretapping, email monitoring, geographic location, etc. ***for things related to human terrorism*** **which gives the aff sufficient flexibility**

This matters—it's the beginning of the year and camp debates impact people's ideological formation and interpretation of the topic

---Limits

Limits—the vast majority of the best literature surrounding domestic surveillance is about human terrorism—they skirt that and exponentially expand the number of cases the negative would be forced to prepare for;

-animal tracking

-recycling

-phone tapping unfaithful significant others

-spying on those who support or are against a certain issue

-food purchases

-innocent people's movement

-snapchat info

-water usage

Any interpretation which allows these affs and more would drastically decrease the quality of debates by irreparably skewing preparation towards the aff-- that makes specific clash impossible and creates a race to terrible generics —err neg they get to speak first and last and the case for reducing domestic surveillance on non-terrorism related issues is overwhelming persuasive

Our case list accurately reflects their vision of debate—there are an infinite number of things they could curtail domestic surveillance on, for example library monitoring

Small '8 (Matthew Small, United States Air Force Academy, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis", cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small, 2008)

The USA Patriot Act provided much of the latitude under which President Bush operated. Section 203 of the act allowed the government to intercept oral, wire and electronic communications related to terrorism. The act failed to detail what exactly "communications related to terrorism" are, giving the executive a large umbrella of protection. Section 212 amends section 2702 of Title 18-Crimes and Criminal Procedure allowing government entities to require communications companies to release customer information. This section superseded Title II of the ECPA. The Act also expanded the scope of the FBI's domestic surveillance by allowing the Bureau to monitor library checkout lists and internet use. More importantly, the American

public favored the act.[1] Even today support still remains for the act.[2] As such, the president did not act outside the public mandate but merely did what he saw fit to ensure national security.

[1] A Gallup Poll taken in 2002 and 2003 asked the question, "Do you think the Bush administration has gone too far, has been about right, or has not gone far enough in restricting people's civil liberties in order to fight terrorism?" In 2002 60% responded "about right" and 55% responded the same in 2003.

[2] A poll conducted by ABC News showed 59% of respondents in favor of extending the USA Patriot Act.

---Ground

Ground—the case for domestic surveillance rests squarely on the shoulders of the terrorism DA as will 2N's across the country—only our interpretation gives the negative some stable offense—otherwise the aff gets to pick any issue to curtail domestic surveillance on

Curtail = Impose a Restriction (Lee's Drones)

1NC T

A. Definition—curtail means an external body has to impose a restriction not to self-check an action

Roberts '13 (Dan Roberts, The Guardian, "Patriot Act author prepares bill to put NSA bulk collection 'out of business'", http://www.theguardian.com/world/2013/oct/10/nsa-surveillance-patriot-act-author-bill, The Guardian, October 10th, 2013)

The conservative Republican who co-authored America's Patriot Act is preparing to unveil bipartisan legislation that would dramatically **curtail** the **domestic surveillance powers it gives to intelligence agencies.**

Congressman Jim Sensenbrenner, who worked with president George W Bush to give more power to US intelligence agencies after the September 11 terrorist attacks, said the intelligence community had misused those powers by collecting telephone records on all Americans, and claimed it was time "to put their metadata program out of business".

His imminent bill in the House of Representatives is expected to be matched by a similar proposal from Senate judiciary committee chair Patrick Leahy, a Democrat. It pulls together existing congressional efforts to reform the National Security Agency in the wake of disclosures by whistleblower Edward Snowden.

Sensenbrenner has called his bill the Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-Collection, and Online Monitoring Act – or USA Freedom Act, and a draft seen by the Guardian has four broad aims.

It seeks to limit the collection of phone records to known terrorist suspects; to end "secret laws" by making courts disclose surveillance policies; to create a special court advocate to represent privacy interests; and to allow companies to disclose how many requests for users' information they receive from the USA. The bill also tightens up language governing overseas surveillance to remove a loophole which it has been abused to target internet and email activities of Americans.

Many lawmakers have agreed that some new legislation is required in the wake of the collapse in public trust that followed Snowden's disclosures, which revealed how the NSA was collecting bulk records of all US phone calls in order to sift out potential terrorist targets.

In July, a temporary measure to defund the NSA bulk collection programme was narrowly defeated in a 217 to 205 vote in the House, but Sensenbrenner said the appetite for greater privacy protections had only grown since.

"Opinions have hardened with the revelations over the summer, particularly the inspector general's report that there were thousands of violations of regulations, and the disclosure that NSA employees were spying on their spouses or significant others, which was very chilling," he told the Guardian in an interview.

Instead, the main opposition to Sensenbrenner and Leahy's twin-pronged effort is likely to come from the chair of the Senate intelligence committee, Dianne Feinstein, who is supportive of the NSA but who has proposed separate legislation focusing on greater transparency and checks rather than an outright ban on bulk collection.

B. Violation—they mandate a self-executing decrease on drones by the USFG which is distinct from an externally imposed restriction on drone use

C. Standards—

Limits—infinite number of ways a multitude of bodies could decrease overall drone use but there's a clear limit on the agents who can mandate a decrease in drones

Ground—self-imposed decreases skirt core negative offense which revolves around questions of oversight and external regulation

D. Voting Issue—topicality at camp sets a precedent and deters bad aff's

***2NC Arguments to Integrate

---OV/Interp

Our interpretation is that curtail requires that a restriction is imposed by an external body—that's Roberts—prefer our interpretation of the topic

Evidence quality—only our evidence speaks to how debates around curtailing domestic surveillance actually play out—prefer it over their ev which is speculative at best—current debates are solely about external bodies regulating and overseeing operations by the NSA whether they are coming from the left or the right—no self-restrictions—we should emulate those debates

Our vision includes aff's that have Congress curtail Obama's drone use, the Courts strike down certain surveillance programs or have someone other than the NSA restrict NSA powers which gives the aff sufficient flexibility

This matters—it's the beginning of the year and camp debates impact people's ideological formation and interpretation of the topic

---Limits

Limits—the vast majority of the best literature surrounding domestic surveillance is about external oversight and authorization—they skirt that and exponentially expand the number of cases the negative would be forced to prepare, for example;

-Obama decrease executive use of intelligence gathering: drones, wiretapping, email collection, etc.

-the NSA decrease *any part* of its domestic surveillance: meta-data, phone tapping, search engine usage, etc.

this drastically decreases the quality of debates by irreparably skewing preparation towards the aff—that makes specific clash impossible and creates a race to terrible generics—err neg they get to speak first and last and the case for a self-imposed reduction in domestic surveillance is overwhelming persuasive

---Ground

Ground—the case for domestic surveillance relies on external oversight being good—only our interpretation gives the negative some stable offense—otherwise the aff gets to pick any way to curtail domestic surveillance on

Court Ruling (NSA)

1NC T

A. Definition—curtail domestic surveillance means the aff has to mandate a restriction on domestic surveillance

B. Violation—they change the legal status of an NSA program but don't directly mandate a curtailment of domestic surveillance

C. Standards—

Effects T—they might lead to curtailing domestic surveillance but do not mandate it, they simply change the legal status of one NSA program but don't ensure domestic surveillance decreases

D. Voting Issue—topicality at camp sets a precedent and deters bad aff's

***2NC Arguments to Integrate

---OV/Interp

This T arg may seem picky but makes an important distinction—our interpretation of the topic is that the aff has to mandate a decrease is domestic surveillance rather than possibly leading to it—

Our vision includes any aff that curtails surveillance but excludes aff's that lead to it—for example they could read the Drones aff or eliminate the Animal Disease Traceability Program along with many others which gives the aff sufficient flexibility

This matters—it's the beginning of the year and camp debates impact people's ideological formation and interpretation of the topic

---FX T/Limits

it's an effects T arg and is the only way to prevent a functionally unlimited topic—the impact to this limits arg is massive—there are an infinite number of things that could be done that might decrease domestic surveillance, for example;

-cut funding to the NSA

-rule that it's illegal for search engines to give out user information

-incentivize people to keep online profiles anonymous

-restrict Obama's war powers

-make a public campaign against Islamaphobia

this drastically decreases the quality of debates by irreparably skewing preparation towards the aff— that makes specific clash impossible and creates a race to terrible generics—err neg they get to speak first and last and will always have better ev defending the way they cause a decrease in domestic surveillance

---Ground

Ground—neg ground revolves around curtailing domestic surveillance being bad *not* around changing the legal status of surveillance programs being bad—only our interpretation gives the negative some stable offense—otherwise the aff gets to pick anything that might lead to curtailing domestic surveillance

Framework

1NC FW

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

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

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

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

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

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

Debate is a means of **settling differences**, so there must be a controversy, a difference of opinion or a conflict of interest **before there can be a debate**. If everyone is in agreement on a feet or **value** or policy, there is no **need or opportunity** for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. **Controversy is an essential prerequisite of debate**. Where there is no **clash** of ideas, proposals, interests, or expressed positions of issues, there is no debate. Controversy invites decisive choice between competing positions. Debate **cannot produce effective decisions** without **clear identification of a question** or questions to be answered. For example, general argument may occur about the **broad topic** of illegal immigration. How many illegal immigrants live in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the **topic area** of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without **focus on a particular question** and **identification of a line demarcating sides** in the controversy. To be discussed and **resolved effectively**, controversies are best understood when

seated clearly such that all parties to the debate **share an understanding about the objective of the debate**. This enables focus on substantive and objectively identifiable issues facilitating comparison of **competing argumentation leading to effective decisions.** Vague understanding results in **unfocused deliberation** and **poor decisions**, general feelings of tension without opportunity for resolution, frustration, and emotional distress, as evidenced by the failure of the U.S. Congress to make substantial progress on the immigration debate. Of course, arguments may be presented without disagreement. For example, claims are presented and supported within speeches, editorials, and advertisements even without opposing or refutational response. Argumentation occurs in a range of settings from informal to formal, and may not call upon an audience or judge to make a **forced choice** among competing claims. Informal discourse occurs as conversation or panel discussion without demanding a decision about a dichotomous or yes/no question. However, **by definition**, debate requires "reasoned **judgment on a proposition**. The proposition is a statement about which competing advocates will offer alternative (pro or con) argumentation calling upon their audience or adjudicator to decide. The proposition provides **focus for the discourse** and **guides the decision process.** Even when a decision will be made through a process of compromise, it is important to identify the beginning positions of competing advocates to begin **negotiation** and movement toward a center, or consensus position. It is frustrating and usually unproductive to attempt to make a decision when deciders are unclear as to what the decision is about. The proposition may be implicit in some applied debates ("Vote for me!"); however, when a vote or consequential decision is called for (as in the courtroom or in applied parliamentary debate) it is essential that the proposition be **explicitly expressed** ("the defendant is guilty!"). In academic debate, the proposition provides **essential guidance for the preparation** of the debaters prior to the debate, the case building and discourse presented during the debate, and the **decision to be made by the** debate **judge** after the debate. Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They' are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same **concerned citizen**, facing a complex range of issues, might arrive at an unhelpful decision, such as "**We ought to do something about this"** or, worse, "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to **express their frustrations**, anger, disillusionment, and emotions regarding the schools, but without a **focus for their discussions**, they could **easily agree** about the sorry state of education **without finding points of clarity or potential solutions. A gripe session would follow.** But if a **precise question** is posed—such as "What can be done to improve public education?"—then a more **profitable area of discussion is opened up** simply by **placing a focus** on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies, The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved; That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a **manageable form**, suitable for debate. They provide specific policies to be investigated and aid discussants in **identifying points of difference**. This focus contributes to better and more informed decision making with the **potential for better results**. In academic debate, it provides **better depth of argumentation** and enhanced opportunity for reaping the educational benefits of participation. In the next section, we will consider the challenge of framing the proposition for debate, and its role in the debate. To have a productive debate, which **facilitates effective decision making** by **directing and placing limits on the decision to be made,** the basis for argument should be **clearly defined**. If we merely talk about a topic, such as '"homelessness," or "abortion," Or "crime," or "global warming," we are likely to have an interesting discussion but not to establish a profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" **is debatable**, **yet** by itself **fails to provide much basis for dear argumentation**. If we take this statement to mean Iliad the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose, perhaps promoting positive social change. (Note that "loose" propositions, such as the example above, may be defined by their advocates in such

a way as to facilitate a clear contrast of competing sides; through definitions and debate they "become" clearly understood statements even though they may not begin as such. There are formats for debate that often begin with this sort of proposition. However, in any debate, at some point, effective and meaningful discussion relies on identification of a clearly stated or understood proposition.) Back to the example of the written word versus physical force. Although we now have a general subject, we have not yet stated a problem. **It is still too broad**, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, cyber-warfare, disinformation, or what? What does it mean to be "mightier" in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treaty with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely **avoid creative interpretation** of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the **guidance provided by focus on a particular point of difference**, which will be outlined in the following discussion.

b. Vote neg

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

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

Ryan **Galloway 7**, Samford Comm prof, Contemporary Argumentation and Debate, Vol. 28, 2007

Debate as a dialogue sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. The affirmative side is set by the topic and fairness requirements. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure.¶ Setting the affirmative reciprocally sets the negative. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table.¶ When one side takes more than its share, competitive equity suffers. However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it fundamentally **denies the personhood of the other participant** (Ehninger, 1970, p. 110). A pedagogy of debate as dialogue takes this respect as a fundamental component. A desire to be fair is a fundamental condition of a dialogue that takes the form of a demand for equality of voice. **Far from** being **a banal request for links** to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon **months of preparation**, research, and critical thinking not be silenced.¶ Affirmative cases that suspend basic fairness norms **operate to exclude** particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue. They are unable to "understand what 'went on…'" and are left to the whims of time and power (Farrell, 1985, p. 114). Hugh Duncan furthers this line of reasoning:¶ Opponents not only tolerate but honor and respect each other because in doing so they enhance their own chances of thinking better and reaching sound decisions. Opposition is necessary because it sharpens thought in action. We assume that argument, discussion, and talk, among free an informed people who subordinate

decisions of any kind, because it is only through such discussion that we reach agreement which binds us to a common cause…If we are to be equal…relationships among equals must find expression in many formal and informal institutions (Duncan, 1993, p. 196-197).¶ **Debate compensates for the exigencies of the world by offering a framework that maintains equality for the sake of the conversation** (Farrell, 1985, p. 114).¶ For example, an affirmative case on the 2007-2008 college topic might defend neither state nor international action in the Middle East, and **yet claim to be germane to the topic** in some way. The case essentially denies the arguments that state action is oppressive or that actions in the international arena are philosophically or pragmatically suspect. Instead of allowing for the dialogue to be modified by the interchange of the affirmative case and the negative response, the affirmative **subverts any meaningful role to the neg**ative team, preventing them from offering effective "counter-word" and undermining the value of a meaningful exchange of speech acts. **Germaneness and other substitutes for topical action do not accrue the dialogical benefits** of topical advocacy.

Substantive regulations that demarcate limits are necessary for dialogue---refusal to tailor their claims to normative, public stances shuts down the possibility for discussion

John **Dryzek 6**, Professor of Social and Political Theory, The Australian National University, Reconciling Pluralism and Consensus as Political Ideals, American Journal of Political Science,Vol. 50, No. 3, July 2006, Pp. 634–649

A more radical contemporary pluralism is suspicious of liberal and communitarian devices for reconciling difference. Such a critical pluralism is associated with agonists such as Connolly (1991), Honig (1993), and Mouffe (2000), and difference democrats such as **Young** (2000). As Honig puts it, "Difference is just another word for what used to be called pluralism" (1996, 60). Critical pluralists resemble liberals in that they begin from the variety of ways it is possible to experience the world, but stress that the experiences and perspectives of marginalized and oppressed groups are likely to be very different from dominant groups. They also have a strong suspicion ofliberal theory that **looks neutral** but in practice supports and serves the powerful. Difference democrats are **hostile to consensus**, partly because consensus decisionmaking (of the sort popular in 1970s radical groups) conceals informal oppression under the guise of concern for all by disallowing dissent (Zablocki 1980). But the real target is political theory that deploys consensus, especially deliberative and liberal theory. Young (1996, 125–26) argues that the appeals to unity and the common good that deliberative theorists under sway of the consensus ideal stress as the proper forms of political communication can often be oppressive. For deliberation so oriented all too easily equates the common good with the interests of the more powerful, thus sidelining legitimate concerns of the marginalized. Asking the underprivileged to set aside their particularistic concerns also means marginalizing their favored forms of expression, especially the telling of personal stories (Young 1996, 126).3 Speaking for an agonistic conception of democracy (to which Young also subscribes; 2000, 49–51), Mouffe states: To negate the ineradicable character of antagonism and aim at a universal rational consensus— that is the real threat to democracy. Indeed, this can lead to violence being unrecognized and hidden behind appeals to "**rationality**," as is often the case in liberal thinking. (1996, 248)

Mouffe is a radical pluralist: "By pluralism I mean the end of a substantive idea of the good life" (1996, 246). But neither Mouffe nor Young want to **abolish communication** in the name of pluralism and difference; much of their work advocates sustained attention to communication. Mouffe also cautions against uncritical celebration of difference, for some differences imply "subordination and should therefore be challenged by a radical democratic politics" (1996, 247). Mouffe raises the question of the **terms in which engagement across difference might proceed**. Participants should ideally accept that the positions of others are legitimate, though not as a result of being persuaded in argument. Instead, it is a matter of **being open to conversion** due to adoption of a particular kind of democratic attitude that converts antagonism into agonism, fighting into critical engagement, enemies into adversaries who are treated with respect. Respect here is notjust (liberal) toleration, but positive validation of the position of others. For Young, a communicative democracy would be composed of people

showing "equal respect," under **"procedural rules of fair discussion and decisionmaking"** (1996, 126). Schlosberg speaks of "agonistic respect" as "a critical pluralist ethos" (1999, 70). Mouffe and Young both want pluralism to be regulated by a particular kind of attitude, be it respectful, agonistic, or even in Young's (2000, 16–51) case reasonable.Thus **neither proposes unregulated pluralism as an alternative to (deliberative) consensus**. **This regulation cannot be just procedural, for that would imply "anything goes" in terms of the substance of positions**. Recall thatMouffe rejects differences that imply subordination. Agonistic ideals demand judgments about what is worthy of respect and what is not. Connolly (1991, 211) worriesabout **dogmatic assertions** and denials **of identity that fuel existential resentments** that **would have to be changed to make agonism possible**. Young seeks "transformation of private, self-regarding desires into public appeals to justice" (2000, 51). Thus for Mouffe, Connolly, and Young alike, **regulative principles for democratic communication are not just attitudinal or procedural; they also refer to the substance of the kinds of claims that are worthy of respect**. These authors would not want to legislate substance and are suspicious of the content of any alleged consensus. But in retreating from "anything goes" relativism, **they need principles to regulate the substance of what rightfully belongs in democratic debate.**

2NC Law Good

Debating pragmatic legalization policy is key to generate an empathetic and institutional change---progress is possible

David **Cole 11**, Professor at Georgetown Law, Turning the Corner on Mass Incarceration?, 9 Ohio St. J. Crim. L. 27-51 (2011)

The tragedy of the United States' forty-year incarceration epidemic remains very much with us. No country on earth incarcerates more people, or at a higher rate per capita. And while that strategy has imposed unnecessary costs on us all, the burden has been disproportionately borne by African American and Latino men. But that is old news. The new news is that after forty years of increasing incarceration and widening racial disparities, **the trend lines appear to be shifting**. In recent years, the incarceration rate has dropped, as has the total number of persons incarcerated in state prisons. And racial disparities are also falling. Legislatures that were once obsessed with enacting mandatory minimums and increasing the severity of criminal sentences are now eliminating mandatory minimums, reducing criminal penalties, and directing new resources to alternatives to incarceration and reentry. The politics of crime, at least for the moment, appears to have changed. It is less captured by demagoguery and more susceptible to **arguments about costs and benefits**. These developments should not be overstated. The changes have as yet been only marginal, offering little challenge to the United States' dubious distinction of being the world leader in incarceration rates. Moreover, the criminal justice system, at every stage, still disproportionately targets minority groups. But the change in direction is nonetheless good, and surprising, news. The story has been otherwise for two solid generations. Might we be in the midst of a new story line, a new strategy, a new criminal justice policy?

It is too early to tell, of course. But it is not too early to recognize the changes, to ask what may have prompted them, and to **think about strategies for facilitating further positive change**. We ought to build on what has worked and push for change that might create further improvements. While what must be done is relatively clear—reduce criminal sentences, **reduce reliance on criminal penalties for illicit drugs**, increase resources for alternatives to incarceration, and invest in communities that are most vulnerable to crime—it is less clear how we **persuade the public** that these measures are worth it. **Pragmatic arguments** about cost savings need to be paired with moral appeals to America's commitment to equality. But most importantly, we must bridge the empathy gap between the public at large and the incarcerated population. If Americans were to come to view those behind bars as part of our community, indeed our family, mass incarceration would no longer be tolerated.

Complete rejection of institutional logic of civil society crushes anti-oppression politics

Kimberle **Crenshaw 88,** Law @ UCLA, "RACE, REFORM, AND RETRENCHMENT: TRANSFORMATION AND LEGITIMATION IN ANTIDISCRIMINATION LAW", 101 Harv. L. Rev. 1331, lexis

Questioning the Transformative View: Some Doubts About Trashing The Critics' product is of limited utility to Blacks in its present form. The implications for Blacks of trashing liberal legal ideology are troubling, even though it may be proper to assail belief structures that obscure liberating possibilities. Trashing legal ideology seems to tell us repeatedly what has already been established -- that legal discourse is unstable and relatively indeterminate. Furthermore, trashing offers **no idea of how to avoid the negative consequences of engaging in reformist discourse** or how to work around such consequences. Even if we imagine the wrong world when we think in terms of legal discourse, **we must nevertheless exist in a present world** where legal protection has at times been a blessing -- albeit a mixed one. The fundamental problem is that, although Critics criticize law because it functions to legitimate existing institutional arrangements, it is precisely this legitimating function that has made law **receptive to** certain demands in this area. The Critical emphasis on deconstruction as the vehicle for liberation leads to the

conclusion that engaging in legal discourse should be avoided because it reinforces not only the discourse itself but also the society and the world that it embodies. Yet Critics offer little beyond this observation. Their focus on delegitimating rights rhetoric seems to suggest that, once rights rhetoric has been discarded, there exists a more productive strategy for change, one which does not reinforce existing patterns of domination. Unfortunately, **no such strategy has yet been articulated**, and it is difficult to imagine that racial minorities will ever be able to discover one. As Frances Fox Piven and Richard Cloward point out in their [*1367] excellent account of the civil rights movement, popular struggles are a reflection of institutionally determined logic and a challenge to that logic. 137 **People can only demand change in ways that reflect the logic of the institutions that they are challenging**. 138 Demands for change that do not reflect the institutional logic -- that is, demands that do not engage and subsequently reinforce the dominant ideology -- will probably be **ineffective**. 139 The possibility for ideological change is created through the very process of legitimation, which is triggered by crisis. Powerless people can sometimes trigger such a crisis by challenging an institution internally, that is, by using its own logic against it. 140 Such crisis occurs when powerless people force open and politicize a contradiction between the dominant ideology and their reality. The political consequences [*1368] of maintaining the contradictions may sometimes force an adjustment -- an attempt to close the gap or to make things appear fair. 141 Yet, because the adjustment is triggered by the political consequences of the contradiction, circumstances will be adjusted only to the extent necessary to close the apparent contradiction. This approach to understanding legitimation and change is applicable to the civil rights movement. Because Blacks were challenging their exclusion from political society, the only claims that were likely to achieve recognition were those that reflected American society's institutional logic: legal rights ideology. Articulating their formal demands through legal rights ideology, civil rights protestors exposed a series of contradictions -- the most important being the promised privileges of American citizenship and the practice of absolute racial subordination. Rather than using the contradictions to suggest that American citizenship was itself illegitimate or false, civil rights protestors proceeded as if American citizenship were real, and demanded to exercise the "rights" that citizenship entailed. By seeking to restructure reality to reflect American mythology, Blacks relied upon and ultimately benefited from politically inspired efforts to resolve the contradictions by granting formal rights. Although it is the need to maintain legitimacy that presents powerless groups with the opportunity to wrest concessions from the dominant order, it is the very accomplishment of legitimacy that forecloses greater possibilities. In sum, the potential for change is both created and limited by legitimation.

Topicality Core- JDI

**Resolved

Resolved is Law

Resolved means to express by formal vote
Webster's 98

(Webster's Revised Unabridged Dictionary, dictionary.com)

Resolved:¶ 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

'Resolved' denotes a proposal to be enacted by law
Words and Phrases 64

(Permanent Edition)

Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

Resolved – for CPs – Firm / specific

Firm decision
AHD 6

(American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

Specific course of action
AHD 6

(American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

Resolved means determined and firm in intent
Random House 6

(Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solved Audio Help /rɪˈzɒlvd/ Pronunciation Key - Show Spelled Pronunciation[ri-zolvd] – adjective firm in purpose or intent; determined.

Resolved – for CPs – Immediate

Resolved implies immediacy and definiteness
Random House 6

(Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve Audio Help /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

to come to a definite or **earnest** decision about; determine (to do something): I have resolved that I shall live to the full.

Aff Competition

"Resolved" doesn't require certainty

Webster's 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

Or immediacy

PTE 9 – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: "To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life."

**The

Specific

"The" is used to denote a specific entity

American Heritage 2k

(Fourth Edition, http://dictionary.reference.com/browse/the)

the1 P (th before a vowel; th before a consonant)
def.art.
Used before singular or plural nouns and noun phrases that denote particular, specified persons or things: *the baby; the dress I wore.* Used before a noun, and generally stressed, to emphasize one of a group or type as the most outstanding or prominent: *considered Lake Shore Drive to be the neighborhood to live in these days.* Used to indicate uniqueness: *the Prince of Wales; the moon.* Used before nouns that designate natural phenomena or points of the compass: *the weather; a wind from the south.* Used as the equivalent of a possessive adjective before names of some parts of the body: *grab him by the neck; an infection of the hand.* Used before a noun specifying a field of endeavor: *the law; the film industry; the stage.* Used before a proper name, as of a monument or ship: *the Alamo; the Titanic.* Used before the plural form of a numeral denoting a specific decade of a century or of a life span: *rural life in the Thirties.*

All Parts

"The" indicates reference to a noun as a whole
Webster's 5

(Merriam Webster's Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

The
4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a **whole** <the elite>

**United States Federal Government

Central government in DC

"Federal Government" means the United States government
Black's Law 99

(Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

National government, not states or localities
Black's Law 99

(Dictionary, Seventh Edition, p.703)

> A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters.

Government of the USA
Ballentine's 95

(Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

Not states
OED 89

(Oxford English Dictionary, 2ed. XIX, p. 795)

> b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

3 Branches

The U.S. government is 3 branches
Black's Law Dictionary 90

(6th Edition, p. 695)

> In the United States, government consists of the executive, legislative, **and** judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

The United States federal government constitutes of the executive, legislative, and judicial branch
Wordnet Princeton 7

http://poets.notredame.ac.jp/cgi-bin/wn?cmd=wn&word=federal_government

> federal government -- (a government with strong central powers) United States government, United States, U.S. government, US Government, U.S. -- (the executive and legislative **and** judicial branches of the federal government of the United States) HAS INSTANCE=> Capital, Washington -- (the federal government of the United States)

Includes Agencies

Includes agencies
Words & Phrases 4

(Cumulative Supplementary Pamphlet, v. 16A, p. 42)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the "Federal Government" for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government's consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

AT: Federal Government is all 3 branches

Federal Government could be any actor within the government
US Code 8

(47 USCS § 224, Lexis)

(a) **Definitions**. As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

**Should

Immediate / Certain

"Should" means "must" and requires immediate legal effect
Summers 94

(Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16

[CONTINUES – TO FOOTNOTE]

13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 **In praesenti** means literally "**at the present time**." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or **immediately effective**, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Should implies obligation
American Heritage Dictionary 9

(theFreeDictionary.com, "Should," http://www.thefreedictionary.com/should)

should (shd)

aux.v. Past tense of shall

1. Used to express obligation or duty: You should send her a note.

“should” expresses duty, obligation, or necessity
Webster’s 61

(Webster’s Third New International Dictionary 1961 p. 2104)

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

Certainty

"Should" is mandatory, certain and leaves no room for discretion

Nieto 9 – Judge Henry Nieto

(Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009))

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence **as synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

"Should" means must – its mandatory

Foresi 32

(Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they

should acquit, the word 'should' is **not used in an advisory sense** but has the force or meaning of 'must', or 'ought to' and carries [***8] with it the sense of [*313] obligation and duty equivalent to **compulsion**. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

Should means must
Words & Phrases 6

(Permanent Edition 39, p. 369)

C.D.Cal. 2005. "Should," as used in the Social Security Administration's ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means "must."—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

**Substantially

Without Material Qualification

Substantially is without material qualification
Black's Law 91

[p. 1024]

Substantially - means essentially; without material qualification.

Substantially is an adverb – refers to the manner not the quantity
Watson 2

JAMES L. WATSON, SENIOR JUDGE 2002 UNITED STATES COURT OF INTERNATIONAL TRADE GENESCO INC., :Plaintiff, :v.Court No. 92-02-00084 UNITED STATES , http://www.cit.uscourts.gov/slip_op/Slip_op00/00-57.pdf.

The term "substantially" is used as an adverb preceding a verb, the term means "**in a substantial manner**: so as to be substantial." Webster's Third New International Dictionary of the English Language Unabridged (1968).

Numbers – Laundry List

It can be 1%
Lee 94

Thomas, September, 72 N.C.L. Rev. 1633, lexis

> The Fourth Circuit easily concluded that the city had entered contracts with its employees upon enacting the Ordinance of Estimates, 31 and that the salary reductions constituted an impairment of these contracts. 32 Second, the court determined that the nearly one-percent pay reduction was substantial 33 because the level of compensation was a contractual inducement upon which the plaintiffs had especially relied. [34]

Substantially means at least 10%
McKelvie 99

Justice, United States District Court for the District of Delaware, 90 F. Supp. 2d 461; 1999 U.S. Dist. LEXIS 21802

> Claim 1 of the '092 patent and claim 1 of the '948 patent contain the phrase "a die of substantially uniform cross-section." KXI contends the term "substantially" means "at least a 10% change in size." KXI contends that as applied to the claim, the phrase "substantially uniform cross-section" means "the die should not change in diameter by more than 10%." Culligan contends the phrase "substantially uniform cross-section" in the '092 and '948 patents means the internal cross-section of the die must vary less than about 0.010 inch along the length of the die.

30%
Business Day 3

"Stock exchange reels as rand rules roost" 12/4/03. Lexis.

> After the close on Tuesday, Impala warned that its results for the half-year ending on December 31 this year are set to be substantially lower than the previous comparative period. According to the JSE's listings requirements, "substantially" means a change of more than 30%.

50%
The Herald 2

"Parties unite in opposition to white paper on Lords reform" 1/11/02. Lexis.

> Chris Smith, the former culture secretary, said: "Quite simply, the government haven't got it right," he said. The new chamber should be substantially elected. "In my book substantially means at least 50% - 20% will not do."

95%

Inbau 99

Fred, Summer, 89 J. Crim. L. & Criminology 1293, lexis

The court accepted the opinion of Florida Rock's expert, noting that the decline in fair market value from $ 10,500 to $ 500 per acre constituted a "substantial reduction in value." 81 Yet the court also observed that this ninety-five percent reduction "in and of itself is not a sufficient basis for concluding that a taking has occurred." [82] The court then stated it also must inquire into "the owner's opportunity to recoup its investment" [83] to determine whether compensation was required. [84] It observed that Florida Rock had purchased the property for mining purposes and that the property owner could recoup its investment only by engaging in this activity. [85] The regulation thus resulted in a substantial impact on Florida Rock's investment. [86] The court concluded that a taking had occurred, [87] and the Government appealed for a second time to the Court of Appeals for the Federal Circuit.

Qualitative

Substantial means "of considerable amount" --- not some contrived percentage

Prost 4 - Judge – United States Court of Appeals for the Federal Circuit

("Committee For Fairly Traded Venezuelan Cement v. United States", 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

> The URAA and the SAA neither amend nor refine the language of § 1677(4)(C). In fact, they merely suggest, without disqualifying other alternatives, a "clearly higher/substantial proportion" approach. Indeed, the SAA specifically mentions that no "precise mathematical formula" or "'benchmark' proportion" is to be used for a dumping concentration analysis. SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30. Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a "case-by-case basis." SAA at 860. Finally, the definition of the word "substantial" undercuts the CFTVC's argument. The word "substantial" generally means "considerable in amount, value or worth." Webster's Third New International Dictionary 2280 (1993). It **does not imply a specific number or cut-off**. What may be substantial in one situation may not be in another situation. The very breadth of the term "substantial" undercuts the CFTVC's argument that Congress spoke clearly in establishing a standard for the Commission's regional antidumping and countervailing duty analyses. It therefore supports the conclusion that the Commission is owed deference in its interpretation of "substantial proportion." The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

Federal courts agree – substantially shouldn't be defined precisely to a numerical value

Curtin 3 - United States Circuit Judge of the Western District of New York

(Gateway Equip. Corp. v. United States, 247 F. Supp. 2d 299, Lexis)

> While the court agrees that the meanings of limitation and impairment refer to restriction and reduction, it **does not agree** with the uncited definition of "substantial" as an order of magnitude equivalent to 80 or 90 percent. *Random House Unabridged Dictionary* 1897 (2d ed. 1993) defines "substantial" as "of ample or considerable amount quantity, size," a much less precise definition than offered by the government. It is clear that the CB-4000 can and does transport its load over the public highway in the course of traveling to a job **[**33]** site. The question is whether that transportation function is substantially limited by its special design in the type of material it can haul, and whether there are other factors that substantially limit/ impair its use for over-the-road distance hauling.

**Curtail

*1nc Restriction Shell

Interpretation – curtail requires a restriction
Oxford Advanced Learner's Dictionary – no date

http://www.oxforddictionaries.com/us/definition/american_english/curtail

Reduce in extent or quantity; impose a restriction on

Violation – the plan is executive discretion, not a restriction
Nybo 2 – JD @ U Chicago

(Christopher, "Dialing M for Murder: Assessing the Interstate Commerce Requirement for Federal Murder-for-Hire," 2001 U Chi Legal F 579, Lexis)

> Proponents of a broad interpretation of § 1958's jurisdictional requirement also argue that, while the subcommittee did not intend "that all or even most such offenses should become matters of Federal responsibility," 152 it may have intended that any limits on jurisdiction be established through **federal** prosecutorial **discretion rather than by** judicial **restriction** of the statute's jurisdictional scope. 153 The Senate report notes that the subcommittee wanted federal jurisdiction to "be asserted selectively based on [600] such factors as the type of defendants reasonably believed to be involved and the relative ability of the federal and state authorities to investigate and prosecute." 154 The use of the phrase "asserted selectively" suggests that the Senate subcommittee acknowledged the potentially broad jurisdictional scope of § 1958 but preferred that prosecutors exercise discretion in choosing which cases to pursue. 155 Rather than pursuing all such cases, federal prosecutors are encouraged to use "cooperation and coordination" with state officials and only use § 1958 in "appropriate cases." 156

Reasons to prefer –

a) **Limits—forcing a restriction limits the possible mechanisms for the topic away from executive action which shrinks the size of the topic**

b) **Ground – maintaining Congress and the courts as the actor ensures disad links and non-secret actions**

Topicality is a voting issue for competitive equity

2nc Restriction Extensions

Curtailment means a limit

Gibbons 99 – PhD in Statistics

(Jean, "Selecting and Ordering Populations: A New Statistical Methodology," p 178)

In general, **curtailment** is defined with respect to any **rule** as terminating the drawing of observations at a number smaller than n as soon as the final decision is determined; here n is the maximum number of observations that one is allowed to take. Thus curtailment is an "early stopping rule" and it yields a saving in the number of observations taken. Therefore we now discuss curtailment with respect to our sampling rule of looking for the cell with the highest frequency in n observations; we wish lo evaluate the amount of saving that may result for various values of k and n.

2nc Restriction Extensions – Third Party

Curtailment has to take away from a third party—can’t be self-imposed
8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken** from the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

*1nc Not Abolish Shell

Interpretation – curtail cannot abolish
Supreme Court of Connecticut 85

(IN RE JUVENILE APPEAL (85-AB), Lexis)

1. In an attempt to suggest that the statutory right to a private hearing under General Statutes § 46b-122 is not really nullified by their opinion, the majority points to General Statutes § 46b-124. While recognizing, as they must, that their position does result in publicity, they nevertheless argue that § 46b-124 by prohibiting disclosure of records and proceedings in juvenile matters does "curtail the additional publicity that a public trial would generate." Two points should be made to counter this "justification." First, as one court said: "[I]n common parlance, or in law composition, the word `curtail' has no such meaning as `abolish.'" State v. Edwards, 207 La. 506, 511, 21 So.2d 624 (1945). Rather, it means "`to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce.'" Id. Second, the statutory right to a private hearing in § 46b-122 does not talk at all in terms of relativity, of something is to be diminished, lessened or reduced. It confers a right that is not to be diluted, let alone nullified.

Violation – the affirmative plan abolishes a domestic surveillance program

It's a voting issues because it unlimits the topic by including abolition as a mechanism and it's extra topical which allows the affirmative to get out of disad and kritik links while giving them extra solvency

2nc Not Abolish Extensions

It’s a reduction, not an abolition
Supreme Court of Louisiana 45

(State v. Edwards, 207 La. 506, Lexis)

Police Jury of Concordia Parish, La., Ordinance No. 202 (April 14, 1943) provided that three open seasons for the hunting of squirrels were curtailed, but the ordinance did not specify how much the state open hunting seasons were to be curtailed. La. Gen. Stat. § 2947 (1926) provided that the annual open season for hunting squirrels was from October 1st to January 15, and defendant was convicted of killing squirrels on October 1, 1944. The ordinance was purportedly enacted to exercise the discretion given to parish authorities to curtail the hunting season by La. Gen. Stat. § 2939 (1926), but defendant claimed that the ordinance was invalid because it was meaningless. The court annulled defendant's conviction, finding that the ordinance was meaningless because the time frame in which hunting was to be curtailed was not specified. The state's argument that the parish abolished all hunting for the three seasons was rejected because the Ordinance's use of the term "curtailed" indicated that there was a **reduction of the hunting season and not its abolishment**. Also the court had jurisdiction to review the conviction because its jurisdiction extended to ordinances that imposed penalties.∂Outcome∂The court annulled the conviction and sentence that had been imposed on defendant, and it ordered that the prosecution of defendant be dismissed.∂Hide sectionLexisNexis® Headnotes∂Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources∂Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review∂Constitutional Law > ... > Jurisdiction > Subject Matter Jurisdiction > Amount in Controversy∂Criminal Law & Procedure > Appeals > General Overview∂HN1 The Supreme Court of Louisiana has jurisdiction of the question of constitutionality or legality of an ordinance under La. Const. art. VII, § 10, which states that it shall have appellate jurisdiction in all cases where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof. Shepardize - Narrow by this Headnote∂Environmental Law > Natural Resources & Public Lands > Topic Summary ReportFish & Wildlife Protection∂HN2 La. Gen. Stat. § 2947 (1926) provides that the annual open season for hunting squirrels is from October 1st to January 15th; and, according to La. Gen. Stat. § 2925 (1926), the term "open season" includes the first and the last of the two days mentioned. Shepardize - Narrow by this Headnote∂Counsel: A. B. Parker, of Jena, and C. T. Munholland and Theus, Grisham, Davis & Leigh, all of Monroe (W. T. McCain and J. W. Ethridge, both of Colfax, of counsel), for defendant-appellant.∂Fred S. LeBlanc, Atty. Gen., M. E. Culligan, Asst. Atty. Gen., and Jesse C. McGee, Dist. Atty., of Harrisonburg (Jos. M. Reeves, of Vidalia, of counsel), for plaintiff-appellee. ∂Judges: O'Niell, Chief Justice. ∂Opinion by: O'NIELL ∂Opinion∂[507] The appellant was convicted of killing squirrels out of season, in violation of a parish ordinance, and was sentenced to pay a fine of $ 25 and the costs of court or be imprisoned in the parish jail for 30 days.∂In a motion to quash the bill of information, and again in a motion for a new trial and a motion in arrest of judgment, the defendant pleaded that the parish ordinance [508] was unconstitutional, for several reasons which we find it unnecessary to consider. He pleaded also that in any event the ordinance was illegal because it was so worded as to have no meaning or effect. The motions were overruled.∂HN1 This court has jurisdiction of the question of constitutionality or legality of the ordinance, under the provision in Section 10 of Article VII of the Constitution that the Supreme Court shall have appellate jurisdiction in all cases "where the

legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof."∂The charge in the bill of information, stated specifically, is that on the 1st day of October, 1944, the defendant "did unlawfully hunt and take six squirrels during the closed season, contrary to the provisions of Ordinance 202 of the Police Jury of Concordia Parish". Under the state law the 1st day of October was within the open season for hunting squirrels. HN2 In Section 1 of Article III of Act 273 of 1926, being Section 2947 of Dart's General Statutes, the annual open season for hunting squirrels is from October 1st to January 15th; and, according to Section 1 of Article I of the act, being Section 2925 of Dart's General Statutes, the term "open season" includes the first and the last of the two days mentioned. Hence the defendant is not accused of violating the state law.∂The ordinance purports to "curtail" the open season for hunting squirrels, or deer [509] or bear, as fixed by the state law, but does not give the extent of the curtailment, or indicate whether it shall be cut off from the beginning or from the end of the open season, from October 1st to January 15th. The first section of the ordinance, adopted on April 14, 1943, reads as follows: "Section 1. Be it ordained by the Police Jury of the Parish of Concordia, State of Louisiana, in lawful session convened, that the open seasons for the hunting and taking of wild deer, bear and squirrels within the boundaries of the Parish of Concordia, State of Louisiana, are hereby curtailed for the open seasons of 1943-1944, the open seasons of 1944-1945, and the open seasons of 1945-1946, it being apparent that a curtailment of the open seasons so that such game life may restock themselves by natural breeding is necessary, and written consent having been given by the Conservation Commissioner of the State of Louisiana to the Police Jury of the Parish of Concordia, to adopt this ordinance."∂The second section of the ordinance imposes the penalty, -- a fine not less than $ 25 or more than $ 100, or imprisonment for a period not exceeding 60 days, or both the fine and imprisonment; the third section repeals all ordinances in conflict with Ordinance No. 202; and the fourth or last section provides that Ordinance No. 202 shall become effective after promulgation in the official journal of the parish, once a week for four consecutive weeks. Such promulgation is required by the third paragraph of Section 15 of Article I of Act 273 of 1926, Section 2939 of Dart's General [510] Statutes. Ordinance No. 202 was adopted under authority of that section of the statute, which section reads as follows:∂"Section 15. The Police Jury of any parish may apply to the Conservation Commissioner for the right to adopt an ordinance to curtail the open season in such parish, or any part thereof, when it becomes apparent that the game bird and game quadruped life are in need of a curtailment of the open seasons so that such game life may restock themselves by natural breeding.∂"Upon receipt of such application and if conditions indicate the need of adding protection for any game bird or game quadruped or all of them, the Commissioner may give written consent to the police jury of the parish to adopt, in their discretion, an ordinance to curtail the open season, but for not more than three consecutive years, which curtailment shall apply to everyone, including the residents of such parish.∂"Such curtailment shall become effective only after notice of the adoption of such ordinance shall have been promulgated by the police jury, in the official parish journal, once a week for four consecutive weeks prior to the regular annual open seasons for hunting. Annual special parish close seasons on the game birds and game quadrupeds shall commence on the legal date of the open seasons in each year."∂The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the period of three years. The ordinance **does not read that way, or convey any such meaning.** According to Webster's New

International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "**curtail" has no such meaning as "abolish**". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Must leave some surveillance in place

Baker 7 - author of Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System

"Proceedings of the Standing Senate Committee on Foreign Affairs and International Trade," http://www.parl.gc.ca/Content/SEN/Committee/391/fore/15evb-e.htm?comm_id=8&Language=E&Parl=39&Ses=1

Mr. Baker: I agree with the point that you were making about the World Bank. Many people in the World Bank are extremely dedicated to curtailing poverty in developing countries. Some others are looking for the next opportunity in the private sector and may be less aggressive in fighting corruption and money laundering; perhaps less aggressive in taking on the kinds of problems we are talking about here. You are correct when you talk about oil revenues going out into foreign banks. They do not go to other African banks, but come frequently through the structure I talked about, the illicit financial structure, but ultimately into Western economies. Part of what fascinates me is that it is almost entirely a permanent outward transfer; very little turns around and goes back in at a later date to developing countries. The little bit that turns around and goes back almost always goes back as foreign direct investment, FDI; that is to say it has gone abroad, has acquired a foreign nationality as a company, investment fund or trust account, and it comes as FDI with the intention of going abroad again as dividends, interest on principal payments on loans or as transfer pricing disguised in inter-company transactions. You used the words "make it impossible"; I use the word "curtail." I am interested in curtailing the outflow of illicit money, **not trying to stop it entirely**. Curtailing it is a matter of political will; stopping it is draconian. I am not certain I favour that.

**Its

Possessive

Its is possessive and denotes ownership
Appellate Court of Illinois 80

"Hulett v. Central Illinois Light Co.," 83 Ill. App. 3d 195, Lexis

The plaintiff responded to the motion for summary judgment to the effect that as to who owned or controlled the wires is immaterial, since CILCO was required to maintain and inspect all electric supply lines carrying its electricity and had failed to do so. In support of this contention the plaintiff relies upon Illinois Commerce Commission General Order 160 -- Revised, and effective as of June 1, 1963, which provides as follows: "9. General Maintenance Requirements. Each public utility operating a system of power or communication lines shall maintain *its* [italics in original] system of lines in such condition as will enable it to furnish safe, adequate and dependable service. Power and communication lines and their associated equipment shall comply with the provisions of this General Order when placed in service, and shall thereafter by systematically inspected, and when necessary, be subjected to tests to determine their fitness for the service required of them, and for conditions of safety. Any defects revealed by such inspections and tests which could cause or create an unsafe condition, shall be promptly corrected. If such corrections are not immediately undertaken, a record of the condition found shall be made in the proper plant office of the utility. Defective lines or their associated equipment shall be placed in good operating condition, or otherwise effectively disconnected or removed." (Emphasis added.) The purport of the trial judge's order is to this court clear in that a question of law is presented, namely, whether or not the Commerce Commission General Order 160 places a duty upon CILCO to maintain, repair and inspect the electrical lines in question, even though they are not and never have been owned or controlled by the power company. We note, however, that the plaintiff attempts to challenge the sufficiency of the Volk affidavit which denies ownership or control of the lines by CILCO. It is the plaintiff's argument that the affidavit referred to records as to premises located at 821 Tremont Township, Tremont, Illinois, and that the described premises have not been established as the place where the plaintiff was injured. We find no merit in this contention since it is [198] patently clear from the record that there was no concern on the part of the trial court or the parties to this action concerning the Volk affidavit or where the plaintiff was injured. It should be noted that the plaintiff did not file a counteraffidavit and consequently admitted that CILCO did not own or control the electrical line. (See Carruthers v. B. C. Christopher & Co. (1974), 57 Ill. 2d 376, 313 N.E.2d 457.) To raise on appeal the question of ownership appears to be an effort on the part of the plaintiff to obfuscate the true issue, to-wit, the meaning and effect of General Order 160. We have set forth the pertinent provisions of the order and attention should be directed to the word **its** located in the first paragraph and which we have emphasized. The word its as used is a pronoun and is being used in its **possessive** form. By the use of the word it is clear that each public utility system shall **maintain** the power lines which it **owns**.

It's singular and possessive
Updegrave 91 – analyst @ MONEY Magazine for 20+ years

Walter, "Explanation of ZIP Code Address Purpose", 8-19,
http://www.supremelaw.org/ref/zipcode/updegrav.htm

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the **singular possessive** pronoun **"its", not "their"**, therefore carrying the implication that it relates to the "United States" as a corporation domiciled in the **D**istrict of **C**olumbia (in the singular sense), **not** in the sense of being the 50 States of the Union (in the **plural** sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

Its means controlled and possessed by
Harrold 11 – Esq., brief to the Supreme Court of Indiana

Dennis, "HAIRE v. PARKER, 2011 IN S. Ct. Briefs LEXIS 350," Lexis

However, simply stating that Haspin Acres is released cannot afford enough protection because - under Indiana's law of agency or various theories of derivative liability - Haspin Acres would nevertheless face significant liability exposure for the negligent acts of its agents and affiliates. Under the doctrine of respondeat superior, a principal is liable for the negligent acts of his agent.

See Comer-Marquardt v. A-l Glassworks, LLC, 806 N.E.2d 883, 887 (Ind. Ct. App. 2004). This explains the use of the language: "its officers, trustees, employees and agents, meet [15] officials, promoters, sponsors, motorcycle riders, mechanics and pit crew." (App. 26) Haspin Acres included this list of possible agents and affiliates to further reduce liability exposure. This list of categories is **controlled** by the **possessive** "its", referring to Haspin Acres. Thus, each category is subject to the same possessive. Therefore, the entities released are Haspin Acres and "its officers", "its .. . trustees", "its .. . employees and agents", "its .. . riders", etc. (App. 26) The effect of the possessive "its" controls the entire list, including "riders". The express provision states "its . . . riders," not all riders.

Associated With

Its means associated with
Dictionary.com 9

Collins English Dictionary, http://dictionary.reference.com/browse/its?s=t

its (ɪts) — determiner a. of, belonging to, or associated in some way with it: its left rear wheel b. (as pronoun): each town claims its is the best

**Domestic Surveillance

Nonpublic/United States

Domestic surveillance means the acquisition of nonpublic information regarding United States persons—most limiting and contextual interpretation

Small 8 – United States Air Force Academy

Matthew, His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis, 2008, http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Before one can make any sort of assessment of domestic surveillance policies, it is first **necessary to narrow the scope** of the term "domestic surveillance." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community **best understands domestic surveillance** as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

Broad

Domestic surveillance involves collection of information from communications

IMUNC 14 – Human Rights Council

Human Rights Council Study Guide, 2014, https://imunc.files.wordpress.com/2014/05/hrc-study-guide.pdf

Domestic surveillance: Involves the monitoring, interception, collection, analysis, use, preservation, retention of, interference with, or access to information that includes, reflects, or arises from or a person's communications in the past, present or future with or without their consent or choice, existing or occurring inside a particular country.

Legislative

Domestic surveillance activities are only topical if defended by the Omnibus Crime Control and Safe Streets Act or the Foreign Intelligence Surveillance Act

ACLU – no date

FACT SHEET: LEGAL CLAIMS IN ACLU V. NATIONAL SECURITY AGENCY, https://www.aclu.org/fact-sheet-legal-claims-aclu-v-national-security-agency

The ACLU also charges that the program violates the constitutional principle of separation of powers, because it was authorized by President Bush in excess of his Executive authority and contrary to limits imposed by Congress. In response to widespread domestic surveillance abuses committed by the Executive Branch and exposed in the 1960s and 1970s, Congress enacted legislation that provides the exclusive means by which electronic surveillance and the interception of domestic wire, oral and electronic communications may be conducted. Congress enacted two statutes which impose strict limits on domestic surveillance, including prior judicial approval -- Title III of the Omnibus Crime Control and Safe Streets Act of 1968 and the Foreign Intelligence Surveillance Act (FISA), passed in 1978.

Data Collection

Domestic surveillance involves mass data collection of United States citizens

McGreal 7 – Professor of Law, Southern Illinois University School of Law

Paul, Counteracting Ambition: Applying Corporate Compliance and Ethics to the Separation of Powers Concerns with Domestic Surveillance, SMU Law Review, Fall, 2007, Lexis

Third, modern domestic surveillance, even in aid of foreign intelligence, entails the collection and storage of massive amounts of private data concerning United States citizens. Citizens rightly fear that such data could be either misused or improperly disclosed, raising issues of individual liberty that (at times) may be unpopular. Separation of powers suggests that the federal judiciary ought to be involved in checking Congress and the President in this area. And Whalen v. Roe n157 further suggests that one such check ought to be judicial review to determine [*1600] whether the President and Congress have implemented adequate safeguards to prevent misuse or improper disclosure of private information.

Drones

Domestic surveillance includes drones—examining drone policy is crucial to topic education

Ghoshray 13 – President, Institute of Interdisciplinary Studies

Dr. Saby, Domestic Surveillance Via Drones: Looking Through the Lens of the Fourth Amendment, Northern Illinois University Law Review, Spring 2013, Lexis

Almost as old as modern civilization, social contract theory originated from Plato and Socrates. Nurtured in the modern era by Hobbs, n80 Rousseau, n81 and Hume, n82 the social contract theory posits that an individual in a society surrenders some of her freedoms and submits to the authority of a supervisory entity in exchange for the protection of such individual's remaining rights. Implicit in this paradigm is a core belief of individual consent. This idea of individual consent as a prerequisite of fundamental liberty has been further solidified in the contemporary era by legal scholar Randy Barnett. n83 Yet, the digital explosion and the ease of technology has created a dystopian nightmare where the related supervisory entities, like the government and law enforcement agencies, may be rejecting this idea of social contract theory. Through implicit rejection of social contract, the supervisory entities are gradually depriving individuals some of their rights, such as the right to privacy within their own confines. This emerging phenomenon **must be evaluated for its full implications** within the context of domestic surveillance via drones. In a futuristic scenario where a domestic drone may be buzzing over a community, either searching for a fleeing criminal or guarding against crime from being committed, the tracking and storing mechanism would automatically record private moments and personal affairs for which the individuals have not provided consent. Social contract theory prohibits such law enforcement intrusion on private space of individuals. If we were to balance the rights relinquished against the rights being preserved, it would be revealed that no significant preservation takes [*598] place. Yet, a significant portion of individual rights is being put in jeopardy, if not in peril. Tracking of an individual via drones or recording an individual's private moments give rise to other concerns. In yet another reversal for implications of privacy, when such recordings take place, the surveillance and data storing may erroneously create illegitimate proxies for an individual profile based on imprecise or incomplete vignettes of life evolving within a fleeting temporal sequence. Law has yet to respond to this imprecise and flawed subjective assessment based on intrusive privacy violations, unbridled data mining, and tracking that unmanned aerial vehicles might be engaged in.

Phone Surveillance

Domestic surveillance includes phone taps

Small 8 – United States Air Force Academy

Matthew, His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis, 2008, http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Having explored the inordinate amount of power granted to two of America's greatest presidents during periods of time when threats from within the United States threatened to rip the fragile fabric of democracy, focus now shifts to the volatile 20th century. New national threats required the use of old surveillance techniques combined with new technology. The ability of the US government to tap into phone conversations opened a whole new realm of domestic surveillance. Simultaneously, it struck a fear into American citizens. Now, one could use telephone conversations, which people held to be as private as a one-on-one chat inside one's own home, to intrude into a person's private life or convict a person of a crime. Out of this fear arose the need to assert the right to privacy. The debate over wiretapping then linked directly to the conception of the right to privacy.

Includes Warrants

Domestic surveillance includes activities that require a warrant

Lee 13 – Washington Post

Timothy, The NSA is trying to have it both ways on its domestic spying programs, 12/22/13, http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/22/the-nsa-is-trying-to-have-it-both-ways-on-its-domestic-spying-programs/

Traditionally, domestic surveillance powers were held by law enforcement agencies, not the NSA. And the existence of the spying powers were not secret. Everyone knows that the FBI and local police departments have the power to compel telecommunications companies to disclose their customers' communications. But first they must get a warrant, supported by probable cause, from a judge. That oversight gives Americans confidence that domestic surveillance powers won't be abused.

*1nc Within Borders

Interpretation – domestic surveillance occurs within the United States borders

Avilez et al 14 - Ethics, History, and Public Policy Senior Capstone Project at Carnegie Mellon University

Marie, "Security and Social Dimensions of City Surveillance Policy" 12/10, http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf

Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity within national borders; this can be carried out by federal, state and/or local officials

Violation – the affirmative curtails surveillance outside of the United States borders

Reasons to prefer

a) **Limits – allowing foreign surveillance explodes the limits of the topic to include other countries**

b) **Ground – disad links are based off of data collection within the United States**

Voting issue for competitive equity

2nc Within Extensions

Domestic surveillance means within the United States

Pegarkov 6 – editor

Daniel, *National Security Issues*, 2006, p. 156-7

Title III does not define "international or foreign communications" or "domestic." It is unclear under the language of this section whether communications that originate outside the United States but are received within U.S. territory, or vice versa, were intended to be treated as foreign, international or domestic. Recourse to the plain meaning of the words provides some illumination. *Webster's New Collegiate Dictionary* (1977), in pertinent part, defines "international" to mean "affective or involving two or more nations" or "of or relating to one whose activities extend across national boundaries." Therefore, "international communications" might be viewed as referring to communications which extend across national boundaries or which involve two or more nations. "Foreign" is defined therein, in pertinent part, as "situated outside a place or country; *esp* situated outside one's own country." Thus, "foreign communications" might be interpreted as referring to communications taking place wholly outside the United States. "Domestic" is defined, in pertinent part, in *Webster's* to mean "of, relating to, or carried on within and esp. one's own country." Therefore, "domestic communications" may be defined as communications carried on **within the United States**.

Domestic means within the United States—that excludes foreign or international

Oxford Dictionaries – no date

http://www.oxforddictionaries.com/us/definition/american_english/domestic

Existing or occurring inside a particular country; not foreign or international

It's within the US's geographic territory

Sladick 12 – blogger for the Tenth Amendment Center

Kelly, "Battlefield USA: The Drones are Coming"
http://blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/

In a US leaked document, "Airforce Instruction 14-104", on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, "any imagery collected by satellite (national or commercial) and airborne platforms that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas." In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises.

Domestic means the contiguous United States

FSSI 13 - Federal Strategic Sourcing Initiative

GSA Federal Strategic Sourcing Initiative (FSSI) Wireless, Blanket Purchase Agreement (BPA),
http://www.gsa.gov/portal/mediaId/172035/fileName/FSSIWirelessRFQAmendment0011.action

2 Performance Work Statement All capabilities shall be offered unless specified “as available” in which case the capability must be offered only if the Contractor offers it commercially. The Contractor shall not propose additional service plans beyond those specified in Tables 3-1 (Voice Service Plans), 3-2 (Data Add-On Service Plans), and 3-3 (Data Only Service Plans). 2.1 Wireless Service and Network Coverage Area The Contractor shall provide domestic wireless voice and data service to areas that are populated by more than 90% of the United States population. Domestic is defined as the contiguous United States, Alaska, Hawaii, Puerto Rico, and the US Virgin Islands. The Contractor shall also provide international coverage areas as commercially available; as a minimum, it shall include Canada, China, France, Germany, Netherlands, Israel, Japan, Mexico, and the United Kingdom. For both domestic and international coverage, the Contractor shall specify geographies covered and type of services available (voice, data and technology (LTE, etc)).

*1nc Covert

Interpretation – surveillance must be covert

Baker 5 – MA, CPP, CPO

(Brian, "Surveillance: Concepts and Practices for Fraud, Security and Crime Investigation," http://www.ifpo.org/wp-content/uploads/2013/08/surveillance.pdf)

Surveillance is defined as **covert** observations of places and persons for the purpose of obtaining information (Dempsey, 2003). The term covert infers that the operative conducting the surveillance is **discreet and secretive**. Surveillance that maintains a concealed, hidden, undetected nature clearly has the greatest chance of success because the subject of the surveillance will act or perform naturally. Remaining undetected during covert surveillance work often involves physical fatigue, mental stress, and very challenging situations. Physical discomfort is an unfortunate reality for investigators, which varies from stinging perspiration in summer to hard shivers during the winter.

Violation – the aff curtails surveillance that is not covert

Reasons to prefer –

a) **Limits—allowing the ending of public surveillance explodes the limits of the topic by allowing affirmatives that deal with programs that known surveillance like detention facilities**

b) **Ground—key to neg ground like terrorism and politics disads**

Voting issue for competitive equity

2nc Covert Extensions

Must be covert
IJ 98

(Info Justice, OPERATIONS, SURVEILLANCE AND STAKEOUT PART 1, http://www.infojustice.com/samples/12%20Operations,%20Surveillance%20And%20Stakeout%20Part%201.html)

Surveillance is defined as the systematic observation of persons, places, or things to obtain information. Surveillance is carried out **without** the knowledge of those under surveillance and is concerned primarily with people.

Even the broadest definition doesn't include information provided with consent
Pounder 9 – PhD, Director, Amberhawk Training and Amberhawk Associates

(Chris, "NINE PRINCIPLES FOR ASSESSING WHETHER PRIVACY IS PROTECTED IN A SURVEILLANCE SOCIETY," Scholar)

This paper uses the term "surveillance" in its widest sense to include data sharing and the revealing of identity information in the **absence of consent** of the individual concerned. It argues that the current debate about the nature of a "surveillance society" needs a new structural framework that allows the benefits of surveillance and the risks to individual privacy to be properly balanced.

2nc Most Common

Surveillance is most often covert

Glancy 12 – Professor of Law, Santa Clara University Law School. B.A. Wellesley College, J.D. Harvard Law School

Dorothy, SYMPOSIUM ARTICLE: PRIVACY IN AUTONOMOUS VEHICLES, Santa Clara Law Review, 2012, Lexis

Surveillance is a relatively modern idea. Even the word, "surveillance," is fairly new to the English language. It was borrowed from the French by the British at the turn of the nineteenth century to refer to looking over an area, usually from a high place, for strategic information about a battlefield or prospective confrontation. n92 Early in the twentieth century, surveillance usually suggested use of technology to enhance human abilities to see over wide distances to collect comprehensive information about an adversary. n93 Since then, [*1208] the word, "surveillance," has been used in a wide variety of careful-watching contexts from medical surveillance of diseases and immune responses, to physical stakeouts of crime suspects, to mass-scale electronic and network surveillance for gathering intelligence or for seeking evidence of anomalous or criminal behavior. Surveillance is also a psychological technique used to affect human behavior through pervasive monitoring of activities and areas to discourage people from violating rules or laws. Although surveillance most often means covert collection of information, it can also refer to overt watching aimed at modifying the behavior of those watched. An example of overt surveillance is red-light cameras. These devices are often prominently placed as ever-present watchers at intersections so that drivers are deterred from entering intersections while the stoplight is red. n94 One purpose of overt surveillance is to affect the behavior of those being watched, to assure that individual behavior conforms to societal norms. If an autonomous vehicle user were informed that his or her vehicle continuously reports its speed to law enforcement authorities, that user would be more likely to direct the vehicle to conform to the speed limit, rather than exercise personal autonomy in deciding not to conform. n95 Similarly, autonomous vehicles could overtly monitor the behavior of vehicle users so that instances of user activities such as smoking or drinking alcohol are sensed and recorded.

Law Enforcement Investigation

Surveillance refers to any method of investigation carried out by law enforcement officials

Simmons 13 – Professor of Law, Moritz College of Law at The Ohio State University

Ric, PRIVACY, SECURITY, AND HUMAN DIGNITY IN THE DIGITAL AGE: ENDING THE ZERO-SUM GAME: HOW TO INCREASE THE PRODUCTIVITY OF THE FOURTH AMENDMENT, Harvard Journal of Law & Public Policy, Spring 2013, Lexis

n13 Throughout this Article I will use the word "surveillance" to cover any method of investigation carried out by law enforcement officials, from accessing a Department of Motor Vehicles database to wiretapping a telephone to strip-searching a suspect. This rather awkward terminology is required because the term "search" has a very particular meaning in Fourth Amendment jurisprudence as a method of surveillance that implicates the Fourth Amendment to the degree that it requires probable cause or a warrant. See Katz v. United States, 389 U.S. 347, 350-53 (1967).

Persons

Systematic observation of persons

Wang 11 – PhD, Vice President for Information Services and Chief Information Officer for the RF

Hao, "Protecting Privacy in China," p. 27

Surveillance is defined as the systematic investigation or monitoring of the actions or communications of one or more **persons**. Traditionally, surveillance has been undertaken by physical means, such as guarding prisons. In recent decades, it has been enhanced through image amplification devices such as high-resolution satel¬lite cameras.6"1 Most of them are readily available in China today. However, some of them are also privacy invasive. They render current Chinese legal protections seriously inadequate. These devices may include: (I) microphones or listening devices that can be concealed; (2) miniature tape recorders; (3) hidden cameras such as cell phone cameras; (4) hidden monitors that operated by remote control; (5) infrared devices enabling photographs to be taken at night; (6) miniature transmitters; and so on.

RIPA definition proves---it's about persons

Martellozzo 12 – PhD, Criminologist, specialises in sex offenders' use of the internet and online child safety

Elena, "Online Child Sexual Abuse," Google Book

During online undercover operation, the use of surveillance is common practice. Surveillance is defined in section 48(2) of the RIPA and includes: a monitoring, observing or listening to **persons**, **their movements**, **their conversations** or **their** other activities or communications b recording anything monitored, observed or listened to in the course of the surveillance and c surveillance by or with the assistance of a surveillance device. There are two types of surveillance: directed and intrusive surveillance. Directed surveillance is defined in section 26(2) of the RIPA. It requires a directed surveillance authority if: • it comprises covert observation or monitoring by whatever means • it is for the purpose of a specific investigation or specific operation • it will or is likely to obtain private information about any person, not just the subject of the operation (this is I lie key element that engages also with Article 8ofthef.CHR)but • it docs not include observations conducted in an immediate response to spontaneous events. The last point refers to a scenario where on patrol, police officers notice someone acting suspiciously near a house. Because this is an immediate event or circumstance, authority for surveillance is not required (Harficld and liarficld 2005: :M). Therefore, directed surveillance includes instances where the police or other authorised public authorities follow an **individual** in the public, monitor and record their movements (The Crown Prosecution Service 07/07/08). Intrusive surveillance is defined in section 26 (http://www.bishop-accountability .org/reports,"2004_02_27_JohnJay/LitReview/l_3_|J_TheoriesAnd.pdf) of the RIPA and it comprises: • covert surveillance • carried out in any residential premises or In any private vehicle and which involves • the presence of an individual on the premises or in the vehicle or • the use of a surveillance device.

AT Drones

Drones don't do surveillance—they are reconnaissance and monitoring

Leachtenauer 1 – Defense Consultant

(John, "Surveillance and Reconnaissance Imaging Systems," p. 1)

Surveillance and reconnaissance (S&R) systems are defined here as remote sensing imaging systems used to acquire military, economic, and political intelligence information. Classically, reconnaissance is defined as the act of reconnoitcring or making a **preliminary inspection**. In the military sense, it involves determining the lay of the land and the disposition of enemy forces. Economically, it may be a survey to detect oil-bearing strata. Any imaging system that can acquire imagery of relatively large ground areas can be used for reconnaissance. Surveillance is defined as maintaining close observation of a group or location. Frequent imaging of enemy forces is the classic application. Monitoring crop vigor or civil unrest can also be considered surveillance. The implication here is the need for frequent or even **continuous** coverage. In a practical sense, most S&R systems can perform both reconnais-sance and surveillance by virtue of the ability to trade ofT resolution and area of coverage. The Predator unmanned aerial vehicle (UAV), for example, flies a video system with **both** a long focal length lens for high resolution surveil-lance and a short focal length lens for lower resolution reconnaissance. The LANDSAT multispectral satellite is used for both reconnaissance and sur-veillance applications, the only difference being the number of images ac-quired of the same ground area.

Limits Good

Narrow definitions are preferable---otherwise 'surveillance' is completely unlimited

Walby 5 – PhD, Associate Professor, University of Winnipeg, Department of Criminal Justice

Kevin, "Institutional Ethnography and Surveillance Studies: An Outline for Inquiry," Surveillance & Society 3(2/3): 158-172

The emerging transdisciplinary field of surveillance studies suffers from an **overabundance** of speculative theorizing and a dearth of rigorous empirical research. Of course, many monographs, articles, and reports tangentially related to the study of surveillance are based on social scientific practice, and many of the classic works that constitute surveillance studies itself are not purely speculative but engage through research with the social world they investigate (see, for instance, Rule, 1973; Braverman, 1974; Marx, 1988). Researching surveillance involves "watching" and needs to be accompanied by an ethics of honesty, sympathy and respect as it regards researchers and their respondents. Still, there is no overarching method in this area of study. Nor should there be only one overarching method. When we use the word "surveillance" we often forget how amazingly diverse the forms, linkages, and processes captured by the word are. That surveillance is a signifier referring to face-to-face supervision, camera monitoring, TV watching, paparazzi stalking, GPS tailing, cardiac telemonitoring, the tracking of commercial/internet transactions, the tracing of tagged plants and animals, etc., points to an **impossible** and **always receding** signified. Nevertheless, we need to refer to these processes, and at present time surveillance is the term. We also need ways of inquiring into these processes. The search is on for the methods of inquiry needed to give surveillance studies continuity and legitimacy in the sport de combat of social science.

**Curtail

1nc Curtail = Reduction

Interpretation—curtail means to reduce in quantity
Oxford Dictionaries 15

"curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail

Definition of curtail in English: verb [WITH OBJECT] 1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

Violation—the affirmative does not mandate a reduction in domestic surveillance

Reasons to prefer—

a) **Limits—our interpretation limits the affirmative's mechanism to a direct reduction of domestic surveillance versus mechanisms that merely impose restrictions on surveillance**

b) **Ground—reductions in domestic surveillance are key to core disadvantage ground like the terrorism disad**

Voting issue for competitive equity

2nc Definition Ext.

Curtail means to reduce
MacMillan Dictionary 15

‘curtail’, http://www.macmillandictionary.com/dictionary/american/curtail

curtail VERB [TRANSITIVE] FORMAL to reduce or limit something, especially something good

2nc Violation Ext.

Regulation moots the curtailment—curtailment requires a net reduction from the status quo

Howell 14 - US District Court Judge

Beryl, HUMANE SOCIETY OF THE UNITED STATES, et al., Plaintiffs, v. SALLY JEWELL, Secretary of the Interior, et al.,1 Defendants, v. STATE OF WISCONSIN, et al. Intervenor-Defendants. 1 Pursuant to Federal Rule of Civil Procedure 25(d), Sally Jewell, Secretary of the Interior, is automatically substituted for her predecessor in office. Civil Action No. 13-186 (BAH) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA 2014 U.S. Dist. LEXIS 175846 December 19, 2014, Decided December 19, 2014, Filed

Moreover, by defining "significant portion of a species' range" in the final rule as referring only to a species' "current range," the FWS explicitly contradicts the conclusions by courts finding that "range" must include the "historical range" and the ESA's legislative history. LEG. HIST. at 742 (H. Rep. 95-1625, from Committee on Merchant Marine and Fisheries, regarding ESAA) ("The term 'range' [in the ESA] is used in the general sense, and refers to the historical range of the species."); Defenders of Wildlife, 258 F.3d at 1145. It also **renders meaningless the word "curtailment"** in 16 U.S.C. § 1533(a)(1)(A), since it is **impossible** [*162] to determine the "present . . . curtailment of [a species'] habitat or range" without knowing what the species' historical range was prior to being curtailed.

2nc Secure Data Act Violation

Secure Data Act does not mandate a reduction in surveillance

Newman 14 – staff writer at Slate

Lily Hay, Senator Proposes Bill to Prohibit Government-Mandated Backdoors in Smartphones, 12/5/14, http://www.slate.com/blogs/future_tense/2014/12/05/senator_wyden_proposes_secure_data_act_to_keep_government_agencies_from.html

Bills aimed at **curtailing** surveillance have failed to pass in the Senate this month (also most of the time), and the Secure Data Act will probably face the same uphill battle. As Ars Technica points out, an amendment similar to the Secure Data Act passed the House in June, but never became a bill. It's worth noting, though, that the Secure Data Act **doesn't actually prohibit backdoors**—it just prohibits agencies from mandating them. There are a lot of other types of pressure government groups could still use to influence the creation of backdoors, even if they couldn't flat-out demand them.

Topicality- Intelligence Gathering- HSS

1NC — Topicality (Intelligence Gathering)

"Domestic surveillance" is a form of intelligence gathering that acquires non-public information about U.S. persons. The plan is not topical because it curtails *information* gathering, not *intelligence* gathering.

Small 8 — Matthew L. Small, Presidential Fellow at the Center for the Study of the Presidency, Student at the United States Air Force Academy, now serves as an Operational Analyst at the United States Air Force, 2008 ("His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power During Times of National Crisis," Paper Published by the Center for the Study of the Presidency, Available Online at http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf, Accessed 07-11-2015, p. 2-3)

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to **narrow the scope of the term** "domestic surveillance." Domestic surveillance is **a subset of intelligence gathering**. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is **a means to an end**; the end being **intelligence**. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

> [T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Adhering to the above definition allows for a **focused analysis** of one part of President Bush's domestic surveillance policy as its implementation relates to the executive's ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis.

Considering an American citizen's claim to a right to privacy, the proposed analysis is not limited to electronic surveillance alone but rather includes those actions that would seek, or at least appear, to abridge a civil liberty. The previously [end page 2] presented definition of electronic surveillance itself implies an infringement into a person's expected right, in this case the right is to privacy. Acknowledging the intrusion **inherent in the definition**, the question of how far the president can push this intrusion becomes even more poignant. As such, President Bush's policies are not the sole subject of scrutiny, but rather his supposed power to abridge civil liberties in the interest of national security. The first part of the analysis, then, turns to a time where the national security of the United States was most at jeopardy, during its fight for independence.

Vote negative to endorse a limited topic.

First, the link: intelligence gathering is sufficiently broad to allow affirmative flexibility but narrow enough to ensure predictable, in-depth debates. The aff justifies an unmanageably large number of plans that curtail monitoring in sectors like *agriculture, banking, education, environment, finance, health care, housing, transportation,* and *welfare*.

Second, the impact: this prevents rigorous preparation and focused analysis because it shifts debates away from the core controversy about balancing security and civil liberties. This won't get stale thanks to the Snowden revelations, but no one will debate it if affs are given less controversial options that skirt the controversy. Broad interpretations sabotage clash and subvert topic education.

2NC — Interpretation/Violation

The plan is not intelligence gathering because its purpose is not identifying and disrupting a future security threat. This interpretation is crucial to effective policy analysis.

Jackson 9 — Brian A. Jackson, Senior Physical Scientist and Director of the Safety and Justice Program at the RAND Corporation, holds a Ph.D. in Bioinorganic Chemistry from the California Institute of Technology and an M.A. in Science, Technology, and Public Policy from George Washington University, 2009 ("Introduction," *Considering the Creation of a Domestic Intelligence Agency in the United States: Lessons from the Experiences of Australia, Canada, France, Germany, and the United Kingdom*, Report Prepared for the Department of Homeland Security and Published by the RAND Corporation, ISBN 9780833046178, Available Online at http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG805.epub , Accessed 07-11-2015, p. 34-38)

Defining Domestic Intelligence

What do we mean by the term domestic intelligence? The term intelligence sparks a range of associations, many of which stem from intelligence's connection with the secret activities of governments seeking to advance their interests in international affairs. In recent years, the term intelligence has been integrated into domestic law enforcement and public safety agencies as part of the phrase intelligence-led policing. Definitions of intelligence-led policing vary, but common elements include the use of information-gathering capabilities and the analysis and application of resulting information in crime prevention and response activities in addition to their more traditional use in the prosecution of past [end page 34] criminal acts (see, e.g., Weisburd and Braga, 2006; Milligan, Clemente, and Schader, 2006; Ratcliffe, 2002; Peterson, 2005). Use of the term intelligence has also spread beyond government organizations into private-sector organizations and elsewhere.1 To some, the term is most closely associated with the collection of information; others see intelligence as a more general category that includes a much broader range of activities. Such variety in the use and understanding of these terms **complicates policy debate**, and the lack of standard definitions for intelligence activities focused on homeland security and domestic counterterrorism (CT) efforts has been cited as a **significant impediment** to designing and assessing policy in this area (Masse, 2003, 2006).

To guide the work reported in this volume, we define domestic intelligence as efforts by government organizations to **gather**, **assess**, and **act on** information about individuals or organizations in the United States or U.S. persons elsewhere2 that are **not related** to the investigation of a known past criminal act or specific planned criminal activity.3

It is often the case that an individual or organization that carries out a terrorist attack—or has specific plans to do so (e.g., the attacker has conspired [end page 35] to acquire weapons for a future attack)—has committed one or more specific crimes. In these cases, traditional law enforcement approaches for investigating and prosecuting these crimes apply. The major difference between intelligence approaches and those used during traditional law enforcement stems from the former's emphasis on **preventing future events**—i.e., on acting when the individuals or organizations planning an attack may **not yet have committed** any prosecutable criminal offenses. Intelligence activities can be **investigative** in nature and may resemble law enforcement activities. However, they do not have to satisfy the same legal requirements that

constrain the initiation of a law enforcement investigation. An example of such an intelligence activity is investigating a tip about the suspected terrorist behavior of an unknown group to determine whether the tip is credible and, if it is, acting to prevent the attack. However, given substantial concern about the ability of even a single individual working alone to plan and execute acts of terrorist violence, investigative follow-up may not be enough to address the threat of terrorism. As a result, another type of intelligence effort can be more **explorative** in character, seeking proactively to (1) identify individuals or groups that might be [end page 36] planning violent actions and (2) gather information that might indicate changes in the nature of the threat to the country more broadly (see, e.g., DeRosa, 2004). Such explorative activity inherently involves gathering a broader spectrum of data about a greater number of individuals and organizations who are unlikely to pose any threat of terrorist activity.

Our definition of domestic intelligence parallels those that appear in the academic literature that has examined U.S. policy in this area over the past several decades (see, e.g., Morgan, 1980). However, it is **narrower than more-general definitions** that seek to capture the full breadth of intelligence requirements associated with homeland security or homeland defense.4 Our focus on the collection and use of information about individuals and organizations means that we have focused on the **tactical threat-identification** and **threat-disruption** parts of homeland security intelligence. Thus, we do not consider activities such as analyses designed to identify societal vulnerabilities or map the threat to those identified vulnerabilities to guide broader homeland security policies.5 Others have noted that the boundary between intelligence and law enforcement activities has blurred over time, particularly [end page 37] in response to transnational threats such as drug trafficking and terrorism. This blurring of the boundary between the two complicates an examination focused largely on the CT mission.6

“Domestic surveillance” is focused on the prevention of future attacks, not the prosecution of ordinary crimes. This is from an authoritative Supreme Court decision.

Powell 72 — Lewis Franklin Powell, Jr., Associate Justice of the United States Supreme Court (succeeded by Anthony Kennedy), 1972 (United States Supreme Court Majority Decision in United States v. United States District Court, Number 70-153, June 19th, Available Online at http://caselaw.findlaw.com/us-supreme-court/407/297.html, Accessed 07-05-2015)

We emphasize, before concluding this opinion, the scope of our decision. As stated at the outset, this case involves only the domestic aspects of national security. We have not addressed, and express no opinion [407 U.S. 297, 322] as to, the issues which may be involved with respect to activities of foreign powers or their agents. 20 Nor does our decision rest on the language of 2511 (3) or any other section of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. That Act does not attempt to define or delineate the powers of the President to meet domestic threats to the national security.

Moreover, we do not hold that the same type of standards and procedures prescribed by Title III are necessarily applicable to this case. We recognize that domestic security surveillance may involve **different policy and practical considerations** from the surveillance of "ordinary crime." The gathering of security intelligence is often **long range** and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to

identify than in surveillance operations against many types of crime specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on **the prevention of unlawful activity** or the enhancement of the Government's **preparedness for some possible future crisis or emergency**. Thus, the focus of domestic surveillance may be **less precise** than that directed against more conventional types of crime.

Topicality Not Framework- HSS

1NC — Topicality (Not Framework)

Our interpretation is that the resolution should define the division of affirmative and negative ground. It was *negotiated* and *announced in advance*, providing both sides with a reasonable opportunity to prepare to engage one another's arguments.

This does not require the use of any particular style, type of evidence, or assumption about the role of the judge — only that the *topic* should determine the debate's subject matter.

The affirmative violates this interpretation because they do not advocate that the United States federal government substantially curtail *its* domestic surveillance.

First, "United States federal government" means the three branches of the central government. The affirmative does not advocate action by the USFG.

OECD 87 — Organisation for Economic Co-operation and Development Council, 1987 ("United States," *The Control and Management of Government Expenditure*, p. 179)

1. Political and organisational structure of government

The United States of America is a federal republic consisting of 50 states. States have their own constitutions and within each State there are at least two additional levels of government, generally designated as counties and cities, towns or villages. The relationships between different levels of government are complex and varied (see Section B for more information).

The Federal Government is composed of **three branches**: the legislative branch, the executive branch, and the judicial branch. Budgetary decisionmaking is shared primarily by the legislative and executive branches. The general structure of these two branches relative to budget formulation and execution is as follows.

Second, "its" implies ownership. Domestic surveillance *conducted by the USFG* must be curtailed.

Gaertner-Johnston 6 — Lynn Gaertner-Johnston, founder of Syntax Training—a company that provides business writing training and consulting, holds a Master's Degree in Communication from the University of Notre Dame, 2006 ("Its? It's? Or Its'?," *Business Writing*—a blog, May 30th, Available Online at http://www.businesswritingblog.com/business_writing/2006/05/its_its_or_its_.html, Accessed 07-04-2014)

A friend of mine asked me to write about how to choose the correct form of its, and I am happy to comply. Those three little letters cause a lot of confusion, but once you master a couple of basic rules, the choice becomes simple. Here goes:

Its' is never correct. Your grammar and spellchecker should flag it for you. Always change it to one of the forms below.

It's is the contraction (abbreviated form) of "it is" and "it has." It's has no other meanings--only "it is" and "it has."

Its is the form to use in all other instances when you want a form of i-t-s but you are not sure which one. Its is a possessive form; that is, it shows ownership the same way Javier's or Santosh's does.

Example: The radio station has lost **its** license.

The tricky part of the its question is this: If we write "Javier's license" with an apostrophe, why do we write "its license" without an apostrophe?

Here is the explanation: Its is like hers, his, ours, theirs, and yours. These are all pronouns. Possessive pronouns do not have apostrophes. That is because their spelling already indicates **a possessive**. For example, the possessive form of she is hers. The possessive form of we is ours. Because we change the spelling, there is no need to add an apostrophe to show possession. Its follows that pattern.

There are several reasons to prefer our interpretation.

First — Deliberation Skills. Topicality facilitates a process of successive debates that develops important skills and fosters appreciation for multiple perspectives. Abandoning the topic forecloses the educational and democratic benefits of debate.

Lundberg 10 — Christian O. Lundberg, Associate Professor of Rhetoric in the Department of Communication Studies at the University of North Carolina at Chapel Hill, holds a Ph.D. in Communication Studies from Northwestern University, 2010 ("The Allred Initiative and Debate Across the Curriculum: Reinventing the Tradition of Debate at North Carolina," *Navigating Opportunity: Policy Debate in the 21st Century*, Edited by Allan D. Louden, Published by the International Debate Education Association, ISBN 9781617700293, p. 299)

In response to the first critique, which ultimately reduces to the claims that debate overdetermines democratic deliberation and that it inculcates an unhealthy antagonism, a number of scholars have extended the old maxim that dissent is critical to democracy in arguing that debate is a **critical tool** for civic deliberation (Brookfield and Preskill 1999; Levinson 2003). Gill Nichols (2000, 132) argues that a commitment to debate and dissent as a core component of democracy is **especially critical** in the face of the complexity of modern governance, rapid technological change, and an increasing need to deal with the nexus of science and public policy. The benefits of in-class debate espoused by Stephen Brookfield, Meira Levinson, and Nichols stem from the idea that debate inculcates skills for **creative and open-minded discussion of disputes** in the

context of democratic deliberation: on their collective accounting, debate **does not close down discussion** by reducing issues to a simple pro/con binary, nor does it promote antagonism at the expense of cooperative discussion. Rather, properly cultivated, debate is a tool for managing democratic conflicts that foregrounds significant points of dispute, and then invites interlocutors to **think about them together creatively** in the context of **successive strategic iterations**, [end page 304] **moments of evaluation**, and **reiterations of arguments** in the context of a **structured public discussion**.

Goodwin's study of in-class debate practice confirms these intuitions. Goodwin's study revealed that debate produces an intense personal connection to class materials while simultaneously making students more open to differing viewpoints. Goodwin's conclusion is worth quoting at length here:

> Traditional teaching techniques like textbooks, lectures, and tests with right answers insulate students from the open questions and competing answers that so often drive our own interest in our subjects. Debates **do not**, and in fact invite students to consider **a range of alternative views** on a subject, encountering the course content broadly, deeply and personally. Students' comments about the value of disagreement also offer an interesting perspective on the nature of the thinking skills we want to foster. The previous research . . . largely focused on the way debate can help students better master the principles of correct reasoning. Although some students did echo this finding, many more emphasized the importance of debate in helping them to recognize and deal with a diversity of viewpoints. (Goodwin 2003, 158)

The results of this research create significant questions about the conclusion that debate engenders reductive thinking and an antagonism that is unhealthy to democracy. In terms of the criticism that debate is reductive, the implication of Goodwin's study is that debate creates **a broader appreciation for multiple perspectives on an issue** than the predominant forms of classroom instruction. This conclusion is especially powerful when one considers debate as more than a discrete singular performance, but as **a whole process** of **inventing**, **discussing**, **employing**, and **reformulating** arguments in the context of an audience of comparatively objective evaluators. In the process of **researching**, **strategizing**, **debating**, **reframing stances**, and **switching sides on a question**, students are provided with both **a framework for thinking about a problem** and creative solutions to it **from a number of angles**. Thus, while from a very narrow perspective one might claim debate practices reduce all questions to a "pro" and a "con," the **cumulative effects** of the pedagogical process of **preparing for**, **performing**, and **evaluating** a debate provide **the widest possible exposure** to the varied positions that a student might take on an issue. Perhaps more significantly, in-class debate provides a competitive incentive for finding as many **innovative and unique approaches** to a problem as possible, and for translating them into **publically useful positions**.

Second — Surveillance Literacy. (See separate file)

Third — Constructive Constraints. Absolute affirmative flexibility leaves the negative without meaningful ground to advance well-developed counter-arguments. Establishing boundaries is important because they spur imagination and innovation, improving the quality of debates.

Thomas and Brown 11 — Douglas Thomas, Associate Professor in the Annenberg School for Communication at the University of Southern California, founding member of the Critical and Cultural Studies division of the National Communication Association, holds a Ph. D. in Communication from the University of Minnesota, and John Seely Brown, Visiting Scholar and Adviser to the Provost at the University of Southern California, independent cochairman of the Deloitte Center for the Edge, former Chief Scientist and Director of the Palo Alto Research Center at Xerox, holds a Ph.D. in Computer and Communication Sciences from the University of Michigan, 2011 ("A Tale of Two Cultures," *A New Culture of Learning: Cultivating the Imagination for a World of Constant Change*, Published by CreateSpace Independent Publishing Platform, ISBN 1456458884, p. 35)

Learning Environments

We believe, however, that learning should be viewed in terms of an environment—combined with the rich resources provided by the digital information network—where the context in which learning happens, the **boundaries that define it**, and the students, teachers, and information within it all coexist and shape each other in **a mutually reinforcing way**. Here, boundaries serve not only as constraints but also, oftentimes, as **catalysts for innovation**. Encountering boundaries **spurs the imagination** to become more active in figuring out novel situations within the constraints of the situation or context.

Environments with well-defined and carefully constructed boundaries are not usually thought of as standardized, nor are they tested and measured. Rather, they can be described as a set of pressures that **nudge and guide change**. They are **substrates for evolution**, and they move at varying rates of speed.

1NC — Race/Racism Module

Fourth — Policy Engagement:

Policy debates over racial issues are productive and important. Meaningful dialogue about what actions the government should take overcomes the conversational impasse and paves the way for material change. Disavowing the policy consequences of one's ideological positions makes things worse, not better.

Bracey 6 — Christopher A. Bracey, Associate Professor of Law and Associate Professor of African & African American Studies at Washington University in St. Louis, holds a B.S. from the University of North Carolina and a J.D. from Harvard Law School, 2006 ("The Cul De Sac of Race Preference Discourse," *Southern California Law Review* (79 S. Cal. L. Rev. 1231), September, Available Online to Subscribing Institutions via Lexis-Nexis)

IV. A Foundation for Renewed Racial Dialogue

A deepened appreciation and open acknowledgment of this pedigree is crucial to restoring public conversation on race preferences. Opponents of race preferences must come to understand that this pedigree, if left unaddressed, tends to overwhelm the underlying merit of arguments against race preferences in the eyes of proponents. At the same time, proponents should understand that the deployment of these pedigreed rhetorical themes does not necessarily signal agreement with the nineteenth-century racial norms from which they are sourced. For both proponents and opponents, the avoidance of a rapid retreat into **ideological trench warfare** not only preserves space for **reasoned, substantive debate** regarding race preferences, but also allows for the possibility of overcoming our collective fixation on race preferences as the issue in American race relations and **advancing the conversation** to reach the larger issue of producing a more racially inclusive society.

Our failing public conversation on race matters not only presents a particularly tragic moment in American race relations, but also evinces a greater failure of democracy. **Sustained, meaningful dialogue** is a critical, if not indispensable feature of our liberal democracy. n260 It is through [*1312] meaningful public conversation about **what actions government should take (or refrain from taking)** that public policy determinations ultimately gain legitimacy. Conversation is particularly important in our democracy, given the profoundly diverse and often contradictory cultural and political traditions that are the sine qua non of American life. Under these particular circumstances, "persons ought to strive to engage in a mutual process of **critical interaction**, because if they do not, no uncoerced common understanding can possibly be attained." n261 Sincere deliberation, in its broadest idealized form, ensures that a broad array of input is heard and considered, legitimizing the resulting decision. Under this view, "if the preferences that determine the results of democratic procedures are unreflective or ignorant, then they lose their claim to political authority over us." n262 In the absence of self-conscious, reflective dialogue, "democracy loses its capacity to generate legitimate political power." n263

In addition to legitimizing the exercise of state authority in a liberal democracy, dialogue works to promote individual freedom. The power to hash over our alternatives is **an important exercise of human agency**. n264 If democracy is taken to mean rule by the people themselves, then conversation and deliberation are the principal means through which we declare and assert the power to shape our own belief systems. The roots of this idea of dialogue as freedom-promoting

are traceable to the Kantian view that individual motivation that is either uncriticized or uncontested can be understood on a deeper level as a mode of subjugation. As Frank Michelman explains, "in Kantian terms we are free only insofar as we are self-governing, directing our actions in accordance with law-like reasons [*1313] that we adopt for ourselves, as proper to ourselves, upon conscious, critical reflection on our identities (or natures) and social situations." n265 Because "self-cognition and ensuing self-legislation must, to a like extent, be socially situated," Michelman continues, "norms must be formed through public dialogue and expressed as public law." n266 In this way, dialogue as democratic modus operandi can be understood both as **a material expression of freedom** and as **a mechanism to promote individual freedom**.

Robust dialogue on **public policy matters** also promotes the individual growth of the dialogue participants. Conversation helps people become **more knowledgeable** and hold **better developed opinions** because "opinions can be **tested** and **enlarged** only where there is a **genuine encounter with differing opinions**." n267 Moreover, meaningful conversation serves to broaden people's moral perspectives to include matters of public good, because appeals to the public good are often the most persuasive arguments available in public deliberation. n268 Indeed, even if people are thinking self-interested thoughts while making public good arguments, cognitive dissonance will create an incentive for such individuals to reconcile their self interest with the public good. n269 At the same time, because political dialogue is a **material manifestation** of democracy in action, it promotes a feeling of **democratic community** and instills in the people a will for political action to advance **reasoned public policy** in the spirit of promoting the public good. n270

For these reasons, the collective aspiration of those interested in pursing **serious**, **sustained**, and **policy-legitimating dialogue** on race matters must be to cultivate a **reasoned discourse** that is relatively free of retrograde ideological baggage that feeds **skepticism**, engenders **distrust**, and effectively **forecloses constructive conversation** on the most corrosive and divisive issue in American history and contemporary life. As the forgoing sections suggest, the continued reliance upon pedigreed rhetorical themes has and continues to poison racial legal discourse. Given the various normative and ideological commitments that might be ascribed to [*1314] opponents of race preferences, the question thus becomes, how are we to approach the task of breaking through the conversational impasse and creating intellectual space for meaningful discourse on this issue?

One can imagine at least three responses to this question. As an initial matter, one might subscribe to the view that pedigree is not destiny, and thus conclude that the family resemblance tells us little, if anything, definitive about the normative commitments of today's opponents of race preferences. Consider the argument that the benefits of white privilege do not extend equally among all whites, and that policies that treat all whites as equally guilty of racial subordination advance a theory of undesirable rough justice. n271 Although this argument is a staple of modern opponents of race preferences, it would be a mistake to conclude that it can only be deployed by those persons who normatively oppose race preferences. Indeed, one might very well support race preferences, but believe quite strongly that such programs should be particularly sensitive to individual candidate qualifications.

Similarly, although one might believe that diversity does not comport with merit based decisionmaking in education and employment, it would be incorrect to interpret this belief as necessarily indicative of a greater commitment to preserving status quo racial inequality. One might reject the diversity rational as insufficient to justify a system of race preferences that one strongly believes must be justified. In short, one may be inclined to simply engage the argument and ignore the possibility of retrograde normative underpinnings.

Interestingly, a small cadre of scholars has adopted this approach. Derrick Bok and William Bowen, in The Shape of the River, investigated whether racial minorities feel stigmatized or otherwise adversely affected as a result of being denoted beneficiaries of affirmative action policy in college admissions. n272 Thomas Ross has critically examined claims of collective white innocence. n273 More recently, Goodwin Lui has researched the scope of the burden that affirmative action in college admissions imposes upon aspiring white students. n274 In each instance, these scholars chose to place to one side their skepticism about the normative commitments of those advancing the viewpoint, and launch directly into substantive critiques of that viewpoint.

[*1315] This approach, however, may prove unsatisfactory for those more strongly committed to racial justice - those for whom it is not enough to simply challenge ideas in the abstract. As the late Robert Cover famously wrote, "legal interpretation takes place within a field of pain and death." n275 By this, he meant that the stakes of legal discourse are elevated when bodies are on the line. A vigorous critique of the substantive position alone leaves the normative underpinnings - the motivational force behind the proposal - dangerously intact. It may stymie the particular vehicle that attempts to reinforce racial subordination, but it leaves unaddressed the fundamental motive driving policy positions that seek to undermine racial minorities in the first place.

At the other end of the responsive spectrum is wholesale rejection. One might view the pedigree as providing good reason to dismiss opponents of race entirely. Proponents of this view may choose to indulge fully this liberal skepticism and simply reject the message along with the messenger. n276 The tradition of legal discourse on American race relations [*1316] has been one steeped in racial animus and characterized by circumlocution, evasiveness, reluctance and denial. When opponents avail themselves of rhetorical strategies used by nineteenth-century legal elites, they necessarily invoke the specter of this tragic racial past. Moreover, their continued reliance upon pedigreed rhetoric to justify a system that only modestly responds to persistent racial disparities in the material lives of racial minorities suggests a deep, unarticulated normative commitment to preserving the racial status quo in which whites remain comfortably above blacks. The steadfast reliance upon pedigreed rhetoric, coupled with the apparent disconnect between claims of racial egalitarianism and material conditions of racial subordination as a result of persistent racial disparities, spoils the credibility of modern opponents of race preferences and creates an incentive for proponents to dismiss them without serious interrogation, consideration, and weighing of the arguments they advance.

The principal deficit of this approach is that it would serve only to **concretize the existing conversational impasse** and subvert the larger aspiration of seeking **constructive solutions to pressing racial issues**. It creates an incentive to view race matters in **purely ideological terms** and further subverts the possibility of **reasoned policy debate**. Speaking of race matters in purely ideological terms poses a **serious impediment** to racial conversation because, in advancing one's position, one essentially argues that a particular set of circumstances demands a particular outcome. In this [*1317] way, purely ideological race rhetoric functions much like philosopher Immanuel Kant described in the Groundwork of the Metaphysics of Morals. n277 According to Kant, a moral imperative is categorical insofar as it is presented as objectively necessary, without reference to some purpose or outcome. The imperative is the end in and of itself. As Kant explained, the moral imperative "has to do not with the matter of the action and what is to result from it, but with the form and the principle from which the action itself follows; and the essentially [sic] good in the action consists in the disposition, let the result be what it may." n278

Because the moral imperative embodies that which is morally good, it necessarily makes a claim about justice. In short, an act is deemed morally just to the extent that it retains fidelity to the moral imperative.

By contrast, a policy argument reflects a set of choices or priorities and asserts a claim about the impact of **a particular set of decisions** upon the world. n279 A policy argument does not embody a claim to justice. Indeed, the correctness of a policy choice is often tested against the backdrop of some agreed upon conception of justice. As the late Jerome Culp, Jr. explained:

> Neither side of a moral debate is likely to be persuaded by proof that the policy claims support or discredit their moral positions. Policy arguments can be disproved by empirical evidence and challenged by showing in some situations the policy does not work or has contrary results. To refute a moral claim, however, first requires some agreement on the moral framework. Only then can one discuss whether the moral policy advocated conforms to the agreed-upon framework. n280

Speaking about race matters in purely ideological or moral terms creates the impression that a particular racial policy is rooted in some theory of what is morally just. In this way, opposition to race preferences is made to appear "above the fray" of politics and less susceptible to public choice debate. In addition, it enables opponents to claim that race [*1318] preferences merely reflect the political whims of its proponents, unanchored by principle or a coherent theory of social justice.

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." 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**. n282

1NC — Gender/Feminism Module

Fourth — Policy Engagement:

Debates about government policies are productive and important. Abandoning the state as an agent of change prevents meaningful progress toward equality. Patriarchy thrives in an environment of anti-statism.

Harrington 92 — Mona Harrington, lawyer and political scientist, 1992 ("What Exactly Is Wrong with the Liberal State as an Agent of Change?," *Gendered States: Feminist (Re)Visions of International Relations Theory*, Edited By V. Spike Peterson, Published by Lynne Rienner, ISBN 1555872980, p. 65-66)

The title of this chapter is a question that needs much more careful exploration by feminists than we have given it so far. In fact, I raise the question in a somewhat belligerent tone because I am inclined to think that the liberal state is a **suitable, even elegant, agent** to advance a feminist agenda in both **domestic and international relations**. Yet most of my feminist colleagues who are probing the gendered nature of the state vastly mistrust the liberal tradition and seek to formulate a politics that will displace it. My aim here is to join some of their arguments before a consensus forms that liberalism is beyond the pale of seriously critical feminist analysis. But let me hasten to say, before irreversible misunderstanding sets in, that what I am contesting is the meaning, the content that antiliberals generally assign to liberalism. The object of most of their criticism is actually one variant of the liberal tradition, and I think it is crucially important that we recognize another, more morally spacious, set of liberal ideas and that we help to develop its deeper promise.

I will review the antiliberal arguments in some detail and answer them presently. First, I want to suggest why the whole argument is important.

The crux of feminist challenge to the liberal state is essentially **an antistate analysis** with demonstrations that liberalism, while promising to divest the state of its destructive features, does not do so. In this analysis, states are inherently oppressive and exploitative organizations of power. They are run by hierarchies in control of deadly force deployed to protect the privileges of elites, which are, for the most part, capital-controlling, white, and male. In short, feminist antiliberal, antistate analysis is similar to already established Marxist criticism of the state but with added attention to gender. States are not only instruments of class interest but also of patriarchy. They perpetuate not only class conflict and violence but also gender conflict and violence. And liberal systems that supposedly democratize power and wealth simply mask the underlying fact of elite rule. Where can this analysis lead but to a call for deconstructing the present sovereign state system? [end page 65]

At this juncture in history—I am writing in the winter of 1990-91 with the Soviet Union and Eastern Europe decommunized, the Cold War over— other calls for deconstructing nation-states are also in the air. Internationalists see the first opportunity since the mid-1940s to put a functioning system of international organization in place, starting with a revived United Nations and extending, in some versions, to complex networks of denationalized, depoliticized regimes rationally and efficiently organizing the world's business.

In other words, the state as a dealer in power, a wielder of weapons, an inherently violent institution, is the object of suspicion and resistance by both antiliberal feminists and liberal

internationalists. And, especially now, when the international system is undergoing immense change, pressures for denationalizing change—certainly discourse arguing for it—will be persistent.

In the face of such pressures, I believe that feminist critics of the present state system should **beware**. The very fact that the state creates, condenses, and focuses political power may make it **the best friend, not the enemy, of feminists**—because the availability of real political power is **essential to real democratic control**. Not sufficient, I know, but essential.

My basic premise is that political power can **significantly disrupt patriarchal and class** (which is to say, economic) **power**. It holds the potential, at least, for disrupting the patriarchal/economic oppression of those in the lower reaches of class, sex, and race hierarchies. It is indisputable that, in the nineteenth and twentieth centuries, it has been **the political power of states** that has confronted the massive economic power privately constructed out of industrial processes and has imposed obligations on employers for the welfare of workers as well as providing additional social supports for the population at large. And the political tempering of economic power has been **the most responsive to broad public needs** in liberal democracies, where governments must respond roughly to the interests of voters.

Of course, this is not the whole story. The nation-states of this period have also perpetrated horrors of torture and war, have aided the development of elite-controlled industrial wealth, and have not sufficiently responded to the human needs of their less powerful constituents. But I believe it is better to try to restrain the horrors and abuses than to **give up on the limits that state organized political power can bring to bear** on the forms of class-based, race-based, sex-based power that constitute **the greatest sources of oppression we are likely to face**.

2NC/1NR — Essentials

Deliberation Skills Explanation/Extension

(Extend our "Deliberation Skills" impact.)

Debating an agreed-upon topic for an entire season is valuable because it trains students to effectively deliberate. The process of debating the topic is valuable independent of its content: successive strategic iterations, moments of evaluation, and reiterations of arguments in the context of a structured discussion train students to appreciate multiple perspectives and better conceptualize and communicate informed positions. Switching sides on the question is important because it establishes a framework for thinking through problems and solutions from multiple angles. Content-based critiques of the topic aren't responsive to our process-based defense of topical debating — that's Lundberg.

Even if the content of the affirmative is valuable, the process they endorse is not. Debating the topic challenges students to articulate and defend positions grounded in the best evidence for and against the proposition. Knowledge of the topic increases depth of inquiry and quality of evaluation.

Lundberg 10 — Christian O. Lundberg, Associate Professor of Rhetoric in the Department of Communication Studies at the University of North Carolina at Chapel Hill, holds a Ph.D. in Communication Studies from Northwestern University, 2010 ("The Allred Initiative and Debate Across the Curriculum: Reinventing the Tradition of Debate at North Carolina," *Navigating Opportunity: Policy Debate in the 21st Century*, Edited by Allan D. Louden, Published by the International Debate Education Association, ISBN 9781617700293, p. 299)

Part of the benefit of debate in this regard is that more than simply fostering student engagement with the curricula by incentivizing mastery of the material and engendering a cooperative learning environment, debate practices also facilitate the application of course material to students' **everyday lives** (Kennedy 2007, 183; Martens 2005, 4). Debate practice is uniquely effective in fostering application because it demands that a student have **a relatively comprehensive grasp** of a subject area, but, more important, that they **articulate a position relative to the issues in the debate**, and **evaluate the competing claims** that they might make **in relation to the strength of the evidence** that supports them (Schuster and Meany 2005). Thus, debate practices foster not only engagement with an issue but also **an evaluation of a student's position** relative to an issue in the light of **the best arguments for and against a proposition**. Debate offers privileged access not only to content mastery, or even opinion formation, but what is more important is that it **bridges the gap** between the theoretical knowledge inculcated in the classroom and **the specific personal stands** that one might take both toward a specific resolution and, more broadly, toward the **critical argumentative connections** that a given resolution for debate accesses. Debate then has the potential to create **a depth of inquiry and evaluation** relative to the classroom curriculum that is **unparalleled** both in terms of **knowledge of a subject area**, and perhaps more significantly, in terms of a set of **owned investments** relative to the propositions at hand.

Deliberation skills are <u>the most significant impact</u> because they determine a student's ability to effectively communicate the content of their positions. Prioritizing content over process leaves students <u>less prepared</u> to vigorously defend their opinions when challenged by well-prepared opponents in non-debate settings.

Constructive Constraints Explanation/Extension

(Extend our "Constructive Constraints" impact.)

Learning is most effective when students are given the freedom to innovate within well-defined and carefully constructed boundaries. Without constraints, affirmatives will gravitate toward positions that don't invite a well-prepared and thoughtful negative response. Constructing boundaries catalyzes innovation and spurs students' imaginations, improving the overall quality of debates — that's Thomas and Brown, two Ph.D.s specializing in the culture of 21st century learning.

Their "topicality bad" arguments assume that boundaries constrain innovation. We critique this assumption. "Topicality not framework" is the best way to encourage creative imagination within the confines of a bounded environment. Prefer evidence from education and innovation experts.

Thomas and Brown 11 — Douglas Thomas, Associate Professor in the Annenberg School for Communication at the University of Southern California, founding member of the Critical and Cultural Studies division of the National Communication Association, holds a Ph. D. in Communication from the University of Minnesota, and John Seely Brown, Visiting Scholar and Adviser to the Provost at the University of Southern California, independent cochairman of the Deloitte Center for the Edge, former Chief Scientist and Director of the Palo Alto Research Center at Xerox, holds a Ph.D. in Computer and Communication Sciences from the University of Michigan, 2011 ("We Know More Than We Can Say," *A New Culture of Learning: Cultivating the Imagination for a World of Constant Change*, Published by CreateSpace Independent Publishing Platform, ISBN 1456458884, p. 79)

Inquiry

Conventional wisdom holds that different people learn in different ways. Something is missing from that idea, however, so we offer a corollary: Different people, when presented with exactly the same information in exactly the same way, will learn different things. Most models of education and learning have almost **no tolerance** for this kind of thing. As a result, teaching tends to focus on eliminating the source of the problem: the student's imagination.

Imagine a situation where two students are learning to play the piano. The lesson for the day is a Bach prelude. The first student attacks the piano forcefully, banging out each note correctly but with a violent intensity that is uncharacteristic for the style of the piece. The second student seems to view the written score as a loose framework; he varies the rhythm, modifies the melody, and follows his own internal muse. In today's classroom, the teacher will see two students "doing it wrong." In the new culture of learning, the teacher will see **a budding rock star** and **a jazz musician**.

The story of these students illustrates **a fundamental principle** of the new culture of learning: Students learn best when they are able to follow their passion and **operate within the constraints of a bounded environment**. **Both** of those elements matter. Without the boundary set by the

assignment of playing the prelude, there would be **no medium for growth**. But without the passion, there would be nothing to grow in the medium. Yet the process of discovering one's passion can be complicated.

An "***anything goes***" approach doesn't work. Clear boundaries are needed precisely because they are challenging.

Thomas and Brown 11 — Douglas Thomas, Associate Professor in the Annenberg School for Communication at the University of Southern California, founding member of the Critical and Cultural Studies division of the National Communication Association, holds a Ph. D. in Communication from the University of Minnesota, and John Seely Brown, Visiting Scholar and Adviser to the Provost at the University of Southern California, independent cochairman of the Deloitte Center for the Edge, former Chief Scientist and Director of the Palo Alto Research Center at Xerox, holds a Ph.D. in Computer and Communication Sciences from the University of Michigan, 2011 ("We Know More Than We Can Say," *A New Culture of Learning: Cultivating the Imagination for a World of Constant Change*, Published by CreateSpace Independent Publishing Platform, ISBN 1456458884, p. 80-81)

Questions and Answers

The new culture of learning is **not** about unchecked access [end page 80] to information and unbridled passion, however. Left to their own devices, there is no telling what students will do. If you give them a resource like the Internet and ask them to follow their passion, they will probably meander around finding bits and pieces of information that move them **from topic to topic**—and produce **a very haphazard result**.

Instead, the new culture of learning is about the kind of **tension** that develops when students with an interest or passion that they want to explore are faced with **a set of constraints** that allow them to act **only within given boundaries**.

Prefer our evidence — psychological studies confirm our thesis.

Gibbert et al. 7 — Michael Gibbert, Assistant Professor of Management at Bocconi University (Italy), et al., with Martin Hoeglis, Professor of Leadership and Human Resource Management at WHU—Otto Beisheim School of Management (Germany), and Lifsa Valikangas, Professor of Innovation Management at the Helsinki School of Economics (Finland) and Director of the Woodside Institute, 2007 ("In Praise of Resource Constraints," *MIT Sloan Management Review*, Spring, Available Online at https://umdrive.memphis.edu/gdeitz/public/The%20Moneyball%20Hypothesis/Gibbert%20et%20al.%20-%20SMR%20(2007)%20Praise%20Resource%20Constraints.pdf, Accessed 04-08-2012, p. 15-16)

Resource constraints can also **fuel innovative team performance directly**. In the spirit of the proverb "**necessity is the mother of invention**," [end page 15] teams may produce **better results** because of resource constraints. Cognitive psychology provides **experimental support** for the "**less is more**" hypothesis. For example, scholars in creative cognition find in laboratory tests that

subjects are **most innovative when given fewer rather than more resources for solving a problem**.

The reason seems to be that the human mind is most productive when restricted. **Limited**—or **better focused**—**by specific rules and constraints**, we are **more likely to recognize an unexpected idea**. Suppose, for example, that we need to put dinner on the table for unexpected guests arriving later that day. The main constraints here are the ingredients available and how much time is left. One way to solve this problem is to think of a familiar recipe and then head off to the supermarket for the extra ingredients. Alternatively, we may start by looking in the refrigerator and cupboard to see what is already there, then allowing ourselves to devise innovative ways of combining subsets of these ingredients. Many cooks attest that the latter option, while riskier, often leads to more creative and better appreciated dinners. In fact, it is the option invariably preferred by professional chefs.

The **heightened innovativeness** of such "constraints-driven" solutions comes from team members' tendencies, under the circumstances, to look for **alternatives beyond "how things are normally done,"** write C. Page Moreau and Darren W. Dahl in a 2005 Journal of Consumer Research article. Would-be innovators facing constraints are more likely to find **creative analogies and combinations** that would **otherwise be hidden** under a glut of resources.

They'll say that their aff is creative, but this misses the point. Topical constraints are a better conduit for creativity. Enforcing limits incentivizes innovation to find ways to express one's arguments *within the confines of the topic*.

Intrator 10—David Intrator, President of Strategic Documentaries, Founder of The Creative Organization, holds an M.A. in Music from Harvard University, 2010 ["Thinking Inside the Box," *Training* magazine, October 21st, Available Online at http://www.trainingmag.com/article/thinking-inside-box, Accessed 02-20-2012]

One of the most pernicious myths about creativity, one that **seriously inhibits creative thinking and innovation**, is the belief that one needs to "think outside the box."

As someone who has worked for decades as a professional creative, **nothing could be further from the truth**. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, "Design depends largely upon constraints."

The myth of thinking outside the box stems from **a fundamental misconception** of what creativity is, and what it's not.

In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired.

But, in fact, creativity is not about divine inspiration or magic.

It's about **problem-solving**, and by definition a problem is **a constraint, a limit, a box**.

One of the best illustrations of this is the work of photographers. They create by excluding the great mass what's before them, choosing a small frame in which to work. Within that tiny frame, literally a box, they uncover relationships and establish priorities.

What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You're the one choosing the frame. And you alone determine what's an effective solution.

This can be quite demanding, both intellectually and emotionally.

Intellectually, you are required to **establish limits**, **set priorities**, and **cull patterns and relationships** from a great deal of material, much of it fragmentary.

More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you're usually left with **a big mess** of ideas, half-ideas, vague notions, and the like.

Now, chances are you've had a great time making your mess. You might have gone off-site, enjoyed a "brainstorming camp," played a number of warm-up games. You feel artistic and empowered.

But to be truly creative, **you have to clean up your mess**, organizing those fragments into **something real**, **something useful**, **something that actually works**.

That's the hard part.

It takes a lot of energy, time, and willpower to make sense of the mess you've just generated.

It also can be emotionally difficult.

You'll need to throw out many ideas you originally thought were great, ideas you've become attached to, because **they simply don't fit into the rules you're creating** as you build your box.

Governmentality as Heuristic

Governmentality should be used as a heuristic, not as a description. We can effectively advocate for policy reforms without identifying with the existing state. Arguing that the state is a bad actor in all circumstances overgeneralizes and stifles political agency. Instead of totalizing rejection, we should assess the practical effects of particular policies in specific contexts.

Zanotti 13 — Laura Zanotti, Associate Professor of Political Science at Virginia Tech, holds a Ph.D. in International Relations from Florida International University, 2013 ("Governmentality, Ontology, Methodology: Re-thinking Political Agency in the Global World," *Alternatives: Global, Local, Political*, Volume 38, Issue 4, November, Available Online to Subscribing Institutions via SAGE Publications Online, p. 289-290)

In this article, I explore the ontological and epistemological assumptions of different versions of governmentality theory and highlight the importance of these assumptions for the conceptualization of political agency. I argue that some versions of governmentality remain trapped in the substantialist ontology they are set to criticize and that this ontological position **stifles the possibility of reimagining political agency** beyond liberal constraints.

While there are important variations in the way international relations scholars use governmentality theory, for the purpose of my argument I identify two broad trajectories.2 One body of scholarship uses governmentality **as a heuristic tool** to explore modalities of local and international government and to assess their effects in the contexts where they are deployed; the other adopts this notion **as a descriptive tool** to theorize the globally oppressive features of international liberalism. Scholars who use governmentality as a heuristic tool tend to conduct inquiries based upon analyses of practices of government and resistance. These scholars rely on ethnographic inquiries, emphasizes the multifarious ways government works in practice (to include its oppressive trajectories) and the ways uneven interactions of governmental strategies and resistance are contingently enacted. As examples, Didier Bigo, building upon Pierre Bourdieu, has encouraged a research methodology that privileges a relational approach and focuses on practice;3 William Walters has advocated considering governmentality as a research program rather than as a ''depiction of discrete systems of power;''4 and Michael Merlingen has criticized the downplaying of resistance and the use of ''governmentality'' as interchangeable with liberalism.5 Many other scholars have engaged in contextualized analyses of governmental tactics and resistance. Oded Lowenheim has shown how ''responsibilization'' has become an instrument for governing individual travelers through ''travel warnings'' as well as for ''developing states'' through performance indicators;6 Wendy Larner and William Walters have questioned accounts of globalization as an ontological dimension of the present and advocated less substantialized accounts that focus on studying the discourses, processes and practices through which globalization is made as a space and a political economy;7 Ronnie D. Lipschutz and James K. Rowe have looked at how localized practices of resistance may engage and transform power relations;8 and in my own work, I have studied the deployment of disciplinary and governmental tools for reforming governments in peacekeeping operations and how these practices were hijacked and resisted and by their targets. 9

Scholars who use governmentality as a descriptive tool focus instead on one particular trajectory of global liberalism, that is on the convergence of knowledge and scrutiny of life processes (or biopolitics) and violence and theorize global liberalism as an extremely effective formation, a

coherent and powerful Leviathan, where biopolitical tools and violence come together to serve dominant classes or states' political agendas. As I will show, Giorgio Agamben, Michael Hardt and Antonio Negri, and Sergei Prozorov tend to embrace this position.10

The distinction between governmentality as a heuristic and governmentality as a descriptive tool is **central for debating political agency**. I argue that, notwithstanding their critique of liberalism, scholars who use governmentality as a descriptive tool rely on the same ontological assumptions as the liberal order they criticize and do move away from Foucault's focus on historical practices in order to privilege abstract theorizations. By using governmentality as a description of ''liberalism'' or ''capitalism'' instead of as a methodology of inquiry on power's contingent modalities and technologies, these scholars tend to reify a substantialist ontology that ultimately reinforces a liberal conceptualization of subjects and power as standing in a relation of externality and stifles the possibility of reimagining political agency on different grounds. ''Descriptive governmentality'' constructs a critique of the liberal international order based upon an ontological framework that presupposes that power and subjects are entities possessing qualities that preexist relations. Power [end page 289] is imagined as a ''mighty totality,'' and subjects as monads endowed with potentia. As a result, the problematique of political agency is portrayed as a quest for the ''liberation'' of a subject ontologically gifted with a freedom that power inevitably oppresses. In this way, the conceptualization of political agency remains confined within the liberal struggle of ''freedom'' and ''oppression.'' Even researchers who adopt a Foucauldian vocabulary end up falling into what Bigo has identified as ''traps'' of political science and international relations theorizing, specifically essentialization and ahistoricism.11

I argue here that in order to reimagine political agency an ontological and epistemological turn is necessary, one that relies upon a relational ontology. Relational ontological positions question adopting **abstract stable entities**, such as ''structures,'' ''power,'' or ''subjects,'' as explanations for what happens. Instead, they explore how these pillar concepts of the Western political thought came to being, what kind of practices they facilitate, consolidate and result from, what ambiguities and aporias they contain, and how they are transformed.12 Relational ontologies nurture **''modest'' conceptualizations** of political agency and also question the overwhelming stability of ''mighty totalities,'' such as for instance the international liberal order or the state. In this framework, political action has more to do with **playing with the cards that are dealt to us to produce practical effects in specific contexts** than with building idealized ''new totalities'' where perfect conditions might exist. The political ethics that results from non-substantialist ontological positions is one that privileges ''modest'' engagements and weights political choices with regard to the **consequences** and distributive effects they may produce **in the context where they are made** rather than based upon their universal normative aspirations.13

Debating about government policies is a valuable heuristic — we can learn about the state without *being* it. Their radical framework eliminates the potential for political agency and oversimplifies complex, contingent relationships. Instead of rejecting government policies *in general*, we should analyze particular policies.

Zanotti 13 — Laura Zanotti, Associate Professor of Political Science at Virginia Tech, holds a Ph.D. in International Relations from Florida International University, 2013 ("Governmentality,

Ontology, Methodology: Re-thinking Political Agency in the Global World," *Alternatives: Global, Local, Political*, Volume 38, Issue 4, November, Available Online to Subscribing Institutions via SAGE Publications Online, p. 299-300)

Conclusion

In this article, I have argued that, notwithstanding their critical stance, scholars who use governmentality as a descriptive tool remain rooted in substantialist ontologies that see power and subjects as standing in a relation of externality. They also downplay processes of coconstitution and the importance of indeterminacy and ambiguity as the very space where political agency can thrive. In this [end page 299] way, they **drastically limit the possibility for imagining political agency** outside the liberal straightjacket. They represent international liberal biopolitical and governmental power as **a homogenous and totalizing formation** whose scripts effectively oppress ''subjects,'' that are in turn imagined as free ''by nature.'' Transformations of power modalities through multifarious tactics of hybridization and redescriptions are not considered as options. The complexity of politics is reduced to homogenizing and/or romanticizing narratives and political engagements are reduced to total heroic rejections or to revolutionary moments.

By questioning substantialist representations of power and subjects, inquiries on the possibilities of political agency are **reframed** in a way that focuses on power and subjects' relational character and the contingent processes of their (trans)formation in the context of agonic relations. Options for resistance to governmental scripts **are not limited to ''rejection,'' ''revolution,'' or ''dispossession''** to regain a pristine ''freedom from all constraints'' or an immanent ideal social order. It is found instead in multifarious and **contingent struggles** that are constituted **within the scripts of governmental rationalities** and at the same time **exceed and transform them**. This approach **questions oversimplifications** of the complexities of liberal political rationalities and of their interactions with non-liberal political players and nurtures **a radical skepticism about identifying universally good or bad actors or abstract solutions to political problems**. International power interacts in **complex ways** with diverse political spaces and within these spaces it is appropriated, hybridized, redescribed, hijacked, and **tinkered with**.

Governmentality **as a heuristic** focuses on performing **complex diagnostics** of events. It invites **historically situated explorations** and **careful differentiations** rather than overarching demonizations of ''power,'' romanticizations of the ''rebel'' or the ''the local.'' More broadly, theoretical formulations that conceive the subject in non-substantialist terms and focus on processes of subjectification, on the ambiguity of power discourses, and on hybridization as the terrain for political transformation, open ways for reconsidering political agency **beyond the dichotomy of oppression/rebellion**. These alternative formulations also foster **an ethics of political engagement**, to be continuously taken up through **plural and uncertain practices**, that demand **continuous attention to ''what happens'' instead of fixations on ''what ought to be.''**83 Such ethics of engagement would not await the revolution to come or hope for a pristine ''freedom'' to be regained. Instead, it would constantly attempt to twist the working of power by **playing with whatever cards are available** and would require intense processes of reflexivity on the consequences of political choices. To conclude with a famous phrase by Michel Foucault ''my point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to **hyper- and pessimistic activism**.''84

This avoids their offense. “Government bad” doesn’t answer “government-<u>as-heuristic</u> good.”

Critique of Simple Truth Thesis

Their arguments rely on the *Simple Truth Thesis* and the *No Reasonable Opposition Thesis*. From their perspective, no reasonable person could *ever* believe that switching sides about the desirability of U.S. federal government action is beneficial because the answer is so self-evident and there is no room for debate. We critique these underlying theses. The answers to Big Questions like "should the USFG curtail its domestic surveillance" are not simple and self-evident — reasonable people can disagree.

Aikin and Talisse 14 — Scott F. Aikin, Assistant Professor of Philosophy at Vanderbilt University, holds a Ph.D. in Philosophy from Vanderbilt University, and Robert B. Talisse, Professor of Philosophy and Political Science at Vanderbilt University, holds a Ph.D. in Philosophy from the City University of New York, 2014 ("The Simple Truth Thesis," *Why We Argue (And How We Should): A Guide To Political Disagreement*, Published by Routledge, ISBN 9780415859059, p. 61-62)

Both camps betray a commitment to the **Simple Truth Thesis**, the claim that Big Questions always admit **simple**, **obvious**, **undeniable**, and **easily-stated** answers. The Simple Truth Thesis encourages us to hold that a given truth is **so simple** and **so obvious** that only the ignorant, wicked, devious, or benighted could possibly deny it. On a recent occasion, an acquaintance of ours, in the midst of a political conversation, announced that opposing the flat tax was "stupid, evil, or both." With this statement, she affirmed that, in her opinion, there is no room for reasoned disagreement about the merits of a flat tax. In another recent discussion, a professor of philosophy asserted that there is not even one intelligent defense of the death penalty. Not one, he said.

It's an odd phenomenon. Part of what makes Big Questions so important and, well, big, is precisely the fact that **reasonable**, **sincere**, **informed**, and **intelligent** persons can **disagree over their answers**. That is, the Simple Truth Thesis has the effect of **deflating Big Questions**. But as it does so by casting aspersions on one's opposition, it deflates the questions by inflaming those with whom one disagrees. Consequently, as our popular political commentary accepts the Simple Truth Thesis, there is a great deal of **inflammatory rhetoric and righteous indignation**, but in fact **very little public debate** over the issues that matter most. Thus the Big Questions over which we are divided remain **unexamined**, and our reasons for adopting our different answers are **never brought to bear in public discussion**. And, moreover, what passes for public argument is **nothing like argument at all**.

This should come as no surprise. It is clear that one of the direct corollaries to the Simple Truth Thesis is the **No Reasonable Opposition Thesis**. According to the No Reasonable Opposition Thesis, argument and debate with those with whom one disagrees is **a pointless and futile endeavor**. The reasoning driving No Reasonable Opposition is simple. [end page 61] If in fact the answer to a given Big Question is a Simple Truth, then there is no opponent of that answer who is not also **woefully ignorant**, **misinformed**, **misguided**, **wicked**, or **worse**. In other words, argument concerning a Big Question can be worthwhile only when there is **more than one reasonable position** regarding the question. And this is precisely what the Simple Truth Thesis denies.

One could argue that it would be a wonderful world were the Simple Truth Thesis true. Our political task would be simply to empower those who know the Simple Truths, and rebuke the

fools who do not. But, alas, the Simple Truth Thesis is **not true**, and consequently the No Reasonable Opposition Thesis must be dismissed as well. In fact, the Simple Truth Thesis is **a fairytale**—soothing and satisfying, but ultimately **unfit for a serious mind**. We must recognize that for any Big Question, there are **several defensible positions**; indeed, as we said above, it is precisely this feature that makes them big questions rather than small or ordinary ones. Of course, to say that a position is defensible **is not to say that it's true**. One can acknowledge that there are **multiple defensible positions** in response to a Big Question, and still maintain that there is **only one defensible position that is correct**. To oppose the Simple Truth Thesis is **not** to embrace relativism, nor is it to give up on the idea that there are true answers to Big Questions. It is rather **to give up on the view that the truth is always simple**.

If we win this argument, vote negative. Even if they are right about their answer to the Big Question of the resolution, refusing to affirm the topic demonstrated that they were unwilling to acknowledge the possibility of other answers or perspectives. We must abandon the Simple Truth Thesis and the No Reasonable Opposition Thesis in order for productive debate to occur. *Our* critique "turns" *their* critique of the resolution.

Aikin and Talisse 14 — Scott F. Aikin, Assistant Professor of Philosophy at Vanderbilt University, holds a Ph.D. in Philosophy from Vanderbilt University, and Robert B. Talisse, Professor of Philosophy and Political Science at Vanderbilt University, holds a Ph.D. in Philosophy from the City University of New York, 2014 ("The Simple Truth Thesis," *Why We Argue (And How We Should): A Guide To Political Disagreement*, Published by Routledge, ISBN 9780415859059, p. 64-66)

That's the quick and dirty case against relativism. Now notice that none of these arguments bear on the view that there are multiple reasonable answers to Big Questions. In affirming that there are **many defensible responses** to each Big Question, one claims only that **there is a difference between being wrong and being stupid**. It is to acknowledge that **even smart people make mistakes**. Take Plato. From the previous chapters, it should be pretty clear that we think Plato was wrong about a great many things. We already indicated that we think he was wrong about several matters concerning democracy, but that's just the beginning of the story. We think that Plato was wrong about almost everything. But we also think it's obvious that Plato was a great philosopher. In fact, we think he was a genius. We admire him, wrestle [end page 64] with his thought, try to criticize his views, and in general take him very, very seriously. But, on nearly every philosophical issue, we believe he was wrong, wrong, wrong.

Holding that there is reasonable opposition, in fact, is **a condition for thinking that criticism is possible**. Consider that if you think that those who you disagree with are **simply stupid**, benighted, **or evil**, you wouldn't have any arguments to give to them. Criticism of them and their views would be **impossible**. You would need only to state that they are wrong. But notice that it's only when you take your opponents to be **reasonable**—people who care about evidence, can see relevant issues, and are able to understand what's at stake in a debate—that you can **actually criticize them**. Criticism depends upon the background thought that the person you're engaging with has the capacity to reason in good faith. That is not to say that in order to criticize another person, one must **endorse or accept** their reasons. It means only that you must **acknowledge that**

reasoning (perhaps bad reasoning, or reasoning from false premises) **is occurring**, and that it's possible to assess and correct it. So to deny the Simple Truth and No Reasonable Opposition theses is **not to capitulate to relativism at all**. One can reject these theses and yet be committed to there being **a single right answer** to each Big Question; and one can still hold that those who deny what you believe are dead wrong. One who rejects these theses can still be committed to arguing earnestly with others, and to vigorously critiquing those who are wrong. But most importantly, the denial of the Simple Truth and No Reasonable Opposition theses actually delivers the kind of **tolerance** that relativism could only promise. Once you're committed to seeing your opponents as **reasonable**, **intelligent**, **and sincere**, **but mistaken**, you're less likely to use force or violence to correct them. You're more likely to use arguments to **change their minds**.

Consequently, even if there is some Big Question whose true answer is p, there can nonetheless be **formidable cases** made in support of alternative, mistaken, answers. That's because when it comes to Big Questions, there are **many different considerations** that must be examined, and **there will always be reasonable disagreements among intelligent and sincere people** about the relative weight of considerations of different kinds. Again, Big Questions are big because they require that we take many, many kinds of consideration into account. Indeed, sometimes the answer to one Big Question depends on how we've answered [end page 65] other Big Questions. Things can get **extremely complicated** very quickly. Yet we are finite creatures with limited cognitive resources, and so it is sometimes hard for us to balance our philosophical checkbooks. Big Questions can dwarf our intelligence. Once we appreciate this, we must recognize that the No Reasonable Opposition Thesis must be **abandoned**. Even if we have the true answer to a Big Question, there will be room for **intelligent**, **informed**, and **sincere people** to disagree. In such cases, our opponents are mistaken or wrong, but **not therefore** unintelligent, wicked, untrustworthy, or ignorant. They deserve our attention, and **we need to consider what they have to say**.

They'll say that our position is Relativism, but this misunderstands our argument. We don't think that every answer to the Big Question of the resolution is right, just that reasonable people can disagree about the answer. This still leaves plenty of room to advocate on behalf of the answer they believe is right when they are negative.

Aikin and Talisse 14 — Scott F. Aikin, Assistant Professor of Philosophy at Vanderbilt University, holds a Ph.D. in Philosophy from Vanderbilt University, and Robert B. Talisse, Professor of Philosophy and Political Science at Vanderbilt University, holds a Ph.D. in Philosophy from the City University of New York, 2014 ("The Simple Truth Thesis," *Why We Argue (And How We Should): A Guide To Political Disagreement*, Published by Routledge, ISBN 9780415859059, p. 62)

That last point about relativism is crucial. So let us take a moment to develop it further. We just said that denying the Simple Truth and No Reasonable Opposition theses **does not commit one to relativism**. Holding that there can be **more than one reasonable answer** to a question **does not commit anyone** to holding that all those answers are right. Nor does it prohibit anyone holding one of those reasonable views from **criticizing another person** holding another of those reasonable views.

Relativism is about **truth**, about who is right. It is the view that everyone in a disagreement is right, or perhaps not wrong. In fact, it is not clear that we even need to appeal to disagreement in order to state relativism's main contention. It is that **every view is correct** for the person who holds it.

2NC/1NR — Responses to Aff Arguments

They Say: "Topicality Bad – General"

1. There is always a topic for debate. The question is whether the topic is negotiated in advance or announced by the 1AC. Regardless, productive debate requires that there be room for both teams to present arguments. "Topicality bad" is not responsive to our argument.

2. It's better for the topic to be negotiated and announced in advance. Establishing procedural rules for reason-giving argument is a form of respect, not coercion. Identity-based positions celebrate disagreement as an end-in-itself, foreclosing the possibility of persuasion and agreement through dialogue.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Reply to My Critic(s)," *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 281-282)

My recent book, The Way We Argue Now, has in a sense two theses. In the first place, the book makes the case for **the importance of debate and argument to any vital democratic or pluralistic intellectual culture**. This is in many ways an unexceptional position, but the premise of the book is that the claims of reasoned argument are often trumped, within the current intellectual terrain, by appeals to cultural identity and what I gather more broadly under the rubric of ethos, which includes cultural identity but also forms of ethical piety and charismatic authority. In promoting argument as a universal practice keyed to a human capacity for communicative reason, my book is a critique of relativism and identity politics, or the notion that forms of cultural authenticity or group identity have a certain **unquestioned legitimacy**, one that cannot or should not be subjected to the challenges of reason or principle, precisely because reason and what is often called "false universalism" are, according to this pattern of thinking, always involved in forms of exclusion, power, or domination. My book insists, by contrast, that **argument is a form of respect**, that the ideals of democracy, whether conceived from a nationalist or an internationalist perspective, **rely fundamentally upon procedures of argumentation and debate** in order to legitimate themselves and to keep their central institutions vital. And the idea that one should be **protected from debate**, that argument is **somehow injurious to persons** if it does not honor their desire to have their basic beliefs and claims and solidarities **accepted without challenge**, is **strenuously opposed**. As is the notion that any attempt to ask people to agree upon **processes of reason-giving argument** is **somehow necessarily to impose a coercive norm**, one that will disable the free expression and performance of identities, feelings, or solidarities. **Disagreement is**, by the terms of my book, **a form of respect, not a form of disrespect**. And by disagreement, I don't mean simply to say that we should expect disagreement rather than agreement, which is a frequently voiced—if misconceived—criticism of Habermas. Of course we should expect disagreement. My point is that we should focus on the moment of dissatisfaction in the face of disagreement—the internal dynamic in argument that imagines argument might be **the beginning of** [End Page 281] **a process of persuasion and exchange that could end in agreement** (or partial agreement). For

those who advocate reconciling ourselves to disagreements rather than arguing them out, by contrast, there is **a complacent**—and in some versions, **even celebratory**—attitude toward fixed disagreement. Refusing these options, I make the case for dissatisfied disagreement in the final chapter of the book and argue that people should be willing to **justify their positions in dialogue with one another**, especially if they hope to **live together in a post-traditional pluralist society**.

They Say: "Framework Bad"

1. Our argument is topicality, not framework. The distinction is meaningful. We don't seek regulation of style, types of evidence, or the role of the judge. Reading our argument as "role playing good" or "diverse perspectives bad" misunderstands the thesis.

2. Topic boundaries are uniquely justified. "Anything goes" prevents meaningful engagement. Everyone learns more when students are well-prepared to debate a shared topic.

3. Reject "active voice," not the topic. They can affirm the topic using passive voice — domestic surveillance by the USFG should be substantially curtailed. There is no "role playing" requirement — their "Framework Impact Turns" don't apply to topicality-not-framework.

They Say: "We Are Germane To The Topic"

1. Only arguments that affirm the topic count as affirmative, not arguments "germane" to the topic. This standard is meaningless—*negative* arguments are "germane" to the topic, but they shouldn't count for the affirmative.

2. Legal evidence supports our argument—"germaneness" is meaningless because it's too broad.

Abbott et al. 6 — Greg Abbott, Attorney General of Texas, et al., 2006 (Petition for Review of the Third Court of Appeals at Austin, Texas of *The State of Texas, by and through the Texas Department of Transportation v. Precision Solar Controls, Inc.*, Available Online at http://www.supreme.courts.state.tx.us/ebriefs/06/06034803.pdf, Accessed 08-31-2013, p. 10-11)

A. The Court of Appeals Skipped the Predicate Question of Whether the Counterclaim Is a "Matter Properly Defensive," Fixating Instead on the Additional Requirement That It Also Be "Germane."

There has been **widespread confusion** in the courts of appeals about the proper scope of counterclaims that might be asserted under Reata. The Reata Court quoted language from Anderson, Clayton permitting "the defense [to] plead and prove all matters properly defensive. This includes the right to make any defense by answer or cross-complaint germane to the matter in controversy." 62 S.W.2d at 110 (emphasis added), as quoted in Reata, 47 TEX. SUP. CT. J. at 409. That test begins with the limitation that a matter must be "properly defensive." Id. It then goes on to further specify that such a "defensive" matter can be raised through a procedural device "germane to the matter in controversy." Id.

The court of appeals promoted the word "germane" to be **the centerpiece of this test**, without first satisfying the predicate requirement that the claim be among the "matters properly defensive." Slip op. at 10. Worse, because the word "germane" is largely foreign to Texas jurisprudence, the courts of appeals have been left to rely on general-purpose dictionary definitions that leave something to be desired as legal tests, [end page 10] since they simply rephrase the obvious—that the word "germane" has **something to do with a concept of relatedness**. Slip op. at 10 (citing City of Dallas v. Redbird Dev't Corp., 143 S.W.3d 375, 381 (Tex. App.—Dallas 2004, no pet.) (relying on Webster's Dictionary and the Random House Unabridged Dictionary to yield that "the term 'germane' means 'closely akin' and 'being at once relevant and appropriate.'"). It is no surprise that such **broad definitions** led to **an equally broad and formless legal rule**.

3. It is not enough to be "related"—germaneness requires promoting the same purposes. The aff's arguments aren't "germane" to the topic because they don't affirm that the U.S. federal government substantially curtail its domestic surveillance.

Mann 33 — George R. Mann, Author of the Nebraska Legislative Manual, 1933 ("Bill Drafting," Nebraska Legislative Manual, Available Online at

http://www.usgennet.org/usa/ne/topic/resources/OLLibrary/Legislature/1933/pages/nelj0121.htm, Accessed 08-31-2013)

Every act must have a title which must designate **a single subject**, or indicate some **particular plan of legislation** as a head under which particular provisions of the act may reasonably be looked for. The title need not be an epitome of the act, and it need not particularize by specifying each detail or feature of the act or contain an index thereto or an abstract thereof. The general subject is all that properly belongs to the title of an act, and the title's exclusive office is to apprise those who vote upon the act as to what that subject is; the details and means by which it is proposed to make the law effective in accomplishing its purpose must be looked for, not in the title, but in the body of the bill. It is essential to a good title that the subject of the act be expressed in exact terms; it is sufficient if the subject is fairly deducible from the language employed.

As a general rule, titles should not express ends, objects or purposes to be accomplished, but rather the means by which ends, objects and purposes are to be attained. The word "subject" is used to indicate the chief thing about which legislation is enacted. "Subject" as used in the prohibition against more than one subject in a statute, has no mathematically precise meaning nor can it be defined exactly. The prohibition against duplicity of subjects is directed, rather, against the joining into one measure of **incongruous and unrelated matters**. Whether there is a logical connection and relation between the matters treated is the test as to the unity of subject rather than the extent and scope of the act. The word "subject" as used in the constitution signifies the matter or thing forming the groundwork. It may contain many parts which grow out of it and are germane to it, and which, if traced back, will [end page 127] lead the mind to it as the generic head. Any matter or thing which may reasonably be said to be subservient to the general object or purpose will be germane and may be properly included in the law. The word "germane" has been frequently employed by the courts in discussing the connection or relationship of provisions to a subject. Literally "germane" means "akin," "closely allied." It is only applicable to persons who are united to each other by the common tie of blood or marriage. When applied to inanimate things it is, of course, used in a metaphorical sense, but still the idea of **a common tie** is always present. Thus when properly applied to a legislative provision, the common tie is found in the tendency of the provision **to promote the object and purpose of the act to which it belongs**. Any provision **not having this tendency** which **introduces new subject matter** into the act is **clearly obnoxious to the constitutional provisions in question**. It is **an error** to suppose that two things are, in a legal sense, germane to each other **merely because there is a resemblance between them**, or because they have **some characteristic common to them both**. It is only the subject and not the matters properly connected therewith which must be expressed in the title.

They Say: "Resolved: Colon"

1. The resolution divides affirmative and negative ground and establishes each side's orientation toward the topic. The affirmative team's ground is the affirmative position and the negative team's ground is the negative position. Their interpretation doesn't assume the context of debate — resolved is used to designate that the issue to be debated is a resolution.

Louisiana no date — Louisiana State Legislature, No Date Cited ("Glossary of Legislative Terms," Available Online at http://www.legis.state.la.us/glossary2.htm, Accessed 02-06-2006)

Resolution: A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; **a resolution uses the term "resolved"**. Not subject to a time limit for introduction nor to governor's veto. (Const. Art. III, §17(B) and House Rules 8.11, 13.1, 6.8, and 7.4 and Senate Rules 10.9, 13.5 and 15.1)

2. "Resolved colon" supports a topicality burden that mirrors real world policymaking.

Parcher 1 — Jeff Parcher, Former Director of Debate at Georgetown University, 2001 ("Re: Jeff P--Is the resolution a question?," Post to the e-Debate List, February 26, Available Online at http://www.ndtceda.com/archives/200102/ 0790.html, Accessed 09-10-2005)

> Jeff, I don't think debaters' relation to the resolution is nearly as clear as it you make it out to be in your recent posts. 1. The resolution > is not a question. It is a statement that has "resolved" on one side and a normative statement on the other separated by a colon. What > is the meaning of "resolved?" I know Bill Shanahan has made the argument that "resolved" means "reserved," in which case the
> resolution doesn't require you to arrive at any certainty about the truth of the normative statement.

(1) Pardon me if I turn to a source besides Bill. American Heritage Dictionary: Resolve: 1. To make a firm decision about. 2. To decide or express by formal vote. 3. To separate something into constiutent parts See Syns at *analyze* (emphasis in orginal) 4. Find a solution to. See Syns at *Solve* (emphasis in original) 5. To dispel: resolve a doubt. - n 1. Frimness of purpose; resolution. 2. A determination or decision.

(2) The very nature of the word "resolution" makes it a question. American Heritage: A course of action determined or decided on. A formal statemnt of a deciion, as by a legislature.

(3) The resolution is obviously a question. Any other conclusion is utterly inconcievable. Why? Context. The debate community empowers a topic committee to write a topic for ALTERNATE side debating. The committee is not a random group of people coming together to "reserve" themselves about some issue. There is context - they are empowered by a community to do something. In their deliberations, the topic community attempts to craft a resolution which can be ANSWERED in either direction. They focus on issues like ground and fairness because they know the resolution will serve as the basis for debate which will be resolved by determining the policy desireablility of that resolution. That's not only what they do, but it's what we REQUIRE

them to do. We don't just send the topic committtee somewhere to adopt their own group resolution. It's not the end point of a resolution adopted by a body - it's the prelimanary wording of a resolution sent to others to be answered or decided upon.

(4) Further context: the word resolved is used to emphasis the fact that it's policy debate. Resolved comes from the adoption of resolutions by legislative bodies. A resolution is either adopted or it is not. It's a question before a legislative body. Should this statement be adopted or not.

(5) The very terms 'affirmative' and 'negative' support my view. One affirms a resolution. Affirmative and negative are the equivalents of 'yes' or 'no' - which, of course, are answers to a question.

They Say: "We Are a Discussion of the Topic"

1. It's not enough to "discuss the topic" — that doesn't invite us to participate because it doesn't provide predictable ground. The resolution divides ground between the affirmative and negative; the negative's job is to affirm the topic and therefore invite the negative to negate.

2. This doesn't provide a meaningful limit — teams can "discuss the topic" by arguing that there should be a different topic, that the topic creation process is bad, that the topic is a metaphor for something else, etc. The neg can't prepare to meaningfully participate in these debates.

They Say: "No Topical Version Of The Aff"

1. This is a failure of imagination. (Yes, there is a topical version—<explain>.)

2. (Extend/apply arguments from the "Constructive Constraints" module.)

They Say: "Topicality is Violent/Policing"

1. Topicality divides *ground* — it doesn't exclude *people*. Debaters can express themselves however they want within their assigned speech time, but only arguments that support the affirmative orientation toward the topic should count as reasons to vote affirmative when the judge is choosing the winner.

2. Procedural fairness is most important—it establishes expectations for preparation and facilitates respectful and productive dialogue between well-prepared opponents. Topicality-not-framework is a reasonable procedural norm.

Massaro 89 — Toni M. Massaro, Professor of Law at the University of Florida, 1989 ("Legal Storytelling: Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?," *Michigan Law Review* (87 Mich. L. Rev. 2099), August, Available Online to Subscribing Institutions via Lexis-Nexis)

B. The Rule-of-Law Model as Villain

Most writers who argue for more empathy in the law concede that law must resort to some conventions and abstract principles. That is, they do not claim that legal rules are, as rules, intrinsically sinister. Rather, they argue that we should design our legal categories and procedures in a way that encourages the decisionmakers to consider individual persons and concrete situations. Generalities, abstractions, and formalities should not dominate the process. The law should be flexible enough to take emotion into account, and to respond openly to the various "stories" of the people it controls. We should, as I have said, move toward "minimalist" law.

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice. n52 Some even question the whole notion of justifying a legal [*2111] decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and experience. n53 I do not intend to enter this important jurisprudential debate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is **only a model**. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable. n54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly **open-ended**. "Relevance," "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" -- to name only a few legal concepts -- hardly admit of precise definition or consistent, predictable application. Rather, they represent a **weaker, but still constraining** sense of the rule-of-law model. Most rules are guidelines that establish **spheres of relevant conversation**, not **mathematical formulas**.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive

method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles. n55

As a practical matter, therefore, our rules often are **ambiguous and fluid standards** that offer **substantial room for varying interpretations**. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -- including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization [*2112] of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers, n56 all of which may go unstated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant. n57 The solution to this "empathy gap" was legislative action to make the law more specific -- more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations. n58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers -- in this example, women -- and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some **procedural regularity** – "law for law's sake" – because it lends **stasis and structure** to our often chaotic lives. Even within our most intimate relationships, we both **establish "rules," and expect the other** [*2113] **party to follow them**. n59 Breach of these unspoken agreements can **destroy the relationship** and **hurt us deeply**, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create **expectations**, and their **consistent application** fulfills the expectations. The **modest predictability** that this sort of "formalism" provides actually may **encourage human relationships**. n60

3. There's nothing violent about debating the assigned topic or making reasoned arguments — topicality *isn't* policing.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Reply to My Critic(s)," *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 285-287)

Let's first examine the claim that my book is "unwittingly" inviting a resurrection of the "Enlightenment-equals-totalitarianism position." How, one wonders, could a book promoting argument and debate, and promoting reason-giving practices as a kind of common ground that should prevail over assertions of cultural authenticity, somehow come to be seen as a dangerous resurgence of bad Enlightenment? Robbins tells us why: I want "argument on my own terms"—that [End Page 285] is, I want to impose reason on people, which is a form of power and oppression. But what can this possibly mean? Arguments stand or fall based on whether they are **successful and persuasive**, even an argument in favor of argument. It simply is **not the case** that an argument in favor of the importance of reasoned debate to liberal democracy is tantamount to **oppressive power**. To assume so is to assume, in the manner of Theodor Adorno and Max Horkheimer, that reason is **itself** violent, **inherently**, and that it will **always** mask power and enforce exclusions. But to assume this is to assume the very view of Enlightenment reason that Robbins claims we are "thankfully" well rid of. (I leave to the side the idea that any individual can proclaim that a debate is over, thankfully or not.) But perhaps Robbins will say, "I am not imagining that your argument is directly oppressive, but that what you argue for would be, if it were enforced." Yet my book doesn't imagine or suggest it is enforceable; I simply argue in favor of, I promote, **an ethos of argument** within a liberal democratic and proceduralist framework. As much as Robbins would like to think so, neither I nor the books I write can be cast **as an arm of the police**.

Robbins wants to imagine a far more direct line of influence from criticism to political reality, however, and this is why it can be such a bad thing to suggest norms of argument. Watch as the gloves come off:

> Faced with the prospect of submitting to her version of argument—roughly, Habermas's version—and of being thus authorized to disagree only about other, smaller things, some may feel that there will have been an end to argument, or an end to the arguments they find most interesting. With current events in mind, I would be surprised if there were no recourse to the metaphor of a regular army facing a guerilla insurrection, hinting that Anderson wants to force her opponents to dress in uniform, reside in well-demarcated camps and capitals that can be bombed, fight by the rules of states (whether the states themselves abide by these rules or not), and so on—in short, that she wants to get the battle onto a terrain where her side will be assured of having the upper hand.

Let's leave to the side the fact that this is a disowned hypothetical criticism. (As in, "Well, okay, yes, those are my gloves, but those are somebody else's hands they will have come off of.") Because far more interesting, actually, is the sudden elevation of stakes. It is a symptom of the sorry state of affairs in our profession that it plays out repeatedly this tragicomic tendency to give **a grandiose political meaning** to every object it analyzes or confronts. We have evidence of how desperate the situation is when we see it in a critic as thoughtful as Bruce Robbins, where it

emerges as the need to **allegorize** a point about an argument in such a way that it gets cast as the equivalent of war atrocities. It is especially ironic in light of the fact that to the extent that I do give examples of the importance of liberal democratic proceduralism, I invoke the disregard of the protocols of international adjudication in the days leading up to the invasion of Iraq; I also speak [End Page 286] about concerns with voting transparency. It is hard for me to see how my argument about proceduralism can be associated with the policies of the Bush administration when that administration has exhibited a flagrant disregard of democratic procedure and the rule of law. I happen to think that a renewed focus on proceduralism is a timely venture, which is why I spend so much time discussing it in my final chapter. But I hasten to add that I am not interested in imagining that proceduralism is the sole political response to the needs of cultural criticism in our time: my goal in the book is to argue for a liberal democratic culture of argument, and to suggest ways in which argument is not served by trumping appeals to identity and charismatic authority. I fully admit that my examples are less political events than academic debates; for those uninterested in the shape of intellectual arguments, and eager for more direct and sustained discussion of contemporary politics, the approach will disappoint. Moreover, there will always be a tendency for a proceduralist to under-specify substance, and that is partly a principled decision, since the point is that agreements, compromises, and policies get worked out through the communicative and political process. My book is mainly concentrated on evaluating forms of arguments and appeals to ethos, both those that count as a form of trump card or distortion, and those that flesh out an understanding of argument as a universalist practice. There is an intermittent appeal to larger concerns in the political democratic culture, and that is because I see connections between the ideal of argument and the ideal of deliberative democracy. But there is clearly, and indeed necessarily, significant room for further elaboration here.

They Say: "Topicality Excludes Our Perspective"

1. This is non-falsifiable and self-serving — they *could* affirm the topic from their perspective, but they've made the strategic decision not to do so.

2. The process of debating the assigned topic cultivates an ethos of argument that promotes respect. *Identity-as-argument* forecloses reasoned disagreement.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Beyond Sincerity and Authenticity: The Ethos of Proceduralism," *The Way We Argue Now: A Study in the Cultures of Theory*, Published by Princeton University Press, ISBN 9780691114033, p. 186-187)

Let me conclude by trying to summarize what I take to be the value of **affirming argument as ethos**, rather than privileging ethos in any of its other various guises—authentic ethical life, charismatic critique, or accommodating tact. While I understand the motivation behind McCarthy's critique of Habermas, his sense that we may need to expect disagreement more than aim for agreement, I think the Habermasian principle of "an intersubjective praxis of argumentation" more closely achieves the ideals of **universalization and respect** that undergird the democratic project. Simply accepting the views of others because they are asserted to be fundamentally linked to their nonnegotiable conceptions of the good or to their given cultural identity—accepting a merely overlapping consensus, or insisting on accommodation of ways and customs that may seem to jar with liberal democratic practice—seems to me precisely to fail in according **the forms of respect** that the model seems to claim for itself.28

I am **not** arguing that identity issues should be excluded from consideration, but simply that they should not be permitted to **stand inviolable or uncontestable**. Argument with those from whom we differ is **a form** [end page 186] **of respect** and it implies **an aspiration to universalism**. Committed to the possibility of **agreement** as well as the conditions of **pluralism**, it does **not** attempt to **tame** or **stabilize** disagreement: it is capable of **reasoned disagreement**, but it is perhaps more fundamentally characterized by **a dissatisfied recognition of disagreement**. To take a current example, the debate over the banning of the hajib (Muslim headscarf) and other religious symbols in schools in France has created a certain dialogical demand whose benefits outweigh, it seems to me, a situation in which clarification and articulation of self-reflective pluralism are simply avoided in the name of passive toleration. This is not to imply that this particular issue cannot be resolved in favor of toleration. What the French debate importantly demands is that citizens of a pluralist state go beyond peremptory appeals to cultural identity and clarify their understanding of what it means to live together under conditions of pluralism with the collective responsibility of providing education consonant with the secular principles of the state. This demand extends not only to Muslims and Jews, but also to the historically dominant Catholic population, whose own partial universalism is revealed in the attempt to include only "large crosses" in the ban. In this situation, there is a need to negotiate between differing forms of affiliation, as well as between political principle and cultural identity. The process of argument is what enables the very act of pluralist self-clarification to occur, and the society in question must **cultivate an ethos of argument** if it is to meet the ongoing challenges of its political (re)constitution.

When argument can itself be recognized as an ethos, disagreement remains **live**, not merely the nonnegotiable emanation of a pregiven cultural identity or holistic ethos. To put this in yet another way, tolerance and respect are **not utterly coterminous**, as the accommodationist position would have us believe. Indeed, if we **collapse these terms**, we are left in a situation where the tradition of sincerity—conceived of in its broadest terms as allied with critique and the promotion of political integrity—remains **impotent** in the face of peremptory appeals to authenticity. Proceduralism is itself a dialectical overcoming of the sincerity/authenticity problematic, but, unlike in Trilling, its polemical relation to received opinion is not in the service of nature, fate, or the unconscious, but rather in the service of **an aspiration toward universalism**.

3. To be meaningful and effective, other modes of expression must be *translated* into policy-relevant arguments.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Beyond Sincerity and Authenticity: The Ethos of Proceduralism," *The Way We Argue Now: A Study in the Cultures of Theory*, Published by Princeton University Press, ISBN 9780691114033, p. 184-185)

By way of closing, I want to address objections that have been raised against the privileging of argument and debate as an ethicopolitical ideal. It has been claimed that such an ideal is too narrow in its conception of how political commitments find expression, and unable to comprehend nonrational forms of solidarity or aesthetic political practices (theatrical display, performativity, ironic critique). I argued in chapter 1 for a democratic model of politics that could acknowledge a wide range of forms of expression as possessing theoretical and political significance: in this sense I have no quarrel with those critics of Habermas who seek to emphasize affective or aesthetic modes. And I have suggested elsewhere in this volume, most particularly in the essay on pragmatism, that liberalism should remain open to a plurality of characterological and expressive modes, rather than seek to elevate a specific temperament or persona.

I would argue, however, that the accommodation of plural modes of expression **still requires procedural elaboration** if it is to have **any political meaning or effectiveness**, as McCarthy's own critique makes clear. In order to affect institutionalized deliberative procedures, nonrational forms of political expression require **some form of translation into terms that can impact decision making and policy**. While dramatic displays of protest that rely on theatrical tactics and visceral power cannot **entirely** [end page 184] be explained in rational terms, and can be recognized to have a force on their own terms, in order to affect policy they have to be translated into claims **recognizable within existing political institutions**. We **do not remain inarticulate** about the visceral if it effectively affects our political views and our social interactions.

They Say: "No Personal Connection to the Topic"

1. That's a benefit of topicality — it allows students of all backgrounds to engage in research about a prescribed topic. No particular identity or experience is required to participate.

2. The process of debating creates a connection—learning about surveillance policy provides students with the content knowledge needed to critically evaluate U.S. policies and formulate their own opinions.

3. Maintaining critical distance is vital to effective democratic debate — the demand for a "personal connection" shuts down dialogue.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Introduction," *The Way We Argue Now: A Study in the Cultures of Theory*, Published by Princeton University Press, ISBN 9780691114033, p. 1-2)

At the same time, however, the book engages in an internal critique of certain tendencies within the field of theory. These essays repeatedly draw attention to the underdeveloped and often incoherent evaluative stance of contemporary theory, its inability to clearly avow the norms and values underlying its own critical programs. In particular, I contest the prevalent skepticism about the possibility or desirability of achieving **reflective distance** on one's social or cultural positioning. As a result of poststructuralism's insistence on the forms of finitude—linguistic, psychological, and cultural—that limit individual agency, and multiculturalism's insistence on the primacy of ascribed group identity and its accompanying perspectives, the concept of critical distance has been seriously discredited, even as it **necessarily informs** many of the very accounts that announce its [end page 1] bankruptcy. The alliance between the poststructuralist critique of reason and the form of sociological reductionism that governs the politics of identity threatens to **undermine the vitality of both academic and political debate** insofar as it becomes **impossible to explore shared forms of rationality**. Given these conditions, in fact, this book might well have been called "The Way We Fail to Argue Now."2

To counter the tendencies of both poststructuralism and identity politics, I advance a renewed assessment of the work of philosopher Jürgen Habermas, whose interrelated theories of communicative action, discourse ethics, and democratic proceduralism have provoked continued and often dismissive critique from theorists in the fields of literary studies, cultural studies, and political theory. The book is in no way an uncritical embrace of Habermas's theory, however. Rather, it offers a renewed assessment of the notions of critical distance and procedural democracy in light of the arguments that have been waged against them. In part I do this by giving airtime to those debates in which Habermas and like-minded critics have engaged poststructuralism. But I also try to give Habermas a new hearing by showing the ways in which his theories promote an understanding of reflective distance as **an achieved and lived practice**, one with an intimate bearing on questions of ethos and character. Typically dismissed as impersonal, abstract, and arid, rational discourse of the kind associated with the neo-Kantianism

of Habermas and his followers is often employed as a contrast to valorized ideals of embodied identities, feelings and passions, ethics and politics—in short, all the values that are seen to imbue theoretical practice with existential meaningfulness and moral force. **This very opposition**, which has effectively **structured many influential academic debates**, involves a **serious misreading and reduction** of the rationalist tradition, which at its most compelling **seeks precisely to understand communicative reason and the aspiration to critical distance as an embedded practice**, as **an ongoing achievement** rather than a fantasmatic imposition. This aspiration, moreover, also characterizes **collective forms of liberal politics**, including the practices and procedures that constitute **the democratic tradition** and are so vital to its ongoing health and stability.

They Say: "Topicality/Your Argument Hurts Us"

1. Arguments aren't harmful *in-and-of themselves*. The burden of rejoinder is necessary for debate to occur.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Reply to My Critic(s)," *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 289)

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a pattern here: precisely the tendency to personalize argument and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. **Argument is not injurious to persons**. **Policies** are injurious to persons and institutionalized practices can alienate and exclude. But **argument itself** is not directly harmful; once one says it is, one is very close to **a logic of censorship**. The **most productive thing to do** in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to **produce a response** or a book that **states your disagreement**. But to assert that **the book itself** directly harms you is tantamount to saying that you **do not believe in argument or in the free exchange of ideas**, that your claim to injury **somehow damns your opponent's ideas**.

2. Their argument can't be negated. This proves *our* argument — they refuse to invite us to the argumentative table.

Subotnik 98 — Daniel Subotnik, Professor of Law at the Jacob D. Fuchsberg Law Center at Touro College, holds a J.D. from Columbia University School of Law, 1998 ("What's Wrong With Critical Race Theory?: Reopening The Case For Middle Class Values," *Cornell Journal of Law and Public Policy* (7 Cornell J. L. & Pub. Pol'y 681), Spring, Available Online to Subscribing Institutions via Lexis-Nexis)

B. And the Consequences

Having traced a major strand in the development of CRT, we turn now to the strands' effect on the relationships of CRATs with each other and with outsiders. As the foregoing material suggests, the central CRT message is not simply that minorities are being treated unfairly, or even that individuals out there are in pain—assertions for which there are data to serve as grist for the academic mill—but that **the minority scholar himself or herself** hurts and hurts badly.

An important problem that concerns the very definition of the scholarly enterprise now comes into focus. What can an academic trained to [*694] question and to doubt n72 possibly say to Patricia Williams when effectively she announces, **"I hurt bad"?** n73 "No, you don't hurt"? "You shouldn't hurt"? "Other people hurt too"? Or, most dangerously - and perhaps most tellingly - "What do you expect when you keep shooting yourself in the foot?" If the majority were perceived as having the well-being of minority groups in mind, these responses might be acceptable, even welcomed. And they might lead to real conversation. But, writes Williams, the

failure by those "cushioned within the invisible privileges of race and power... to incorporate a sense of precarious connection as a part of our lives is... ultimately obliterating." n74

"Precarious." "Obliterating." These words will clearly invite responses only from **fools and sociopaths**; they will, by effectively **precluding objection**, disconcert and disunite others. "I hurt," in academic discourse, has three broad though interrelated effects. First, it demands priority from the reader's conscience. It is for this reason that law review editors, waiving usual standards, have privileged a long trail of undisciplined - even silly n75 - destructive and, above all, self-destructive arti [*695] cles. n76 Second, by emphasizing the emotional bond between those who hurt in a similar way, "I hurt" discourages fellow sufferers from **abstracting themselves from their pain** in order to **gain perspective** on their condition. n77

[*696] Last, as we have seen, it precludes the possibility of **open and structured conversation with others**. n78

[*697] It is because of this **conversation-stopping effect** of what they insensitively call "first-person agony stories" that Farber and Sherry deplore their use. "The norms of academic civility hamper readers from challenging the accuracy of the researcher's account; it would be rather difficult, for example, to criticize a law review article by questioning the author's emotional stability or veracity." n79 Perhaps, a better practice would be to put the scholar's experience **on the table**, along with **other relevant material**, but to subject that experience to **the same level of scrutiny**.

If through the foregoing rhetorical strategies CRATs succeeded in **limiting academic debate**, why do they not have greater influence on public policy? Discouraging white legal scholars from entering the national conversation about race, n80 I suggest, has generated a kind of **cynicism** in white audiences which, in turn, has had **precisely the reverse effect** of that ostensibly desired by CRATs. It drives the American public **to the right** and ensures that anything CRT offers is **reflexively rejected**.

In the absence of scholarly work by white males in the area of race, of course, it is difficult to be sure what reasons they would give for not having rallied behind CRT. Two things, however, are certain. First, the kinds of issues raised by Williams are **too important in their implications** [*698] for American life to be confined to communities of color. If the lives of minorities are heavily constrained, if not fully defined, by the thoughts and actions of the majority elements in society, it would seem to be of **great importance** that white thinkers and doers participate in **open discourse to bring about change**. Second, given the lack of engagement of CRT by the community of legal scholars as a whole, the discourse that should be taking place at the highest scholarly levels has, by default, been displaced to faculty offices and, more generally, the streets and the airwaves.

* CRT = Critical Race Theory

* CRAT = CRT's Advocates

They Say: "Neg Still Has Ground/Should Be Prepared"

1. The neg doesn't have *predictable* ground when the aff doesn't affirm the topic. Ground is inevitable, but the affirmative hurt the quality of in-round dialogue.

Galloway 7 — Ryan Galloway, Assistant Professor and Director of Debate at Samford University, 2007 ("Dinner and Conversation at the Argumentative Table: Re-Conceptualizing Debate As An Argumentative Dialogue," *Contemporary Argumentation & Debate*, Volume 28, September, Available Online to Subscribing Institutions via Academic Search Premier, p. 12)

In addition, even when the negative strategy is not entirely excluded, **any strategy** that diminishes argumentative depth and quality **diminishes the quality of in-round dialogue**. An affirmative speech act that flagrantly violates debate fairness norms and claims that the benefits of the affirmative act supersede the need for such guidelines has the potential of **excluding a meaningful negative response**, and **undermines the pedagogical benefits of the in-round dialogue**. The "germ of a response" (Bakhtin, 1990) is stunted.

2. Even if we *could* prepare a different strategy, this requirement is too burdensome. Prep time isn't unlimited — dedicating time to untopical affs trades off *either* with preparation for topical affs *or* with other important parts of our lives. Topicality *is* our preparation — it is a researched strategy that clashes with the aff. Vote neg to preserve meaningful limits.

Harris 13 — Scott Harris, Associate Specialist and Debate Coach at the University of Kansas, holds a Ph.D. in Communication from Northwestern University, 2013 ("This Ballot," Ballot from the Final Round of the 2013 National Debate Tournament, Posted on the *Global Debate* blog, April 6th, Available Online at http://globaldebateblog.blogspot.com/2013/04/scott-harris-writes-long-ballot-for-ndt.html, Accessed 08-31-2013)

I understand that there has been some criticism of Northwestern's strategy in this debate round. This criticism is premised on the idea that they ran framework instead of engaging Emporia's argument about home and the Wiz. I think this criticism is unfair. Northwestern's framework argument did engage Emporia's argument. Emporia said that you should vote for the team that performatively and methodologically made debate a home. Northwestern's argument directly clashed with that contention. My problem in this debate was with aspects of the execution of the argument rather than with the strategy itself. It has always made me angry in debates when people have treated topicality as if it were a less important argument than other arguments in debate. Topicality is **a real argument**. It is **a researched strategy**. It is an argument that challenges many affirmatives. The fact that other arguments could be run in a debate or are run in a debate does **not** make topicality somehow **a less important** argument. In reality, for many of you that go on to law school you will spend much of your life running topicality arguments because you will find that words in the law matter. The rest of us will experience the ways that word choices matter in contracts, in leases, in writing laws and in many aspects of our lives. Kansas ran an affirmative a few years ago about how the location of a comma in a law led a couple of districts to misinterpret the law into allowing individuals to be incarcerated in jail for two days without having any formal charges filed against them. For those individuals the location of the comma in

the law had major consequences. **Debates about words are not insignificant**. Debates about what kinds of arguments we should or should not be making in debates are not insignificant either. The limits debate is an argument that has **real pragmatic consequences**. I found myself earlier this year judging Harvard's eco-pedagogy aff and thought to myself—I could stay up tonight and put a strategy together on eco-pedagogy, but then I thought to myself—why should I have to? Yes, I could put together a strategy against any random argument somebody makes employing an energy metaphor but the reality is there are only so many nights to stay up all night researching. I would like to actually spend time playing catch with my children occasionally or maybe even read a book or go to a movie or spend some time with my wife. A world where there are an infinite number of affirmatives is a world where the demand to have a specific strategy and not run framework is a world that says this community **doesn't care whether its participants have a life** or **do well in school** or **spend time with their families**. I know there is a new call abounding for interpreting this NDT as a mandate for broader more diverse topics. The reality is that will create more work to prepare for the teams that choose to debate the topic but will have little to no effect on the teams that refuse to debate the topic. Broader topics that do not require positive government action or are bidirectional will not make teams that won't debate the topic choose to debate the topic. I think that is a con job. I am not opposed to broader topics necessarily. I tend to like the way high school topics are written more than the way college topics are written. I just think people who take the meaning of the outcome of this NDT as proof that we need to make it so people get to talk about anything they want to talk about without having to debate against topicality or framework arguments are interested in constructing a world that might make debate **an unending nightmare** and **not a very good home in which to live**. Limits, to me, are a real impact because I feel their impact **in my everyday existence**.

3. Every debate that's not about the topic is a lost opportunity to repeat the iterative process — that's Lundberg.

They Say: "Switch-Sides Debate Bad – General"

1. "Switch sides" refers to format, not content. Affirmative and negative are orientations toward the topic, not prescribed identities. The topic requires debaters to sometimes affirm and sometimes negate the resolution in order to make the best decision about surveillance policy, not to "switch sides" on every argument.

2. Playing devil's advocate combats dogmatism and leads to better convictions.

Galloway 7 — Ryan Galloway, Assistant Professor and Director of Debate at Samford University, 2007 ("Dinner and Conversation at the Argumentative Table: Re-Conceptualizing Debate As An Argumentative Dialogue," *Contemporary Argumentation & Debate*, Volume 28, September, Available Online to Subscribing Institutions via Academic Search Premier, p. 8-9)

Willingness to argue against what one believes helps the advocate understand the strengths and weaknesses of their own position. It opens the potential for a new synthesis of material that is superior to the first (Dybvig & Iverson, 2000). Serving as a devil's advocate encourages an appreciation for middle ground and nuance (Dell, 1958). Failure to see both sides can lead to high levels of ego involvement and dogmatism (Hicks & Greene, 2000). [end page 8] Survey data confirms these conclusions. Star Muir found that debaters become **more tolerant** after learning to debate both sides of an issue (Muir, 1993).

Such tolerance is predictable since debate is firmly grounded in respect for the other through the creation of a fair dialogue. Ironically, opponents of a debate as dialogue risk falling prey to dogmatism and the requisite failure to respect potential middle grounds. Perceiving the world through the lens of contingency and probability can be beneficial to real-world activism when its goal is creating consensus out of competing interests. The anti-oppression messages of critical teams would benefit from a thorough investigation of such claims, and not merely an untested axiological assumption.

3. This encourages debaters to better appreciate one another's arguments.

Galloway 7 — Ryan Galloway, Assistant Professor and Director of Debate at Samford University, 2007 ("Dinner and Conversation at the Argumentative Table: Re-Conceptualizing Debate As An Argumentative Dialogue," *Contemporary Argumentation & Debate*, Volume 28, September, Available Online to Subscribing Institutions via Academic Search Premier, p. 12)

Conversely, in a dialogical exchange, debaters come to realize the positions other than their own have value, and that reasonable minds can disagree on controversial issues. This respect encourages debaters to modify and adapt their own positions on critical issues without the threat of being labeled a hypocrite. The conceptualization of debate as a dialogue allows challenges to take place from a wide variety of perspectives. By offering a stable referent the affirmative must uphold, the negative can choose to engage the affirmative on the widest possible array of "counter- words," enhancing the pedagogical process produced by debate.

4. Their interpretation causes confirmation bias. Challenging assumptions by playing Devil's Advocate is vital to prevent policy disasters.

Dame and Gedmin 13 — John Dame, Chief Executive Officer of Dame Management Strategies, and Jeffrey Gedmin, Chief Executive Officer of the Legatum Institute, 2013 ("Three Tips For Overcoming Your Blind Spots," *Harvard Business Review* blog, October 2nd, Available Online at http://blogs.hbr.org/2013/10/three-tips-for-overcoming-your-blind-spots/, Accessed 10-10-2013)

To fight confirmation bias, have a devil's advocate.

Confirmation bias refers to our tendency, when receiving new information, to process it in a way that it **fits our pre-existing narrative** about a situation or problem. Simply put, if you're already inclined to believe that the French are rude, you will find the examples on your trip to Paris to validate your thesis. Disconfirming evidence – the friendly waiter, the helpful bellman – gets pushed aside. They're just "the exception." Warren Buffett says, "What the human being is best at doing, is interpreting all new information so that their prior conclusions remain intact." He knows he is prone to it himself.

Attorneys, debaters, and politicians engage in a kind of confirmation bias when, in order to make a case, they **select certain data while deliberately neglecting or deemphasizing other data**. But confirmation bias can cause **disaster** in business and policy when it leads a decision-maker to **jump to conclusions**, fall prey to **misguided analogies**, or simply **exclude information** that inconveniently disturbs a desired plan of action.

What to do? The only remedy is to make sure you have **a full and accurate picture** available when making important decisions. When you have a theory about someone or something, **test it**. When you smell a contradiction – a thorny issue, an inconsistency or problem – **go after it**. Like the orchestral conductor, **isolate it, drill deeper**. When someone says – or you yourself intuit – "that's just an exception," be sure it's just that. **Thoroughly examine the claim**.

Dealing with confirmation bias is about **reining in your impulses** and **challenging your own assumptions**. It's difficult to stick to it day in and out. That's why it's important to have in your circle of advisers a brainy, tough-as-nails **devil's advocate** who – perhaps annoyingly, but valuably – **checks you constantly**.

They Say: "Switch-Sides Debate Bad – Hicks & Greene"

1. Switch-side debating prepares students to challenge dominant ideologies, not mindlessly accept them.

English et al. 7 — Eric English, Graduate Student in the Department of Communication at the University of Pittsburgh, et al., part of the Schenley Park Debate Authors Working Group (DAWG)—a consortium of public argument scholars at University of Pittsburgh that includes Gordon R. Mitchell—Associate Professor of Communication at the University of Pittsburgh, Stephen Llano, Catherine E. Morrison, John Rief, and Carly Woods—Graduate Students in the Department of Communication at the University of Pittsburgh, 2007 ("Debate as a Weapon of Mass Destruction," *Communication and Critical/Cultural Studies*, Volume 4, Number 2, June, Available Online at http://www.pitt.edu/~gordonm/JPubs/EnglishDAWG.pdf, Accessed 01-19-2010, p. 223-225)

Second, while the pedagogical benefits of switch-side debating for participants are compelling,10 some worry that the technique may perversely and unwittingly serve the ends of an aggressively militaristic foreign policy. In the context of the 1954 controversy, Ronald Walter Greene and Darrin Hicks suggest that the articulation of the debate community as a zone of dissent against McCarthyist tendencies developed into a larger and somewhat uncritical affirmation of switch-side debate as a [end page 223] "technology" of liberal participatory democracy. This technology is part and parcel of the post-McCarthy ethical citizen, prepared to discuss issues from multiple viewpoints. The problem for Greene and Hicks is that this notion of citizenship becomes tied to a normative conception of American democracy that justifies imperialism. They write, "The production and management of this field of governance allows liberalism to trade in cultural technologies in the global cosmopolitan marketplace at the same time as it creates a field of intervention to transform and change the world one subject (regime) at a time."11 Here, Greene and Hicks argue that this new conception of liberal governance, which epitomizes the ethical citizen as an individual trained in the switch-side technique, serves as a normative tool for judging other polities and justifying forcible regime change. One need look only to the Bush administration's framing of war as an instrument of democracy promotion to grasp how the switch-side technique can be appropriated as a justification for violence.

It is our position, however, that rather than acting as a cultural technology expanding American exceptionalism, switch-side debating originates from a civic attitude that serves as **a bulwark against fundamentalism of all stripes**. Several prominent voices reshaping the national dialogue on homeland security have come from the academic debate community and draw on its animating spirit of critical inquiry. For example, Georgetown University law professor Neal Katyal served as lead plaintiff's counsel in Hamdan, which challenged post-9/11 enemy combat definitions.12 The foundation for Katyal's winning argument in Hamdan was laid some four years before, when he collaborated with former intercollegiate debate champion Laurence Tribe on an influential Yale Law Journal addressing a similar topic.13

Tribe won the National Debate Tournament in 1961 while competing as an undergraduate debater for Harvard University. Thirty years later, Katyal represented Dartmouth College at the same tournament and finished third. The imprint of this debate training is evident in Tribe and Katyal's contemporary public interventions, which are characterized by meticulous research, sound argumentation, and a staunch commitment to democratic principles. Katyal's reflection on his early days of debating at Loyola High School in Chicago's North Shore provides a vivid

illustration. "I came in as a shy freshman with dreams of going to medical school. Then Loyola's debate team opened my eyes to a different world: one of argumentation and policy." As Katyal recounts, "the most important preparation for my career came from my experiences as a member of Loyola's debate team."14

The success of former debaters like Katyal, Tribe, and others in **challenging the dominant dialogue on homeland security** points to the efficacy of academic debate as **a training ground for future advocates of progressive change**. Moreover, a robust understanding of the switch-side technique and the classical liberalism which underpins it would help prevent misappropriation of the technique to bolster suspect homeland security policies. For buried within an inner-city debater's files is a secret threat to absolutism: the refusal to be classified as "with us or against us," the embracing of intellectual experimentation in an age of orthodoxy, and reflexivity in the face of fundamentalism. But by now, the irony of our story should be [end page 224] apparent—the more effectively academic debating practice can be focused toward these ends, the greater the proclivity of McCarthy's ideological heirs to brand the activity as a "weapon of mass destruction."

2. Hicks and Greene are wrong — they overgeneralize and lack an alternative. Switch-side debating facilitates informed deliberation.

Stannard 6 — Matt Stannard, Director of Forensics and Associate Lecturer in the Department of Communication and Journalism at the University of Wyoming, 2006 ("Deliberation, Debate, and Democracy in the Academy and Beyond," *The Underview*, Spring 2006 Faculty Senate Speaker Series Speech, April 18, Available Online at http://theunderview.blogspot.com/2006/04/deliberation-democracy-and-debate.html, Accessed 06-26-2007)

If it is indeed true that debate inevitably produces other-oriented deliberative discourse at the expense of students' confidence in their first-order convictions, this would indeed be a trade-off worth criticizing. In all fairness, Hicks and Greene do not overclaim their critique, and they take care to acknowledge the important ethical and cognitive virtues of deliberative debating. When represented as anything other than a political-ethical concern, however, Hicks and Greene's critique has several problems: First, as J.P. Lacy once pointed out, it seems a **tremendous causal** (or even rhetorical) **stretch** to go from "debating both sides of an issue creates civic responsibility essential to liberal democracy" to "this civic responsibility upholds the worst forms of American exceptionalism."

Second, Hicks and Greene do not make **any comparison** of the potentially bad power of debate to any alternative. Their implied alternative, however, is a form of forensic speech that privileges personal conviction. The idea that students should be able to preserve their personal convictions at all costs seems **far more immediately tyrannical**, **far more immediately damaging** to either liberal or participatory democracy, than the ritualized requirements that students occasionally take the opposite side of what they believe.

Third, as I have suggested and will continue to suggest, while a debate project requiring participants to understand and often "speak for" opposing points of view may carry a great deal of liberal baggage, it is at its core a project **more ethically deliberative** than institutionally liberal. Where Hicks and Greene see debate producing "the liberal citizen-subject," I see debate at least

having the potential to produce "**the deliberative human being**." The fact that some academic debaters are recruited by the CSIS and the CIA does not undermine this thesis. Absent healthy debate programs, these think-tanks and government agencies would still recruit what they saw as the best and brightest students. And absent a debate community that rewards anti-institutional political rhetoric as much as liberal rhetoric, those students would have **little-to-no chance** of being exposed to truly oppositional ideas.

They Say: "Unethical To Defend The Topic"

1. This is an affirmative burden: the resolution requires the affirmative to defend that the U.S. federal government substantially curtail its domestic surveillance. "*The USFG is evil — and so is every policy the USFG enacts*" is a negative argument, not a response to topicality.

2. Debate is not role-playing — arguing that the federal government should curtail domestic surveillance doesn't make a debater complicit with the USFG's wrongdoing. You don't *become* the USFG by arguing about it.

Harris 13 — Scott Harris, Associate Specialist and Debate Coach at the University of Kansas, holds a Ph.D. in Communication from Northwestern University, 2013 ("This Ballot," Ballot from the Final Round of the 2013 National Debate Tournament, Posted on the *Global Debate* blog, April 6th, Available Online at http://globaldebateblog.blogspot.com/2013/04/scott-harris-writes-long-ballot-for-ndt.html, Accessed 08-31-2013)

While this ballot has meandered off on a tangent I'll take this opportunity to comment on an unrelated argument in the debate. Emporia argued that oppressed people should not be forced to role play being the oppressor. This idea that debate is about role playing being a part of the government **puzzles me greatly**. While I have been in debate for 40 years now **never once** have I role played being part of the government. When I debated and when I have judged debates I have **never** pretended to be anyone but Scott Harris. Pretending to be Scott Harris is burden enough for me. Scott Harris has formed many opinions about what the government and other institutions should or should not do **without ever role playing** being part of those institutions. I would form opinions about things the government does if I had never debated. I **cannot imagine a world** in which people don't form opinions about the things their government does. I don't know where this vision of debate comes from. I have **no idea at all** why it would be oppressive for someone to **form an opinion** about whether or not they think the government should or should not do something. I do not role play being the owner of the Chiefs when I argue with my friends about who they should take with the first pick in this year's NFL draft. I do not role play coaching the basketball team or being a player if I argue with friends about coaching decisions or player decisions made during the NCAA tournament. If I argue with someone about whether or not the government should use torture or drone strikes I can **do that** and **form opinions** without **ever** role playing that I am part of the government. Sometimes the things that debaters argue is happening in debates puzzle me because they seem to be based on a vision of debate that is foreign to what I think happens in a debate round.

3. Debate is about the development of convictions, not the stating of convictions—debate is a process for learning how to argue and decide ethical positions.

4. Working within the state is good — it is not unethical.

Smith 10 — Andrea Smith, Associate Professor in the Department of Media and Cultural Studies at the University of California-Riverside, Faculty Member at the North American Institute for Indigenous Theological Studies, Co-Founder of INCITE!—a national activist organization of radical feminists of color advancing a movement to end violence against women of color and our communities through direct action, critical dialogue and grassroots organizing, holds a Ph.D. in History of Consciousness from the University of California-Santa Cruz, interviewed by Sharmeen Khan, David Hugill, and Tyler McCreary, 2010 ("Building Unlikely Alliances: An Interview with Andrea Smith," *Upping The Anti*—a Canadian radical journal, Number 10, Available Online at http://uppingtheanti.org/journal/article/10-building-unlikely-alliances-an-interview-with-andrea-smith/, Accessed 05-02-2014)

You've said that you saw the Obama election as a moment for social movements to build themselves. What are your thoughts about electoral politics and the role of the state in terms of the question of power?

Until you have an alternative system, then there is **no "outside"** of the current system. I don't think there is a pure place in which to work, so you can work in many places, **including inside the state**. I think there is **no reason** not to engage in electoral politics or any other thing. But it would probably be a lot more effective if, **while we are doing that**, we are **also** building alternatives. If we build the alternatives, we have movements to **hold us accountable** when we work within the system and we also have more negotiating power. It can actually be **helpful**.

In terms of, say, state repression, if we have some critical people **within the state** then we might be able to **do something about it**. We might think about them as a way to **relieve some of the pressure** while trying to build the alternatives. I don't think it is **un-strategic** to think about it like that. I am just not the kind of person who ever says, "never do 'x'." You always have to be **open-minded and creative**. It may not work out. You may get co-opted or something bad might happen. But if we really knew the correct way to do something we would have done it by now.

You challenge the US Social Forum motto – "another world is possible, another US is necessary" by raising the question that, if another world is possible, then why is another US necessary? What happens when we organize around a state-centered framework?

Well, our political imaginary gets captured by the state. I think that the world we want to live in is something we can't imagine now. We just assume that the US must be necessary, but does anybody really feel liberated here? It's almost common sense. Do we really think the United States demonstrates the best way to organize the universe? Why is that the limit of our imagination? I am **not** necessarily saying we can never do electoral politics or be strategic in certain ways. The problem is when that strategy becomes the long-term vision itself. So, for example, Obama's campaign becomes the goal rather than a means to another goal. To me, that is what that question is really asking. Can we free up our imaginations about what we really want?

5. In-depth knowledge about the USFG is empowering. This answers "*historical determinism*" and proves that government is responsive to citizen intervention.

Zelden 8 — Charles L. Zelden, Professor of History at Nova Southeastern University, holds a Ph.D. in History from Rice University, 2008 ("Foreword," *The Legislative Branch of Federal Government: People, Process, and Politics*, Written by Gary P. Gershman, Published by ABC-CLIO, ISBN 1851097120, p. vii-ix)

Most of us know something about the federal government. At the very least, we can name its three branches—executive, legislative, and judicial—and discuss the differences between them. At an early age, we are taught in school about the president of the United States and his official roles and responsibilities; we learn about Congress and the courts and their place in our government. In civics classes, we often get a skeletal picture of how the nation's government works; we are told that Congress writes the laws, the president executes them, and the Supreme Court acts as the interpreter of the U.S. Constitution. News reports, blogs, and editorials we read as adults add to this knowledge. Many of us can go further and explain some of the basic interactions among the branches. We know that the laws Congress passes are subject to the president's veto power and the Supreme Court's powers of judicial review; we understand that the president names the members of his Cabinet and nominates justices to the Supreme Court, but that the Senate has to confirm these nominations; and we can discuss how the Supreme Court, as the "caretaker" of the Constitution, can declare laws unconstitutional, but that it is up to the legislative and executive branches to enforce these rulings. We bandy around such terms as checks and balances and separation of powers. We talk about majority votes and filibusters in the Senate.

For most of us, however, this is about as far as our knowledge goes. According to newspaper accounts spanning decades, most Americans have trouble naming members of the Supreme Court, or key figures in the congressional leadership, or the members of the president's Cabinet. Still fewer of us can explain in detail how a bill becomes a law, or the president's authority in foreign affairs, or how the Supreme Court decides a case. If we ask about the historical development of these institutions and officials and their powers, the numbers of those who understand how our federal government works drops even further.

It is not surprising that most of us do not know a lot about the workings of our government. Government is a large and complex enterprise. It includes thousands of people working on subjects ranging from tax reform to national security, from voting rights to defining and enforcing environmental standards. Much of the work of government, although technically open to the public, is done out of sight and hence out of mind. We may know about those parts of the government that affect us directly—the Social Security Administration for the elderly, the Defense Department for those with family members in the military, or the Supreme Court when the news is filled with such controversial topics as abortion or the right to die or prayer in schools—but our understandings are generally limited to only those parts that directly affect us. Although this state [end page vii] of affairs is understandable, it is also **dangerous**. Our form of government is a democratic republic. This means that, although elected or appointed officials carry out the duties of government, "We the People of the United States" are the ultimate authority, and not just because we choose those who run the government (or those who appoint the men and women who run the day-to-day business of government). In the end, it is **our choices** that shape (or, at least, should shape) the **scope** and **function** of the federal government.

As Abraham Lincoln gracefully puts it, ours is a government "of the people, by the people, for the people."

Yet what sort of choices can we make if we do not understand the structures, workings, and powers of the federal government? **Choices made in ignorance are dangerous choices**. When a president goes on TV and claims a power not granted by the Constitution, we need to know that this claim is something new. It might be that what the president is asking for is a reasonable and necessary extension of the powers already held by the executive branch—but it might, on the other hand, be a radical expansion of his powers based on nothing more than his say-so. If we do not understand what is normal, how can we judge whether abnormal and exceptional proposals are necessary or proper? The same is true when pundits and politicians rant on about the dangers of "activist judges." How can we know what an "activist judge" is if we do not even understand a "normal" judge's job? What one person calls dangerous activism could be courageous defense of constitutional rights in other people's eyes—or what one person praises as a creative reading of the Constitution, another person might denounce as an irresponsible and unwise judicial experiment.

This is the point: without knowledge of the way things are supposed to be, how can we judge when the powers of government are being **underused**, **misused**, or even **abused**? The need for this knowledge is the root from which the three volumes of the About Federal Government series have grown. Our goal is to present the federal government as **a living, working system** made up of real people doing jobs of real importance—not just in the abstract, but for all of us in our daily lives. **Knowledge is power**, and this is as true today as when Lord Francis Bacon wrote it about four hundred years ago. Understanding **how our government works**, and how each of its institutions works, and how they interact with one another and with "We the People" is **not** just something we might need to pass a civics test or a citizenship exam—it is **a source of power for us as citizens**. Knowing how a bill becomes a law and the many ways that a good idea can be derailed by the process of lawmaking is a source of power—for some day, there may be a bill that you want to see enacted into law, or that you want to prevent being made a law. Knowing the stress points at which a bill is most vulnerable to defeat can give you the opportunity to put pressure where it would do the most good. We can find similar examples for the other two branches as well.

One way of showing the living and evolving nature of the federal government is to place it into its historical context. Our government did not just come into being fully formed. The government we have today is the result of **over two hundred years of** [end page viii] **growth and change**, of choices made and laws passed. Much of what we hold to be gospel today, when it comes to the goals and methods and powers of the national government, resulted from our experiences—good and bad—in the past. How can one understand today's civil rights laws, for example, without first understanding the impact of slavery, the Civil War, and Reconstruction on the structure of our government? Forgetting the past leaves us powerless to deal with the present and the future. A second way to bring our government to life is to focus on the interactions among the three branches of the federal government, as well as between these three branches and the states. Most of the controversy shaping our governing structures grew out of conflicts among the various branches of the federal government, or between the federal government and the states. When Congress fights with the president over budgets or the Supreme Court overturns a popular law passed by Congress and signed by the president, or when a state defies a mandate issued by the U.S. Supreme Court and the president must put that state's National Guard under his authority to

enforce the Court's decision, those crises clarify the actual working structures of our government. Like flexing a muscle to make it strong, these interactions define the actual impact of our government—not only today, but in the future as well. Finally, we can understand the living nature of the federal government by examining the people who make up that government. Government is **not an abstract idea**: it is people doing their jobs as best they can. If government can be said to have a personality, it is the direct reflection of the collective personalities of those who work in our government. Hence, when we talk about Congress, we are talking about the people who are elected to the House of Representatives and the Senate and whose values, views, beliefs, and prejudices shape the output of the national legislature. The About Federal Government series integrates all three of these approaches as it sets out the workings and structures of our national government. Written by historians with a keen understanding of the workings of government past and present, these volumes stress the ways in which each of the branches helps form part of a whole system—and the ways that each branch is unique as an institution. Finally, we have given special stress to bringing the people and the history of these branches to life, in the process making clear **just how open to our own intervention** our government really is. This is **our** government, and **the more we understand how it works**, the more **real** our "ownership" of it will be.

6. Voicing an argument doesn't make a person unethical. They oversimplify complex relations between stance and identity. Proceduralism is the best way to facilitate reasoned compromise.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Beyond Sincerity and Authenticity: The Ethos of Proceduralism," *The Way We Argue Now: A Study in the Cultures of Theory*, Published by Princeton University Press, ISBN 9780691114033, p. 161-163)

In this essay, I interpret the political theory known as "proceduralism" as an alternative to the paradigms of thought that dominate within poststructuralism. Proceduralism is a normative model for the justification of specific political practices and institutions: in the case of the forms of democracy favored by Rawls and Habermas, the aim is to elaborate those **processes, rules, and procedures** that will determine **legitimate or justifiable outcomes**. Historically associated with liberalism and legal formalism, proceduralism contrasts itself with moral and political theories that make appeal to substantive guiding concepts such as human nature or a pregiven notion of the good. In Habermas's case, ongoing intersubjective argument conducted within conditions of fairness and reciprocity, and animated by a moral point of view committed to the enlargement of perspective that argument itself promotes and demands, is the privileged procedural component of liberal and internationalist democratic institutions. Only those outcomes that have been accepted by all those concerned—whether by **consensus** or **reasoned compromise**—can be considered legitimate from a moral point of view.

In its Habermasian version, I will argue, proceduralism harbors a challenging conception of ethos, one that effectively **displaces the antinomy between reason and ethos** that I examined in the previous essay. The very idea of a proceduralist ethos will, I realize, be viewed by some readers as counterintuitive, insofar as proceduralism is often seen as fundamentally impersonal in its emphasis on processes, rules, and institutional practices that exceed the level of individual actors.

But I will excavate proceduralism's own interest in ethos at both the individual and collective levels, and in order to set the stage for my analysis, I will revisit Lionel Trilling's genealogy of the modern concepts of sincerity and authenticity, arguing that proceduralism constitutes an extension of the sincerity paradigm, while poststructuralism remains the inheritor of the authenticity paradigm. The essays in the final section of this volume have identified ways in which a certain exiling of the categories of character and ethos has impoverished the theoretical resources of contemporary literary and cultural studies. My central presupposition has been that sociological [end page 161] conceptions of identity—ascriptions of race, class, sexuality, ethnicity, nationality—have so dominated the understanding of subjective experience that we do not tend to reflect sufficiently on the **complex relations** among **ascribed identity**, **cultivated ethos**, and **practice**. Even in much work influenced by poststructuralism, where identity is of course a complex affair, there is no coherent analysis of the relation between implied ideals of intellectual or ethical or political virtue, and the insistence that identities are fundamentally multiple and unstable because shot through with various group identifications. Ethical rhetoric certainly appears when theorists discuss the desirable or undesirable consequences of various stances toward identity and social relations. But the **conceptual gulf** between stance and identity typically remains **unacknowledged**—the former implies capacities for reflective distance, self-cultivation, and situated judgment, while the latter remains either extrinsic or imposed (even when unstable or precarious). The idea that intellectual and political practices carry ethical significance precisely insofar as they become a part of one's character or contribute toward the formation of a developed ethos seems **foreign** to the view of identity as **imposed**, **subverted**, **unstable**, or even **performed** (precisely because the notion of performance is fundamentally elaborated in relation to conditions of imposition and opportunities for subversion). In the end, the current frameworks for understanding selfhood and practice tend to imagine action as **a negation or negotiation of identity**, rather than something that might **develop a character** or **foster an ethos**.

Habermas's proceduralism departs from prevailing paradigms of identity—and their consequent theoretical impasses—by addressing two questions whose fates are deeply intertwined. First, his proceduralism interestingly **reframes** the poststructuralist attempt to trouble, subvert, or denaturalize identity, both at the level of individual practice and in relation to the collective dimensions of identity. It very much subordinates group identity to the moral framework of a universalist procedure that can subtend diverse forms of self-understanding: in this sense it mounts **a critique of identity politics** and discloses certain **limits or problems** in recent attempts to promote pluralist accommodation of disparate cultural practices and self-understandings. But in doing so, I will argue, it **in no way fails to conceptualize an ethos** that meets the demands of a pluralistic democracy. Indeed, its ability to mediate among the individual, intersubjective, and collective levels of practice constitute, I will suggest, one of the strongest claims of this tradition upon our attention.

The second achievement of Habermasian proceduralism that I isolate lies in its manner of addressing a core problem that has emerged within those pockets of theory, analyzed in previous chapters, in which ethos emerges as conceptually significant, but remains oppositional or mystified [end page 162] insofar as it is invoked as that which exceeds, escapes, or resists either rational argument or abstract universalism. Proceduralism departs dramatically from this theoretical predisposition by suggesting that argument informed by universalistic principles might itself become an ethos. In doing so, it pushes beyond not only the impasses of identity paradigms (in either their affirmative or deconstructive guise), but also certain entrenched excesses of the

critique of enlightenment. The account that I will offer will refuse the prevalent tendency to offer ethos—whether understood as individual style or group culture—as the corrective to reason.

7. Vigorously defending positions you don't believe in debates is the highest ethical obligation in a democracy. Their refusal to affirm the topic when assigned to defend the affirmative is unethical.

Day 66 — Douglas G. Day, Assistant Professor and Director of Forensics at the University of Wisconsin, 1966 ("The Ethics of Democratic Debate," *Central States Speech Journal*, Volume 17, February, p. 5-7)

The ethics of debate are inherent in debate as **the technology of decision-making** in a democratic society. These ethics may be ascertained by examining the nature of debate as a decision-making process and the function debate fulfills in democratic society.

Democracy as a political philosophy does not specify what the good life is, rather it provides a methodological framework within which each individual may seek to fulfill his own conception of the good life. The two primary functions of democratic government are to provide means for establishing public policies when such policies become necessary and to provide means for the adjudication of disputes when private interests come into conflict with each other or with public policies.2 In both functions debate is the essential procedural feature of the decision-making process. When the people or their representatives in legislature or committee choose a policy, the choice is presumed to be the outcome of debate. In the adjudication of disputes, law guarantees that the decision be determined by debate. Without debate the ballot box and the jury's verdict become empty social gestures.

The acceptance of debate as the democratic technology of decision-making rests upon two assumptions. First, that political and moral truths are different from scientific truths. Second, that public consensus on political and moral truth is possible. I call these two statements "assumptions" because debate as a method must accept them as true, even though they may be open to question. The first assumption, that political and moral truth is different from scientific truth, is reasonably clear. Moral statements which are answers to questions such as "What ought I do?" or 'What should I do?" are not factual statements. They are not empirical descriptions of the way things are, but rather attitudes toward the way things are. This does not, of course, mean that empirical data may not be relevant to moral decisions; it does mean that we cannot turn to the empirical sciences to discover the nature of the good life. The second assumption necessary to the acceptance of debate is that consensus on political and moral statements is possible, in spite of the inability to verify such statements empirically. In other words, when we seek agreement, we assume agreement is possible. In practice, of course, we do not expect unanimous agreement. But our willingness to be bound by, i.e., to accept as true, a decision with which we disagree stems from the fact that agreement is assumed possible and is sought. As Sabine observes: "It is the belief that consensus is possible which creates the will to make the apparatus work, and it is the belief that a consensus has been sought that takes from its execution the sense of being merely coercive."3 The problem for democracy is to make decision by debate work as effectively as possible.

Decision is meaningful **only if there are alternatives** from which to choose; it is intelligent only if the alternatives are understood. Thus, the prime requisite which must be met if debate is to

provide sound decisions is that it be **thorough and complete**, that all arguments and information relevant to decision be known and understood.

Democratic government provides the opportunity for debate through the guarantee of freedom of speech. The important civil value in freedom of speech, however, is not in the elimination of restraints on speech but in the unique opportunity that this elimination of restraints provides. Lippman calls this the "creative principle" of freedom of speech. He observes that "the essence of freedom of opinion is not in more toleration as such, but in the debate which toleration provides: it is not in the venting of opinion, but in the confrontation of opinion."5 Too often regard for freedom of speech is only in its negative sense and the positive obligation is forgotten. The prohibition against restraint of speech is meaningless if nothing is said. Free speech is "people talking, not merely people who are not prevented from doing so."6

Free speech is the necessary prerequisite of full debate. It guarantees that full debate can take place; it does not guarantee that full debate will take place. Herein lies the highest ethic of democratic debate. A commitment to debate as the method of democratic decision-making demands **an overriding ethical responsibility** to promote **the full confrontation** of opposing opinions, arguments, and information relevant to decision. Without the confrontation of opposing ideas debate does not exist, and to the extent that that confrontation is incomplete so is debate incomplete.

What are the practical obligations entailed in acceptance of this ethic? The preservation of freedom of speech is obviously necessary. But more important is the obligation to see that opinions and arguments are fully and persuasively presented. Encouragement and incentive must be provided those who hold minority viewpoints to express them. Forums must be provided those whose views are so unpopular that they are denied ready access to the usual channels of public expression. And finally, all must **recognize and accept personal responsibility** to present, **when necessary**, as forcefully as possible, opinions and arguments with which they may **personally disagree**.

To present persuasively the arguments for a position with which one disagrees is, perhaps, **the greatest need** and **the highest ethical act** in democratic debate. It is the greatest need because most minority views, if expressed at all, are not expressed forcefully and persuasively. Bryce, in his perceptive analysis of America and Americans, saw two dangers to democratic government: the danger of not ascertaining accurately the will of the majority and the danger that minorities might not effectively express themselves.7 In regard to the second danger, which he considered the greater of the two, he suggested:

> The duty, therefore, of a patriotic statesman in a country where public opinion rules, would seem to be rather to resist and correct than to encourage the dominant sentiment. He will not be content with trying to form and mould and lead it, but he will confront it, lecture it, remind it that it is fallible, rouse it out of its self-complacency.8

To present persuasively arguments for a position with which one disagrees is **the highest ethical act** in debate because it **sets aside personal interests** for the benefit of the common good. Essentially, for the person who accepts decision by debate, the ethics of the decision-making process are superior to the ethics of personal conviction on particular subjects for debate. Democracy is a commitment to **means, not ends**. Democratic society accepts certain ends, i.e., decisions, because they have been arrived at by democratic means. We recognize the moral priority of decision by debate when we agree to be bound by that decision regardless of personal

conviction. Such an agreement is morally acceptable because the decision-making process **guarantees our moral integrity** by guaranteeing the opportunity to debate for a reversal of the decision.

8. Procedural fairness outweighs personal conviction.

Day 66 — Douglas G. Day, Assistant Professor and Director of Forensics at the University of Wisconsin, 1966 ("The Ethics of Democratic Debate," *Central States Speech Journal*, Volume 17, February, p. 7)

Thus, personal conviction can have moral significance in social decision-making **only so long as the integrity of debate is maintained**. And the integrity of debate is maintained **only** when there is **a full and forceful confrontation of arguments and evidence** relevant to decision. When an argument is **not presented** or is **not presented as persuasively as possible**, then debate **fails**. As debate fails decisions become less "wise." As decisions become less wise the process of decision-making is questioned. And finally, if and when debate is **set aside** for the alternative method of decision-making by authority, the personal convictions of individuals within society **lose their moral significance** as determinants of social choice.

9. No impact — if they believe the resolution is unethical, they should be confident defending it because when all arguments are made, the truth will win out. The only reason they would fear presenting affirmative arguments is if they didn't believe in their personal convictions.

Day 66 — Douglas G. Day, Assistant Professor and Director of Forensics at the University of Wisconsin, 1966 ("The Ethics of Democratic Debate," *Central States Speech Journal*, Volume 17, February, p. 7-8)

This may seem to represent a paradoxical ethical dichotomy to those who believe that sincerity of expression is the highest ethical test of public address. No paradox obtains, however, for those who are committed to debate. Belief that the wisest decisions are achieved by a full confrontation of arguments and information dictates **a primary obligation** to see that debate takes place. And if personal conviction on a particular subject has a preponderance of truth in its favor it will prevail over other views **even when all views are fully presented**. If we believe that our personal conviction can prevail **only if not confronted by other opinions**, then we must either reject the belief that debate is the best method of arriving at truth in social matters or admit that our personal conviction is not in the general interests of society. When we give personal conviction **an ethical priority over the decision-making process** our emphasis can too easily focus on **ends rather than means**. And personal conviction, as noted above, derives its moral significance only in a specified context of means. Perhaps this is what Murphy had in mind when he wrote, "Although personal integrity and honest belief are important parts of a man's character, it is not the sincerity of the man but the honesty of his expression which has to be measured in rhetoric."9

They Say: "Our Experience/Perspective Outweighs"

1. Tolerance of difference requires recognition of disagreement, not abandonment of rules. Radical accommodation collapses argument into identity and renders democratic debate impossible.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 ("Beyond Sincerity and Authenticity: The Ethos of Proceduralism," *The Way We Argue Now: A Study in the Cultures of Theory*, Published by Princeton University Press, ISBN 9780691114033, p. 182-184)

The question of how dialogue under conditions of pluralism might ideally be conceived has led to **alternate theories** that define themselves against Habermasian proceduralism, which is seen as ethnocentrically invested in rationality and consensus. It is important, in my view, to acknowledge how fundamental to these alternate views remains the attempt to define ethos **against argument**, which amounts to **refusing the idea of argument as ethos**. As in the case of the Foucault/Habermas "debate," and in certain articulations of the new cosmopolitanism, ethos in these alternate models is **elevated above argument**, most visibly as a critique of reason and abstract universalism, but also, I shall argue, as a model of difference that poses problems for **democratic politics** and particularly for **the fate of debate within it**. In the Rawlsian model of overlapping consensus (where people with fundamentally different conceptions of the good agree on political principles but for different reasons) and in models of accommodation that have been proffered in objection to what are seen as the deficiencies of the consensus models, there is an expectation of fundamental, nonnegotiable disagreement among parties who nonetheless have an investment in cohabiting within a pluralistic democratic state.

One of the more thoughtful critiques of Habermasian proceduralism along accommodationist lines is that of Thomas McCarthy, who argues that Habermas's emphases on rational acceptance and a cooperative search for truth intended to gain the assent of a universal audience are not themselves the proper informing ideals of a discourse proceduralism enacted under the "conditions of posttraditional pluralism and individualism."23 McCarthy argues that Habermas wants to prevent any skepticism about [end page 182] the possibility of ethicopolitical consensus from undercutting the orientation to reasoned agreement on which he bases his conception of legitimacy. For McCarthy, by contrast, participants need to recognize the possibility of reasoned disagreements and then use this recognition to devise democratic procedures that will enable and enhance coexistence. McCarthy therefore suggests that Habermas's organizing presuppositions, which favor procedures meant to promote consensus and negotiated compromise, might be foreclosing the possibility of devising a different order of proceduralism that would aim to promote not agreement but rather mutual accommodation. He concludes, tantalizingly: "it would be an important and interesting task to explore the logic of the ethical-political dialogue that could produce such mutual accommodation and to elaborate its differences from the logics both of truth-oriented discourse and of strategic, self-interested bargaining" (151).

In his reply to McCarthy's critique, Habermas refuses the concept of mutual accommodation that McCarthy introduces. He entirely cedes the point that we must expect disagreement—an ideal of argument presupposes this—and that this awareness should form part of reflective participation in democratic debate. He then maps out three positions on dialogue under conditions of pluralism, rejecting the first two and endorsing the third. The first position holds that it is impossible to

escape clashing horizons; when they encounter one another, the only possibility for overcoming their differences is the assimilation of one to the other. The second position, which is Rawls's, envisions an overlapping consensus (parties accept a consensus result for different reasons).24 And the third position promotes the progressive expansion of horizons: beyond the limit of their respective self-interpretations and world views, the different parties refer to a presumptively shared moral point of view that, under the symmetrical conditions of discourse and mutual learning, requires an ever broader decentering of perspectives. What Habermas insists upon is the necessity that people accept regulating procedures elaborated with the goal of coexistence for the same reasons. As he concludes, "We can agree to the mutual toleration of forms of life and worldviews that represent existential challenges for each other only if we have a basis of shared beliefs for 'agreeing to disagree.'"25

In the case of McCarthy, whose position is closer to Rawls's, the elaboration of those virtues that would best express a goal of accommodation—[end page 183] tolerance, respect—are elevated **above any principle of shared reasons**. This creates a situation in which ethos, in the sense of an avowed form of ethical life, is somehow allowed to **cushion the participants against argumentative challenges**, a condition that Habermas is persistently concerned to disallow. In its most pronounced form, such an approach risks **collapsing argument into identity**: here the ineluctable fact of difference—whether radically conceived or more traditionally pluralist—becomes **the overriding reason** for reasoned disagreement. But of course the position that McCarthy advances need not be taken so far: read another way, there is a potential similarity between McCarthy's position and the new cosmopolitanism, insofar as both locate a virtue in refusing the insistence on explicit justification and rational agreement that we find in Habermas. The logic of accommodation implies a willingness not to argue out every last detail, but rather to **exercise the tact** that consists in recognizing that we may differ. Nonetheless, it is important to recognize that accommodation here operates **as an attitude informing democratic practices** that otherwise **still need to be based on procedures for ensuring open debate and equitable forms of representation**. These procedures can be **refined and debated themselves**, but **never suspended completely**. Ethos in this view **does not replace or eclipse procedure**, just as cosmopolitanism has the potential to refine universalism through tact and phronesis, without disavowing its fundamental universalistic principles.

2. Don't attach *special authority* to insider accounts. Excluding the perspectives of individuals without a particular experience or identity impoverishes debate.

Bridges 1 — David Bridges, Director of the Centre for Applied Research in Education and Professorial Fellow at the University of East Anglia, Chair of the Von Hügel Institute at St Edmund's College Cambridge, holds a Ph.D. from the University of London, 2001 ("The Ethics of Outsider Research," *Journal of Philosophy of Education*, Volume 35, Issue 3, August, Available Online to Subscribing Institutions via Academic Search Premier, p. 372-374)

II Only Insiders Can Properly Represent The Experience of a Community

First, it is argued that only those who have shared in, and have been part of, a particular experience can understand or can properly understand (and perhaps 'properly' is particularly heavily loaded here) what it is like. You need to be a woman to understand what it is like to live

as a woman; to be disabled to understand what it is like to live as a disabled [end page 372] person etc. Thus Charlton writes of 'the innate inability of able-bodied people, regardless of fancy credentials and awards, to understand the disability experience' (Charlton, 1998, p. 128).

Charlton's choice of language here is indicative of the rhetorical character which these arguments tend to assume. This arises perhaps from the strength of feeling from which they issue, but it warns of a need for caution in their treatment and acceptance. Even if able-bodied people have this 'inability' it is difficult to see in what sense it is 'innate'. Are all credentials 'fancy' or might some (e.g. those reflecting a sustained, humble and patient attempt to grapple with the issues) be pertinent to that ability? And does Charlton really wish to maintain that there is a single experience which is the experience of disability, whatever solidarity disabled people might feel for each other?

The understanding that any of us have of our own conditions or experience is unique and special, though recent work on personal narratives also shows that it is itself multi-layered and inconstant, i.e. that we have and can provide many different understandings even of our own lives (see, for example, Tierney, 1993). Nevertheless, our own understanding has a special status: it provides among other things a data source for others' interpretations of our actions; it stands in a unique relationship to our own experiencing; and no one else can have quite the same understanding. It is also plausible that people who share certain kinds of experience in common stand in a special position in terms of understanding those shared aspects of experience. However, once this argument is applied to such broad categories as 'women' or 'blacks', it has to deal with some **very heterogeneous groups**; the different social, personal and situational characteristics that constitute their individuality may well **outweigh the shared characteristics**; and there may indeed be greater **barriers** to mutual understanding than there are gateways.

These arguments, however, all risk a descent into **solipsism**: if our individual understanding is so particular, how can we have communication with or any understanding of anyone else? But, granted Wittgenstein's persuasive argument against a private language (Wittgenstein, l963, perhaps more straightforwardly presented in Rhees, 1970), we cannot in these circumstances even describe or have any real understanding of our own condition in such an isolated world. Rather it is in **talking to each other**, in participating in a shared language, that we construct the conceptual apparatus that allows us to **understand our own situation in relation to others**—and this is a construction which involves understanding differences as well as similarities.

Besides, we have good reason to treat with some **scepticism** accounts provided by individuals of their own experience and by extension accounts provided by members of a particular category or community of people. We know that such accounts can be riddled with **special pleading**, **selective memory**, **careless error**, **self-centredness**, **myopia**, **prejudice** and a good deal more. A lesbian scholar illustrates some of the pressures that can bear, for example, on an insider researcher in her own community: [end page 373]

> As an insider, the lesbian has an important sensitivity to offer, yet she is also more vulnerable than the non-lesbian researcher, both to the pressure from the heterosexual world—that her studies conform to previous works and describe lesbian reality in terms of its relationship with the outside—and to pressure from the inside, from Within the lesbian community itself-that her studies mirror not the reality of that community but its self-protective ideology. (Kreiger, 1982, p. 108)

In other words, while individuals from within a community have access to a particular kind of understanding of their experience, this **does not automatically attach special authority** (though it might attach special interest) to their own representations of that experience. Moreover, while we might acknowledge the limitations of the understanding which someone from outside a community (or someone other than the individual who is the focus of the research) can develop, this **does not entail** that they cannot develop and present an understanding or that such understanding is **worthless**. Individuals can indeed find benefit in the understandings that others offer of their experience in, for example, a counselling relationship, or when a researcher adopts a supportive role with teachers engaged in reflection on or research into their own practice. Many have echoed the plea of the Scottish poet, Robert Burns (in 'To a louse'):

O wad some Pow'r the giftie gie us

To see oursels as others see us!3

—even if they might have been horrified with what such power revealed to them. Russell argued that it was the function of philosophy (and why not research too?) 'to suggest many possibilities which enlarge our thoughts and free them from the tyranny of custom… It keeps alive our sense of wonder by showing familiar things in an unfamiliar aspect' (Russell, 1912, p. 91). 'Making the familiar strange', as Stenhouse called it, often requires the assistance of someone **unfamiliar with our own world** who can look at our taken-for-granted experience through, precisely, the eye of a stranger. Sparkes (1994) writes very much in these terms in describing his own research, as a white, heterosexual middle-aged male, into the life history of a lesbian PE teacher. He describes his own struggle with the question 'is it possible for heterosexual people to undertake research into homosexual populations'?' but he concludes that being a 'phenomenological stranger' who asks 'dumb questions' may be a useful and illuminating experience for the research subject in that they may have to return to first principles in reviewing their story. This could, of course be an elaborate piece of self-justification, but it is interesting that someone like Max Biddulph, who writes from a gay/bisexual standpoint, can quote this conclusion with apparent approval (Biddulph, 1996).

3. If they win that it is impossible for outsiders to understand their experience, it is also impossible for them to communicate their argument effectively. Don't exclude outsider scholarship.

Bridges 1 — David Bridges, Director of the Centre for Applied Research in Education and Professorial Fellow at the University of East Anglia, Chair of the Von Hügel Institute at St Edmund's College Cambridge, holds a Ph.D. from the University of London, 2001 ("The Ethics of Outsider Research," *Journal of Philosophy of Education*, Volume 35, Issue 3, August, Available Online to Subscribing Institutions via Academic Search Premier, p. 374-375)

People from outside a community clearly **can** have an understanding of the experience of those who are inside that community. It is almost [end page 374] certainly a different understanding from that of the insiders. Whether it is of any value will depend among other things on the extent to which they have immersed themselves in the world of the other and portrayed it in its richness and complexity; on the empathy and imagination that they have brought to their enquiry and writing; on whether their stories are honest, responsible and critical (Barone, 1992). Nevertheless, this value will also depend on qualities derived from the researchers' **externality**: their capacity

to relate one set of experiences to others (perhaps from their own community); their **outsider perspective** on the structures which surround and help to define the experience of the community; on the **reactions and responses** to that community of individuals and groups external to it. 4

Finally, it must surely follow that if we hold that a researcher, who (to take the favourable case) seeks honestly, sensitively and with humility to understand and to represent the experience of a community to which he or she does not belong, is incapable of such understanding and representation, then how can he or she understand either that same experience as mediated through the research of someone from that community? The argument which excludes the outsider from understanding a community through the effort of their own research, ***a fortiori*** excludes the outsider from that understanding through the secondary source in the form of the effort of an insider researcher or indeed **any other means**. Again, the point can only be maintained by insisting that a particular (and itself ill-defined) understanding is the only kind of understanding which is worth having.

The epistemological argument (that outsiders cannot understand the experience of a community to which they do not belong) becomes an ethical argument when this is taken to entail the further proposition that they ought not therefore attempt to research that community. I hope to have shown that this argument is based on **a false premise**. Even if the premise were sound, however, it would **not necessarily follow** that researchers should be **prevented or excluded** from attempting to understand this experience, unless it could be shown that in so doing they would cause some harm. This is indeed part of the argument emerging from disempowered communities and it is to this that I shall now turn.

They Say: "Debate Is Dying Now"

No basis for their argument—two reasons:

1. **Insufficient Data—no statistical analysis supports their assertion. Factual questions require *data-driven* answers, not *politicized speculation*.**
2. **Over-determination—even if they're right, causation is *complicated* and participation is *relative*. "Try-or-die" is an inappropriate metaphor: debate will survive, but they've misdiagnosed the problem.**

We'll straight turn their position:

First, progress now: urban participation is growing.

NAUDL 12 — National Association of Urban Debate Leagues, last updated in 2012 ("Urban Debate QuickFacts," Available Online at http://www.urbandebate.org/quickfacts.shtml, Accessed 04-05-2012)

Urban Debate Leagues (UDLs) currently exist in **24** of the nation's largest cities.

Currently over **500** urban high schools are part of the Urban Debate Network. More than **40,000 urban public school students** have competed in UDLs.

Policy debate is the most academically rigorous of all interscholastic speech activities and the oldest, dating back to 1928, of all high school academic competitions. Policy debate develops core academic skills: literacy, critical thinking, research, communication, organization, and supporting of arguments.

UDLs can have a fundamental impact on participating schools. An Argumentation and Debate course is offered at almost half of the schools in the Urban Debate Network. Curricular Debate, a method that incorporates formal debating throughout the regular curriculum, is offered in several districts.

UDLs promote education equity. Not only are they providing rigorous academic training to students from all across participating cities, some of those urban public school students are competing nationally and winning. UDLs have placed highly at state debate championships in California, Georgia, Illinois, New Jersey, and New York. UDL teams have been in the top 16 National Finalists on four separate occasions, placing 5th in the nation in 2003.

Debate training equips youth for future success. Former debaters are disproportionately represented among leaders in the media, the business word, the law, the academy, and the government. Nearly two out of three Members of the 104th U.S. Congress (1996-97) were former debaters.

Urban debate is highly efficient and cost-effective as an out-of-school-time program. A full academic season costs under $750 per student served, compared with an industry average of nearly $1,500.

The commitment by urban public school districts to urban debate is **substantial and growing**. Since 1997, approximately **$11 million** has been invested in Urban Debate Leagues by school districts such as those in Baltimore, Detroit, St. Louis, Seattle, Newark, Kansas City, and

Chicago. Private partners have also made **significant, multi-million dollar investments** in UDLs.

And participation is record-breaking and will continue to grow—*latest data*.

NAUDL 12 — National Association of Urban Debate Leagues, 2012 ("National Association of Urban Debate Leagues Winter 2012 Newsletter," Winter, Available Online at http://www.urbandebate.org/newsblastwinter12.shtml, Accessed 04-05-2012)

Urban debate is growing! This year our urban debate leagues are reporting **record-breaking participation** at their tournaments. Congratulations to the leagues in Boston, Dallas, and Nashville. In the last few months, these leagues have added more than 250 high school students to the urban debate network. Today, **3,000 high school students** compete in urban debate leagues in nineteen cities. Our leagues are also teaching debate to more than 900 middle school students. You can read more about our leagues and their work in "Around the Leagues."

Here at the NAUDL we believe that urban debate must **continue to grow**. Under our new strategic plan, our goal is, in the next five years, to **triple the number of urban debaters**. See the summary and link to Preparing Urban Youth to Lead in the 21st Century. We were reminded why urban debate is so important a few months ago when Dr. Briana Mezuk published her newest study. In her first study, published several years ago, Dr. Mezuk found that urban debate leads to higher grades and test scores and better graduation rates. In her second study, published in October, she found that urban debaters outperformed non-debaters, even after controlling for the self-selection bias. See the article "Urban Debaters Better Prepared for College" for a link to the complete study.

Unfortunately, doomsaying undermines progress toward greater participation.

Habig 10 — Jason Habig, Speech and Debate Coach for Hathaway Brown School in Ohio, serves as North Coast District Chairman in the National Forensic League, 2010 ("Assisted Rhetorical Suicide: A Response to O'Rourke and the Future of Policy Debate in Ohio," *Rostrum*, Volume 84, Number 6, February, Available Online at http://nflonline.org/uploads/Rostrum/0210_029_030.pdf, Accessed 04-05-2012, p. 29-30)

This leads to the biggest problem with O'Rourke's objections to Policy Debate. For while he correctly points to declining support for Policy Debate in Ohio, he **completely misunderstands its cause**; because so many others **uncritically accept his analysis**, O'Rourke's arguments will only serve to **feed people's misunderstandings about Policy** and **further weaken its support**. When you talk to Policy Debate coaches in Ohio about what is responsible for declining numbers, answers include a **lack of financial resources** in a state that continues to have an [end page 29] unconstitutional form of school funding, an increase in the number of **other, less time-consuming forensic options** for students, a **lack of coaches** willing to make the time commitment, and the **strict limits on school transportation** more than 120 miles outside of our state lines. Yet when you ask some non-Policy forensic coaches, they likely will respond with some of the same **straw man arguments** that O'Rourke employs. This disconnect is troubling because it illustrates a **sharp division within our community** and **perpetuates the myths and rumors** about what "good" Policy Debate looks like, which are **killing support for the activity** in Ohio. Moreover, O'Rourke's claim that Policy Debate is becoming the stomping ground of elite private schools is **sheer fiction**, as almost 75 percent of the Policy Debate teams qualified to

Ohio's state tournament in 2008 were public.2 Successful Urban Debate Leagues, many with a Policy Debate focus, have been successful throughout the nation, and efforts are underway to bring such a program to Cleveland. Organizations like the National Debate Coaches Association have made lesson plans and prepared evidence for Policy Debate free with **universal access**, beginning to **eliminate some of the financial barriers** that have hampered Policy Debate in Ohio and nationwide. Clearly many within the Policy Debate community are **taking the steps necessary to increase participation** in the activity by addressing these **real causes** of the activity's contraction; the misunderstandings created by articles like O'Rourke's **hinder this progress significantly**.

And, the mere perception is enough—school districts and administrations won't support an activity if they perceive that it is dying. "Sky is falling" predictions create a self-fulfilling prophecy of declining participation.

And, the internal link only goes our way: external *structural* factors determine participation, not format or style.

Hanes 7 — T. Russell Hanes, holds an M.S. in Communication Studies from Portland State University, recipient of the IMPACT Coalition's Legacy Award for his volunteer contributions to the New York and Southern California Urban Debate Leagues, 2007 ("Popularizing Debate: An Equity Strategy," *Rostrum*, Volume 81, Number 6, February, Available Online at http://nflonline.org/uploads/Rostrum/0207_069_070.pdf, Accessed 04-05-2012, p. 69)

Miller notes that the percentage of schools participating in debate has been declining for decades, beginning back in the 1970s. (As just one example, Gary Fine notes a precipitous drop from 50% of all Minnesota high schools down to 10% that competed in debate from the 1960s to 1990s.)1 Miller implies that the national-circuit style, which caught on at the high school level in the 1970s, caused this decline. He criticizes several practices, arguing that the kinds of research used in debate can turn kids away (especially minority students who feel no connection to academics and political pundits) and positing that unrealistic impacts (such as nuclear war or genocide) distance debaters from the real-world activism debate should foster. Instead, Miller advocates the use of poetry, song lyrics, and personal narratives as alternative kinds of evidence and moves his teams to a narratives style.

On the one hand, Miller presents a valid concern. If a coach finds that a certain style connects with a student—especially if it is a student from a group currently under-represented in the debate community—then it is reasonable for the coach to support that student's needs and wants. Students ought to feel personally invested in both the substance and style of their arguments. As James Gee notes, students always begin learning about a subject in their "primary discourse" (conversational language emphasizing an intimate connection), but education can help move them into "secondary discourses" (academic languages that abstract and publicize an issue)— and our society gives much greater credibility to second ary discourses.2 The detachment might be greater in secondary discourses, but coaches ought to help students close that argumentative distance. Narratives are best if used as a bridge between personally relevant stories and academic research. Based on his descriptions, this is exactly what Mr. Miller did as a coach.

On the other hand, this analysis applies only to the retention of students. His analysis can say **nothing** about the retention of **programs**, and on this issue, neither his explanation nor his solution **squares with the facts**. Why did speech-only programs also decline to roughly the same

degree? Why have LD and PF, both of which explicitly rejected the national-circuit style, not reversed the decline in NFL membership? A better explanation is that the 1970s saw the emergence of the back-to-basics movement, which cut co-curricular speech classes, hired new teachers of "basic" subjects while superannuating teachers of "extras" such as art and debate, and generally denied the place of rhetoric in the liberal arts canon. Programs folded, and never returned. The national circuit emerged **in response to these events** but **did not cause them**, despite what Miller posits.

Neither a new style nor a new format will address the root causes of declining NFL membership. Miller blames the debate community for creating exclusionary norms around the activity, which is **unfair** because many of the pressures that limit participation to a few well-to-do schools were **given to the debate community by inequalities in the education system as a whole**. The style of debate may affect which students participate—and increasing participation, especially minority participation, is important to consider—but style **does not affect how many schools participate**. There are substantive problems facing debate programs that no amount of new rules are capable of solving. After all, the rules only determine what happens in the round, **not what the school district and principal do before the tournament**. In other words, I believe Miller **overestimates how many real world inequalities can be rectified** with a new debate style or theory.

Public Forum proves our argument—it is less progressive than policy debate but participation is strong because it is cheaper and easier for schools to support. High school administrators worry about funding, not style.

Strongly err negative—their burden of proof is high: writing off debate based on *speculation* about participation trajectory does a disservice to all *current* and *future* participants. Judge-educators invested in the long-term health of debate should be wary of "sky is falling" predictions—hyperbolic rhetoric makes *reasonable discussion* impossible.

They Say: "Black/Urban Youth Are Disinterested In USFG Policies"

1. Urban youth *aren't* disinterested in policy. On balance, that's false and essentializing. Embracing frameworks that oppose policy will be a *setback* at the student and community level. We can win within their framework.

Noguera and Cannella 6 — Pedro Noguera, Professor in the Steinhardt School of Education and Director of the Metro Center for Research on Urban Schools and Globalization at New York University, holds a Ph.D. in Sociology from the University of California-Berkeley, and Chiara M. Cannella, Doctoral Student in the Department of Language, Reading, and Culture at the University of Arizona, 2006 ("Conclusion: Youth Agency, Resistance, and Civic Activism: The Public Commitment to Social Justice," *Beyond Resistance! Youth Activism and Community Change: New Democratic Possibilities for Practice and Policy for America's Youth*, Edited by Shawn Ginwright, Pedro Noguera, and Julio Cammarota, Published by Routledge, ISBN 0415952506, p. 342)

Principle 3: Invest in the Capacity of Youth Leaders

Involving youth in the processes of **policy creation**, **implementation**, and **evaluation** requires youth to have experience in **critical thinking**, **research**, **social analysis**, and **problem solving**. Urban youth have demonstrated both the capacity and the inclination for these roles when they are supported by **effective educational and youth development strategies** (Duncan-Andrade, chapter 9, this volume; HoSang, chapter 1, this volume; Kwon, chapter 12, this volume; Lewis-Charp, Yu, & Soukamneuth, chapter 2, this volume; Strobel, Osberg, & McLaughlin, chapter 11, this volume). But urban youth, especially recent immigrants and linguistic minorities, **tend to have fewer opportunities** to learn and acquire experience to become active as leaders in their communities (Sherrod, chapter 16, this volume). Without **deliberate training and education**, youth are likely to lack **the skills and thinking required for effective civic participation**. Poor urban neighborhoods in particular tend to offer fewer opportunities for adolescents to become involved in community organizations, to **exercise leadership** in their schools, and to participate in multigenerational organizing efforts.

Effective youth programs **build a scaffold** for the development of the skills necessary for young people to become **activists and leaders** in their community. They also impart the **skills, both analytical and academic**, that young people need to be able to **critique conditions and policies** that adversely affect their lives (Kirshner, chapter 3, this volume; Morrell, chapter 7, this volume; O'Donoghue, chapter 13, this volume). This scaffolding may include adult or youth leaders modeling certain behaviors, such as **how to speak in public**, collect signatures for a petition, organize a rally or write a press release. They also provide the young people they work with the opportunity to reflect and process the work and activities they engage in order to insure that they can learn from their experiences. Groups like the Children's Defense Fund and the Center for Third World Organizing also place young people with community-based organizations where they can learn the nuts and bolts of organizing and leadership directly from veterans. Such training activities are **crucial** if young people are to develop **the skills needed to become leaders in their communities**.

2. We critique their totalizing representations of politically alienated urban youth. Even if *some* young people are cynical about policy discourse, the aff has made a sweeping generalization that ignores *complexity* and *particularity*. Vote neg to reject this essentialism.

Kirshner et al. 3 — Ben Kirshner, Doctoral Student in the Program in Child and Adolescent Development at the School of Education at Stanford University, et al., with Karen Strobel, Post-Doctoral Fellow at the John W. Gardner Center for Youth and their Communities at Stanford University, holds a Ph.D. in Psychological Studies in Education from the School of Education at Stanford University, and María Fernández, Liaison to Redwood City community partners addressing community youth development, civic engagement, and school-family-community partnerships for the John W. Gardner Center for Youth and their Communities at Stanford University, 2003 ("Critical Civic Engagement Among Urban Youth," *Perspectives on Urban Education*, Volume 2, Issue 1, Spring, Available Online at https://www.urbanedjournal.org/archive/volume-2-issue-1-spring-2003/critical-civic-engagement-among-urban-youth, Accessed 07-16-2014)

While these analyses of the structural and institutional challenges to urban youth's civic participation provide a necessary starting point, it is also important to pay attention to young people's **own interpretations** of social context. How do young people make sense of their social and political environment and its implications for their future? Flanagan and Gallay (1995) write:

> Rarely are [young people] asked to look outward, toward the community where they live, and reflect on the justice of economic arrangements or of the political influence they observe…we know little about the processes through which children come to understand, challenge, or justify the political arrangements or economic practices of their society (p. 35).

Often, ethnicity, socioeconomic status (SES) and geographically defined neighborhoods are variables included in studies as indicators of the social context in which adolescents are developing their civic identities. In this paper, we argue that knowledge of adolescents' "social address"—while necessary—**does not provide sufficient understanding of youth experiences** in that context; this is not because we think that the structural analyses are wrong, but because we believe youth's sense-making about social and political realities is a core aspect of their development. Understanding how young people think about their neighborhoods, schools, and communities is **critical** to supporting their capacity to help build, shape or challenge the institutions in those settings.

Secondly, knowledge of youth's social awareness is important because it can give us **a more complex picture** of what it means to be an "engaged citizen." **Terms such as "cynical," or "alienated" that are used to categorize broad demographic groups misrepresent the complexity of youth's attitudes towards their communities**. Young people are often cynical **and** hopeful, or **both** critical **and** engaged. Rosaldo (1997), for example, points out in his discussion of "Latino cultural citizenship" that citizenship involves a discussion and struggle over the meaning and scope of membership in the community in which one lives, which involves feelings of both alienation and belonging. Sanchez-Jankowski (2002) makes a related point: because of historical experiences of oppression and exclusion, some ethnic groups are more attuned to systemic injustices, leading to distinct forms of civic involvement. For youth growing up in neighborhoods and schools with insufficient resources, meaningful democratic participation

often involves a critical analysis of structural forces and power (Ginwright & James, 2002). This **complex process** can be described as a critical form of civic engagement, in which youth's civic participation is motivated by their own experience of pressing social problems. A research approach that puts urban youth's meaning-making about social context at the center can help to **shed light on this complexity**.

One promising arena for a better understanding of critical civic engagement lies in the emerging phenomena of **youth participation in social change**. Amidst concerns about the political disengagement of young people, researchers have begun to document the growing prevalence of "youth action" (Forum for Youth Investment, 2001). For example, youth groups have organized politically to achieve school reform goals, performed action research to expose environmental polluters, and conducted program evaluation to improve city services for youth (for a discussion see Forum for Youth Investment, 2001; Sherman, 2002). Programs like these seek to empower youth who have been traditionally marginalized from political participation. The way that youth are socially positioned in the groups contrasts sharply with the typical public school, which rarely engages youth in decision-making or privileges their voices in **policy discourse** (Gee, 2001; Mitra, 2002). Youth are expected to **think critically**, develop a sense of themselves as **agents of change**, and learn how to **act competently in the public arena**. Although practitioners have begun to promote this emerging field, there is little research describing developmental processes in these settings or their significance for youth's development as citizens (Rajani, 2001).

3. Their sweeping generalizations lack scholarly support. Studies confirm the benefits of training opportunities that enable marginalized youth to engage in public policy activism.

Lewis-Charp et al. 6 — Heather Lewis-Charp, Senior Associate and Social Scientist at Social Policy Research Associates, holds an M.A. in Education Research from the University of California-Santa Cruz, et al., with Hanh Cao Yu, Vice President and Senior Social Scientist at Social Policy Research Associates, holds a Ph.D. in Education Administration and Policy Analysis from Stanford University, and Sengsouvanh Soukamneuth, Social Scientist at Social Policy Research Associates, holds an M.A. in Education Policy from the University of California-Los Angeles, 2006 ("Civic Activist Approaches for Engaging Youth in Social Justice," *Beyond Resistance! Youth Activism and Community Change: New Democratic Possibilities for Practice and Policy for America's Youth*, Edited by Shawn Ginwright, Pedro Noguera, and Julio Cammarota, Published by Routledge, ISBN 0415952506, p. 22)

Despite the emerging interest in youth action and political engagement, few empirical studies exist in this area—particularly studies of youth in low-income urban communities. Most research has focused on the benefits of traditional forms of political engagement and/or community service (see Walker, 2002; Youniss & Yates, 1997; Youniss & Yates, 1999). **Few empirical studies** have explicitly explored the relationship between youth development and youth activism. Emerging scholarly works on the development of an activist orientation and sociopolitical capacity, however, have begun to lay the groundwork for a study in this area. Watts, Williams, and Jagers (2003), for example, explore concepts relevant to sociopolitical development among African American youth. Building on concepts from community psychology, such as oppression, liberation, critical consciousness, and culture, Watts et al. claim that sociopolitical development is

a key process by which individuals acquire the **knowledge**, **analytical skills**, and **emotional faculties** necessary for participation in **democratic processes and social change efforts**.

The study of civic activism we conducted and discuss in this chapter is one step toward addressing this void in the research literature, as we focus explicitly on the engagement of marginalized youth in social justice efforts. The study focuses on the work of civic activism groups because of their applied strategy for engaging youth as actors and "experts" on issues of **public policy** and community concern. By supporting **political skills and knowledge**, civic activism efforts support young people's capacity to **engage directly with power brokers, decision makers, and institutions** in their communities. Such efforts have the potential to transform the capacity of families and communities to provide for young people (Forum for Youth Investment, 2001). It is through the **politicized analysis of the inequitable contexts and policies** that shape young people's day-to-day lives (schools, healthcare, public services, etc.) that civic activism groups seek to promote the conditions for healthy youth development.

4. Our critique of essentialism turns their critique of topicality. Sweeping generalizations about urban youth are used to *pathologize* and *stigmatize* already marginalized populations.

Noguera and Cannella 6 — Pedro Noguera, Professor in the Steinhardt School of Education and Director of the Metro Center for Research on Urban Schools and Globalization at New York University, holds a Ph.D. in Sociology from the University of California-Berkeley, and Chiara M. Cannella, Doctoral Student in the Department of Language, Reading, and Culture at the University of Arizona, 2006 ("Conclusion: Youth Agency, Resistance, and Civic Activism: The Public Commitment to Social Justice," *Beyond Resistance! Youth Activism and Community Change: New Democratic Possibilities for Practice and Policy for America's Youth*, Edited by Shawn Ginwright, Pedro Noguera, and Julio Cammarota, Published by Routledge, ISBN 0415952506, p. 343-345)

Principle 5: Counter the Prevalence—and Impact—of Misconceptions and Distortions About Youth

One aspect of accountability in public policy that is essential for advancing the interests of low-income youth is a willingness to **contradict the misrepresentations and distortions** that have been used to rationalize targeting youth for punitive measures (HoSang, chapter 1, this volume) With the tendency of the media to sensationalize reporting on crime and other social issues, young people, especially poor youth of color, have often been subject to negative characterizations and debilitating prejudice. There are numerous examples of youth being [end page 343] portrayed as lazy and unmotivated to excel academically, as prone to violence and gang activity, as morally depraved and pathological (Giroux, 1996; Mahiri, 1997). Such images dominate popular media and shape political understandings of how young people should be addressed through policy. As Mike Males (1998; chapter 17, this volume) demonstrates, commonsense knowledge about the rates and severity of youth crimes are woefully inaccurate. Yet such misconceptions serve as the justification for punitive and coercive policies (Gin- wright & Cammarota, 2003; HoSang, chapter 1, this volume).

For example, the willingness of several states to adopt high-stakes exams as a basis for determining high school graduation without ensuring that all students have access to quality

education (i.e., competent teachers, schools that are adequately funded, etc.) is yet another example of the way in which public policy scapegoat young people. The No Child Left Behind Act (U.S. Department of Education, 2001) has resulted in a system of educational accountability in which the only people who are really accountable for failure are those who lack political power and influence—mainly students (Orfield, 2004), but also their underpaid and deprofessionalized teachers. The fact that there is so little concern expressed over the casualties of these policies—poor students, students who don't speak fluent or academic English, students with learning disabilities, and students who are consigned to the worst schools, all of whom are overrepresented among those who fail—is perhaps the clearest indication that for many policy makers, some students are expendable.

Youth researchers in this volume repeatedly demonstrate how many problems commonly identified as characteristic of individual youth are in fact the result of institutionalized racism, economic disadvantage, and ethnic, linguistic, and class discrimination (HoSang, chapter 1; Lewis-Charp, Yu, & Soukamneuth, chapter 2; Strobel, Osberg, & McLaughlin, chapter 11; Torre & Fine, chapter 15). Their work complements a tremendous body of research on the degree to which hard work ensures academic achievement for only some of our nation's students (see, for example, Anyon, 1994).

This does not mean that young people should not be held responsible for poor decisions when they make them. The other side of recognizing the potential of young people to engage in actions that can change their circumstances is to also acknowledge that they can take responsibility for their own behavior. Anything less would be patronizing and would reflect an unwillingness to see youth as individuals capable of participating in change. On one hand, this means we should not make excuses for young people who prey upon others, who peddle drugs in their communities, who behave irresponsibly and hurt others or themselves. On the other hand, it means that we cannot be content to accept **commonsense knowledge**, but are responsible for our understanding of the **context** of economic, educational, and cultural disenfranchisement many youth face. It is also important that we **not engage in broad, sweeping generalizations** about the nature of these problems such that we that end up **disparaging all minority or low-income youth**, and create [end page 344] unjust and counterproductive policies. By accepting pathological characterizations of youth, especially nonwhite youth, that is precisely what we have done. Policy makers must take the first step of **demanding and disseminating accurate representations** of all of America's youth.

5. This is especially true in the context of debate. When sweeping generalizations are accepted, students aren't taken seriously when they *do* actively participate in policy discourse.

Noguera and Cannella 6 — Pedro Noguera, Professor in the Steinhardt School of Education and Director of the Metro Center for Research on Urban Schools and Globalization at New York University, holds a Ph.D. in Sociology from the University of California-Berkeley, and Chiara M. Cannella, Doctoral Student in the Department of Language, Reading, and Culture at the University of Arizona, 2006 ("Conclusion: Youth Agency, Resistance, and Civic Activism: The Public Commitment to Social Justice," *Beyond Resistance! Youth Activism and Community Change: New Democratic Possibilities for Practice and Policy for America's Youth*, Edited by

Shawn Ginwright, Pedro Noguera, and Julio Cammarota, Published by Routledge, ISBN 0415952506, p. 333-334)

Each of the chapters in this book shows in different ways that despite a relative lack of power and despite the ways in which young people are often marginalized and maligned, youth—**even those who are poor and disadvantaged**—have the potential to **take action** upon the forces that oppress, constrain, and limit their lives. The authors remind us that this is possible even for young people deemed to be "at risk," who have low skills, who have been written off as unemployable and uneducable. Despite the odds against them, under the right circumstances they have the ability to critique the situations that restrict their lives, to articulate that critique in verbal, written, and artistic form, and to move beyond critique by **taking action to assert and affirm their interests** as individuals and as members of families and communities. This volume documents the ways that youth are redefining what constitutes civic engagement, as they create and assume powerful roles as individuals and as members of families and communities. Given that young people in urban areas are too often unfairly characterized as undisciplined and unmotivated—or even worse, as delinquent, menacing and insolent—this may come as a revelation to many readers. [end page 333]

To the extent that we are able to **see beyond the stereotypes and distortions** that are perpetrated through the **one-dimensional portraits of urban youth** frequently found in the media, then perhaps such a revelation may also elicit a different set of perspectives on how to **relate and respond to youth when they act**. Rather than responding to young people's attempts to be heard and taken seriously with fear, contempt, or condescension, more adults, particularly those with power and authority, may find it possible to see in youth agency **the kernels of our future democracy**. And this is not the type of democracy that is limited to voting on designated dates, but the kind of democratic practice that encourages **social awareness**, **debate** and **active participation in civic life**.

They Say: "Conditionality Bad"/" Topicality is a Reverse Voting Issue"

1. Conditional Perspective-Taking Good — presenting multiple initial positions in debates about racism is valuable. Openly exploring opposing positions helps us determine which arguments are most persuasive. Education theory confirms the value of *antilogic* and *dialectic* as heuristics in discussions about race.

Inoue 5 — Asao B. Inoue, Ph.D. Candidate in English at Washington State University, currently is an Associate Professor of Rhetoric and Composition in the English Department at Fresno State University, 2005 ("The Epistemology of Racism and Community-Based Assessment Practice," Washington State University Ph.D. Dissertation, May, Available Online at http://www.dissertations.wsu.edu/Dissertations/Spring2005/a_inoue_012205.pdf, Accessed 07-13-2014, p. 158-159)

Sophistic antilogic and a slightly altered version of dialectic, **as heuristics**, can be quite beneficial to the writing classroom. Originally, these methods were meant for education, and for the sophists, a way to invent arguments, not in an Aristotelian sense (i.e. to discover the available means of persuasion), but in an explorative sense. It's this second sense I hold up as more profitable contemporary classrooms. As a set of heuristics, sophistic pedagogy, particularly antilogic and dialectic method, asks students to **play with ideas and language** in order to come closest to acceptable truth for a given **context**, **purpose**, **audience**, and their currently understood ethical limits. **The practice of antilogic when married to a dialectical forum** (as a community of rhetors who vie for understanding) can also provide for ways in which students can see past the god-trick in their own dispositions and the common sense. However, for it to work as a critical pedagogy, **the epistemology of racism should be incorporated** in order for students to see dispositions as a part of habitus and common sense in discourse as rhetorical and social structures that structure their very ways of seeing and believing. Additionally, it can move away from discussions of relativism that many students will resist, discussions that seem purely opinion-based that antilogic might seem to encourage. Instead dialectic and antilogic can help students **position themselves at other locations in a network of ideas and subjectivies**, and thus see how consent and SR are structured into our lives, daily activities, and discourse, even when good intentions suggest otherwise. To **openly explore opposing positions** pushes us to **reconsider our own vantage points** in the network, and thus they can work to help students **better use the epistemology of racism as a framework to see structurally**. Antilogic and dialectic also highlight a crucial aspect of the writing class: that it's not only about grammar, linguistic precision, correctness, or rules to learn, it's also about learning to be citizens, about the limits and horizons to our knowledge and ways of coming to that knowledge, about **revising our initial perspectives** [end page 158] and allowing for **potential adjustments** to them later on, and about finding a critical space in which to make good decisions that work for the present and future. In short, as I'll discuss in chapter 4, the writing class is about **assessing our positions and ideas**, as well as those of others, in critical ways that look for structuring structures and address power relationships.

* SR = Structural Racism

We'll explicitly clarify our terminology. Factually, "antilogic" means "*taking either side in an argument*."

Inoue 5 — Asao B. Inoue, Ph.D. Candidate in English at Washington State University, currently is an Associate Professor of Rhetoric and Composition in the English Department at Fresno State University, 2005 ("The Epistemology of Racism and Community-Based Assessment Practice," Washington State University Ph.D. Dissertation, May, Available Online at http://www.dissertations.wsu.edu/Dissertations/Spring2005/a_inoue_012205.pdf, Accessed 07-13-2014, p. 143-144)

Protagoras had one of the earliest most coherent sophistic philosophies of nomos over physis, or structured power relationships over inherent power relationships. This affected the debate over the teachability of arête (discussed later in this chapter). The nomos-physis controversy and Protagoras' position in it is seen in his man-measure doctrine,83 but it can also be seen in his philosophies on the teaching of rhetoric. Gutherie explains Protagorean teachings, saying they were practical and based "largely on the art of persuasive speaking, training his pupils to **argue both sides of a case**." This practice of "taking either side in an argument . . . was founded on theories of knowledge and being which constituted an extreme reaction from the Eleatic antithesis of knowledge and opinion [episteme and doxa], the one true the other false" (Gutherie 267). The practice of antilogic ("**taking either side in an argument**") was a **heuristic** that Protagoras perfected and taught his pupils because it helped them find success **in various contexts** and with **a variety of audiences**. Rhetorical success, thus, wasn't about finding truth but finding **successful and persuasive arguments**. While Protagoras advocates a protreptic function for rhetoric,84 he's less certain that one could know any kind of absolute truth or justice (for the polis), instead he's more confident in the articulation of persuasive doxa (opinion), supported by observable nomos; thus, antilogic emphasizes the best that language can offer us in the way of socially sanctioned knowledge. It's an agnostic view towards truth, but not a hopeless one, or one that leads to inaction. It is, in a way, a reaction to the need many politicians and statesmen had in Athens at the time. One could haggle philosophically with others indefinitely about what's true or right, but for a state to run effectively and efficiently, decisions need to be made quickly [end page 143] and actions taken from them. In a nomos-centered world, the appeals that justified "the right" decisions needed more backing since rhetoric is more about power relationships and not the articulation of absolute and divine "truth," which could not be questioned. In short, a sophist like Protagoras would be dangerous to the Greek state and the power relationships it nurtured.

This is *especially important* in this competitive format because students are risk-averse. Without a fallback option, negatives won't be willing to introduce new arguments. This discourages innovative research.

2. Preemptive Forgiveness Good — their interpretation prevents serious and honest conversations about race because it punishes students for making mistakes and evolving their positions. It's *okay* to change one's mind because of interactions during the debate.

Farr 14 — Arnold Farr, Associate Professor of Philosophy at the University of Kentucky, holds a Ph.D. in Philosophy from the University of Kentucky, 2014 ("Racialized Consciousness and Learned Ignorance: Trying to Help White People Understand," *Exploring Race in Predominantly*

White Classrooms: Scholars of Color Reflect, Edited by George Yancy and Maria del Guadalupe Davidson, Published by Routledge, ISBN 9780415836692, p. 106-107)

The Disarming Power of Preemptive Forgiveness

The phenomenon of racialized consciousness combined with epistemologies of ignorance,7 and atomistic individualism, makes it **very difficult** to **explain**, **discuss**, and **teach about race** in predominantly White institutions. In the above section, I have tried to explain this difficulty by examining some of the social mechanisms (e.g., habitus and racialized consciousness) as constitutive sources of learned ignorance and resistance. Much more could be said about these mechanisms, but that would take us beyond the conspectus of this chapter. My purpose in discussing them at all here is to reveal the social and psychological disposition of the White student who is the recipient of the disclosure by the Black professor of ongoing racism in the United States. Understanding the social and psychological mechanisms that shape White, racialized consciousness and learned ignorance is important for developing strategies for teaching White students about race.

My first teaching strategy I call "**preemptive forgiveness**." Preemptive forgiveness is not the traditional Christian form of forgiveness, as in turning the other cheek or pardoning someone after they've harmed you in some way. This traditional form of forgiveness has been overused, and I would suggest that oppressed people be less inclined to forgive. The purpose of preemptive forgiveness is to **open a space for free and honest conversations about racism** and other forms of oppression. In spite of Bill Clinton's call, in the 1990s, to have a conversation about race, our society has not yet learned to talk about race, due to White America's obsession with comfort. How many times have we been in conversation with well-intentioned, liberal White people who become angry or claim to be uncomfortable when things get a bit too deep vis-à-vis race. These people are fine with talking about race as long as we do not go deep enough to challenge their own identity and privilege. Hence, even when we talk about race, the conversation ends up being truncated and very superficial. There is a fear of offending someone or of saying the wrong thing.

When conversations about race begin to move **beyond the superficial level**, people often back out. Conversations about race and racism are so difficult for White people because of the pervasiveness of White denial; the reduction of [end page 106] racism to conscious, intentional, individual forms of hatred and discrimination, and our failure to think structurally. The result is that our students are **completely unprepared** to discuss or listen to discussions about race. Even well-intentioned students who might be open to a discussion about race often freeze up because **they are afraid that they may say the wrong thing**.

Preemptive forgiveness **opens the space for a candid conversation** about race. Before we enter the conversation, we recognize that, due to decades of denial, we have been **ill equipped** for candid conversations about race. Due to our lack of preparedness, it is **a given** that some people hold false assumptions about race and racism. It is also a given that we will **make mistakes and perhaps offend someone (unintentionally) during the conversation**. Preemptive forgiveness is the act of forgiving one another **in advance** for the **inevitable mistakes** that will occur during the conversation. I forgive my students, they forgive one another, and they forgive me. With forgiveness in place, we are now free to enter a conversation about race that **goes well beyond the typical superficial level**.

Preemptive forgiveness has a **disarming effect** with regard to students and faculty who might get defensive because they feel that they are being blamed for a form of oppression that they may not

be consciously committed to. With preemptive forgiveness, all participants are put on an even playing field due to the recognition that we have all been ill prepared by our society for **a serious and honest conversation about race**.

This contextualizes to debate — it is a dialogic space where ideas about race and racism can be exchanged and tested. Their interpretation forecloses opportunities for learning and growth.

Glass 14 — Kathy Glass, Associate Professor of English and Director of Undergraduate Studies at McAnulty College and Graduate School of Liberal Arts at Duquesne University, holds a Ph.D. in English from the University of California-San Diego, 2014 ("Race-ing the Curriculum: Reflections on a Pedagogy of Social Change," *Exploring Race in Predominantly White Classrooms: Scholars of Color Reflect*, Edited by George Yancy and Maria del Guadalupe Davidson, Published by Routledge, ISBN 9780415836692, p. 59)

Pedagogical Response and Concluding Thoughts

Given the sensitive nature of the issues discussed and the slipperiness of language, the meaning of which cannot be guaranteed, I establish my classroom as a space of **respectful listening and learning**. While the catchphrase "safe space" could be invoked to describe my classroom, I prefer to use what I call **a "dialogic space"** to make clear to students that they are free to ask questions and to exchange ideas with me and their peers. They might not always feel emotionally comfortable or "safe" during these encounters, as honest participation requires some degree of vulnerability.

Designating the classroom as **a non-punitive space** where any one of us might in fact **misspeak** while grappling with such sensitive issues as race, racism, and other systems of oppression helps to create a more relaxed environment. In such a context, misunderstanding and even disagreement can create **opportunities for learning and growth**.

Topicality Surveillance Literacy- HSS

1NC — Surveillance Literacy Module

( ) Surveillance Literacy —

First, surveillance uniquely threatens students' freedoms. Debating surveillance policy is vital to civic engagement and social change.

Glaser 14 — April Glaser, Staff Activist at the Electronic Frontier Foundation, 2014 ("17 Student Groups Pen Open Letters on the Toxicity of Mass Surveillance to Academic Freedom," Electronic Frontier Foundation, June 9th, Available Online at https://www.eff.org/deeplinks/2014/06/students-against-surveillance-17-university-groups-pen-open-letters-toxicity-mass, Accessed 07-23-2015)

Students are **rising up and fighting** to protect our Internet. In response to our call to action, seventeen university groups from across the United States have published open letters about the real chilling effects mass surveillance is having right now on academic freedom and life on campus.

Universities are places where the free flow of new ideas and the discussion of controversial topics should be **fostered, encouraged, and amplified**. But when students and researchers know that the government is recording our communications, our data, and our online behavior, students **can't speak freely**. Speech is **chilled**. In response, we launched our call for students across the country to write letters about the effects of illegal, unconstitutional government spying in their campus communities last month.

Students and researchers get it. "Mass warrantless surveillance by the NSA has restricted our ability to freely **think**, **act**, **research**, **innovate**, and **share ideas** in a multitude of ways," reads the letter from Stanford University students penned by student Devon Kristine Zuegel.

Students have been **central to the movement** to put an end to illegal mass spying since Snowden's leaks hit the press. As the letter from Temple University students notes, it was Temple student Ali Watkins, who broke the story last March about CIA surveillance of members of the Senate Intelligence Committee.

The campus letters also call attention to the effects of mass government surveillance on international students and global collaboration in research. These international connections are a bragging point of many academic institutions. But as the letters from Purdue University students and Queens College students note, "NSA surveillance specifically targets foreign nationals, regardless of whether they have actually done anything wrong."

Both of these institutions are highly ranked, in part for their diverse, international student communities. And student activists on both campuses point out that mass government spying that targets non-US persons is not only discriminatory, but stifles student cross-cultural collaboration, especially on politically sensitive topics.

"Certain demographics of students, such as the LGBTQ community that remain closeted, could be made public," wrote Liz Hawkins in the letter she composed from the University of Nevada in Las Vegas. "This also includes students in [search] of mental health care," the UNLV student letter continues. And she's right.

Students often come to universities excited to explore their identity and find community that might not have been available back home. But when we know that the government is collecting information and storing it in a way that could be potentially used against us, we don't say what we would say otherwise. Students are less likely to associate with campus groups and less likely to engage fully in campus life.

Our call to write letters was assisted by the organizing prowess of the Student Net Alliance (SNA), a group dedicated to bringing the fight for digital rights into campus communities all over the world. The SNA amplified the call to action into a campaign called Students Against Surveillance. And we're glad they did. Students are **powerful forces for change**, and intuitively understand the potential of an open, free Internet, not hampered by intrusive government spying that undermines our basic rights, like our freedom of speech and freedom from unwarranted search and seizure.

If you're a student or a researcher and want to write an open letter to take a stand against NSA surveillance on your campus, see our letter-writing guide and get in touch with either the Student Net Alliance or with us. Writing a letter is a great way to spark debate on campus and build the foundation for future organizing. The fight against NSA spying is going to be a long one. And students will be **a critical force** in building a movement to **raise awareness**, **push for change**, and **put an end to mass government surveillance**.

Second, policy debate is an excellent forum for informed citizen participation in decision-making about surveillance policy. This can overcome public apathy *even though* fiat isn't "real."

Snowden Commons 14 — Snowden Commons, a project created at the Berliner Gazette Conference that seeks to publicly share the Snowden document archive in public libraries throughout the world, 2014 ("From the Snowden Files to the Snowden Commons: The Library as a Civic Hub," *Libreas*—an academic library journal, Number 26, Available Online at http://libreas.eu/ausgabe26/08anonym/#from-the-snowden-files-to-the-snowden-commons-the-library-as-a-civic, Accessed 06-28-2015)

Citizen engagement in the Post-Snowden World

The massive disclosure of secret NSA documents by Edward Snowden has created **an epochal opportunity for dialogue and debate**, not only about the nature of state surveillance and the right to privacy in the digital age, but also about human rights and the future of democracy. We believe that the Snowden files represent a crucial part of the World Heritage of Contemporary Documentation: **the essential texts** citizens must have the right to access so they can **fully participate in a democratic society**, which is based on **participatory and informed decision making**. If this is, indeed, a Post-Snowden era, then we all must have the right to access the documents that initiated this new age.

Thus far, the Snowden files have inspired **collaborations** of experts, policy-makers, journalists, activists, artists and concerned citizens. We believe that these critical alliances demonstrate the potential of the Snowden files to **mobilize a broad public engagement**. New models of access and participation are needed. How can we support, build on and expand the existing initiatives to

include the wider variety of people affected and concerned by these revelations and their implications, but who, at present, are not active?

Most citizens have difficulty imagining the scope of the problem and how it is affecting their lives and communities. It would be comfortable to assume that the reason that the population at large has not shown wide and sustained outrage after the Snowden revelations, has not engaged with the released documents, and has not acted upon them, is simply apathy, hopelessness and a sense of defeat and resignation. We insist that the **underacknowledged reason** for this situation is that we have **inadequate public institutions** for sharing this information in a way that makes it genuinely accessible and understandable to everyone, public institutions providing spaces for many forms of **collaboration** and **mobilization for collective action**.

Third, student-scholars *can* topically challenge mass surveillance with plans that defend negative state action. Neglecting this opportunity is a choice that we critique.

Izquieta 14 — Stephanie Izquieta, Board Member and Director of Congress at the Student Net Alliance—a student-run digital rights organization, Senior in the Philosophy, Politics & Law program at Binghamton University, 2014 ("Binghamton University Students and Faculty Against Mass Surveillance," Open Letter by Faculty and Students at Binghamton University, May, Available Online at http://studentsagainstsurveillance.com/Binghamton/, Accessed 07-23-2015)

A free flow of ideas is the cornerstone of a strong and vibrant society. An informed citizenry is one of the most important guarantors of the integrity and security of a nation. As a community of teachers and scholars at Binghamton University, we sign this letter in support of digital rights and free speech on campus, and in objection to government surveillance. An important idea in the definition of a university is the notion of academic freedom. Academic freedom is the belief that the freedom of inquiry by faculty members is essential to the mission of the academy as well as the principles of academia, and that scholars should have freedom to teach or communicate ideas or facts (including those that are inconvenient to external political groups or to authorities) **without being targeted for repression**, job loss, or imprisonment. Thanks to whistleblower Edward Snowden, we now know that there exists **a tangible threat to academic freedom** and that our rights as cybercitizens are being violated. In an environment of mass surveillance, speech and academic freedom are **chilled**. We, as students and faculty of the global academic community, **protest**. Together, we are taking a stand against mass surveillance on our campus.

While the bulk of the revelations on mass government surveillance are relatively new, studies show a marked shift in people's online behavior [1]. Government surveillance negatively affects free speech and digital rights by:

* Undermining our ability to communicate and collaborate with our peers abroad by directly targeting non-US citizens, immigrants, and those connected to others outside of the United States, with programs like CO-TRAVELR [2], MYSTIC [3], and the Foreign Intelligence Surveillance Act (FISA) Court's interpretation of Section 702 of the FISA Amendments Act [4].

* Targeting our Muslim and Arab peers by spying on religious student organizations and university prayer rooms [5]. This represses free speech among students and creates an atmosphere of fear.

* Mapping and monitoring social networks [6], chilling our ability to organize and engage in political discourse.

Accordingly, we stand collectively for a university environment that decries digital surveillance and embodies principles of free speech and online privacy. As such, we are calling on the Binghamton University administration to develop policies that actively minimize on-campus surveillance and to foster a culture of digital freedom that is consonant with the commitments to academic freedom and freedom of speech that are at the heart of any institution of higher education. As members of the global academic community, we sign this letter in protest. We **protest the U.S. surveillance state** and **the chilling effects it has** on our campus life. We **call on the U.S. government** to bring the NSA **back within the bounds of the constitution**.

Surveillance Literacy Explanation/Overview

Topicality is important because it promotes Surveillance Literacy. This is *only* possible when students debate topical policies.

First, Student Participation. This topic provides a unique opportunity for students to express informed and well-researched opinions about U.S. surveillance policy. Student participation in the public dialogue about surveillance is important because students like us are instrumental to raising awareness and pushing for change — that's Glaser, an EFF activist citing seventeen university groups organizing to reform NSA policy.

Second, Civic Engagement. Without surveillance literacy, students are excluded from full participation in democratic decision-making processes. Citizens need to understand and engage with arguments by experts, policy-makers, journalists, activists, and artists in order to effectively mobilize for collective action. Debate should be conceived of as a "civic hub" that provides space for these important discussions of surveillance policy — that's Snowden Commons.

Third, Negative State Action. Topical plans can oppose government surveillance *without* defending the state *writ large*. In response to the chilling effect caused by NSA, student-scholars should protest the surveillance state and call on the government to end these repressive programs — that's Izquieta, a student activist who leads the Student Net Alliance.

They Say: "We Are Related To The Topic"

1. They skirt the central controversy: *whether* and *how* to curtail the U.S. government's domestic surveillance. Debates about U.S. surveillance policies—not surveillance *in general*—are vital to surveillance literacy.

2. Surveillance literacy requires knowledge of policy issues. *Only* topical debates require sufficient preparation and knowledge to make life-or-death decisions.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 527-528)

5. Leadership, Integrity and Good Judgment

National security law often takes place in **a high stakes environment**. There is tremendous pressure on attorneys operating in the field – not least because of [end page 527] the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount.

The types of powers at issue in national security law are among **the most coercive authorities available to the government**. Decisions may result in the **death** of one or many human beings, the abridgment of **rights**, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a **higher magnitude** than many other areas of the law. Added to this pressure is the **highly political nature of national security law** and the necessity of understanding **the broader Washington context**, within which individual decision-making, power relations, and institutional authorities compete. **Policy concerns** similarly **dominate the landscape**. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances.

3. Particularity is essential to meaningful surveillance debates. Totalizing positions aren't debatable.

Haggerty 6 — Kevin D. Haggerty, Director of the Criminology Program and Professor of Criminology and Sociology at the University of Alberta, Editor of the *Canadian Journal of Sociology*, Book Editor for *Surveillance & Society*, holds a Ph.D. in Sociology from the University of British Columbia, 2006 ("Tear Down The Walls: On Demolishing The Panopticon," *Theorizing Surveillance: The Panopticon and Beyond*, Edited by David Lyon, Published by Willan Publishing, ISBN 1843921929, p. 41)

The emphasis on **particular governmental projects** also restrains any desire to conceptualize surveillance **tout court** in favour of examining how **particular** systems of visibility are deployed in the context of **specific governmental ambitions**. It allows for a focused consideration of the aims, dynamics and rationalizations of **particular surveillance projects**. Such a focus can also mitigate the tendency towards forms of dystopian technological determinism that are often apparent in the surveillance studies literature. Combining a normatively ambivalent stance with a focus on **particular governmental projects** allows for the development of **a more refined normative stance** towards surveillance. Surveillance is neither good nor bad. We can only develop a **meaningful normative position** towards surveillance projects that are coordinated and calibrated in light of **particular governmental ambitions**. Such an emphasis also allows for analysis of the complexities and dynamics of contemporary surveillance politics, as citizens typically do not oppose or resist surveillance in the **abstract**, but express concerns about **concrete manifestations or imaginings** of how surveillance is or will be deployed for **very specific purposes** by **particular institutions**.

4. Studying the details is essential to surveillance literacy. General knowledge isn't enough.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 521)

2. Factual Chaos and Uncertainty

One of the most important skills for students going into national security law is the ability to deal with **factual chaos**. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate **enormous amounts of data** from **numerous sources**, determine which information is **reliable and relevant**, and proceed with **analysis and recommendations**. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government

lawyers as it is for those outside of governmental structures. They must be aware of what is **known**, what is **unsure**, what is **unknown**, and the possibility of **changing circumstances**, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters.

5. Informed decision-making about national security requires consideration of policy considerations. Surveillance literacy depends on policy relevance.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 523-524)

c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students' critical thinking skills.134 Problem-solving, however, is not merely a method of [end page 523] teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problem-solving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors' expertise, and how to **leverage each skill set**.

This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal **authorities and practices**, **the Washington context**, and **policy considerations**. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students' **complex fact-finding skills** and their ability to provide **contingent analysis**, but it must teach them how to **swiftly and efficiently engage in these activities**.

6. Only topical debates promote surveillance literacy. Debates that are *related* to the topic don't teach essential skills.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard

University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 515-516)

B. National Security Pedagogy

In contrast to the traditional pedagogical approach, six goals in particular stand out in considering the role of legal education with regard to national [end page 515] security law: (1) understanding the law **as applied** (that is, knowledge of relevant legal authorities and processes, understanding what can be termed "**the Washington context**", and considering **the broader policy environment**), (2) dealing with **factual chaos and uncertainty**, (3) obtaining **critical distance** despite significant pressure, (4) developing nontraditional **written and oral communication skills**, (5) demonstrating leadership, integrity, and good judgment in **a high-stakes, highly-charged environment**, and (6) creating opportunities for **future learning**. Students, moreover, must **integrate these skills**, performing on **multiple levels at once**.127 These goals are not conclusive – nor are they necessarily exclusive to national security law. But calling attention to them suggests that more careful examination of the field, and not just legal education writ large, may yield **a more effective method** of developing the next generation of national security lawyers.

7. Learning the "Washington context" of national security law is important.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 518-519)

b. "Washington Context." While recognizing the importance of legal authorities and processes, in the field of national security law both may be overridden by considerations unique to what may be called the "Washington context." The inherent political friction between the branches of government, the institutional frictions between departments and agencies, and the interpersonal components that accompany the exercise of power all influence the manner in which national security law evolves. To the extent that law schools ignore this aspect of the practice, they do students **a great disservice**. Students may, for instance, (correctly) read Homeland Security Presidential Directive (HSPD)-5 and the Homeland Security Act of 2002 to mean that the Secretary of Homeland Security has the authority to order an evacuation of the capitol. To act on this authority, however, without direct communication with (and permission from) the White House, would be inappropriate. This type of Washington-based, political authority is critical to the exercise of power.

Herein lies the rub: national security instruments often incorporate power that has significant domestic and international political ramifications. The stakes are [end page 518] high. It is thus **imperative** that students **understand the broader authorities and processes at work**. Such processes extend beyond the executive branch to dealings with Congress – a branch often sidelined in law school curricula. Lawyers working in the field, from the executive branch and legislative branches to private industry, must understand the political processes in Congress in order to be **more effective**. The relative strength of different committees, the contours of legislative oversight, the range of policy documents applicable to the field (and required by Congress via statute), the formal and informal mechanisms to obtain information relating to executive branch national security matters, the role of party politics – **all prove relevant**. Understanding political authority extends to chain of command, as well as inter-agency processes.

8. It is irresponsible to ignore policy consequences when debating national security law.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 519-520)

c. Policy Environment. The "Washington context" can be distinguished from a second area in which political considerations enter into national security law: namely, the broader policy environment. One way to understand this is in terms of the push and pull of policymaking. In the Washington context, law constitutes just one of many competing demands that policymakers take into account before deciding which actions to pursue. In the latter area, the impact of the actions taken is felt in both the domestic and international arena. Each constitutes an ex ante consideration for lawyers operating in this domain.

Within government practice, in determining which course to set, the role that law plays may be just one of many competing demands on the policymaker's decision-making strategy. In order to secure a place for legal considerations, lawyers must therefore be cognizant of the different pressures influencing the process. Part of this is learning how to communicate clearly with those involved in making and implementing policy. It also entails developing a feel for when and how to initiate appropriate participation. That is, lawyers must insert themselves into the conversation, representing the interests of law itself.

In policy discussions, lawyers are often not seated at the table. They may be a "plus one" in the discussion, and, in this capacity, they must come to terms with the fact that the law is only one consideration at play. They may have to accept being relegated to a supporting role, with their recommendations overridden. In this context, they must grapple with not just personality management, but issues related to ego and subordination. They must then decide how to react to each situation, when and how to take the initiative, when to concede, and when to proceed through other channels. In brief, they must learn both how to insert legal considerations into what

is essentially a policy debate, and how to treat the outcome of such efforts in the context of professional and personal goals.

At the back end, legal recommendations carry with them strong policy implications. It is worth noting at the outset that there is disagreement over whether national security lawyers need to take this into account. Professor John Yoo, for instance, argues that it is not the national security lawyer's role to think about the policy impact of legal advice given – even when delivered at the [end page 519] highest levels of government.129 The logic behind this arrangement is that separating law from policy is essential to good lawyering, and that to combine policy considerations with strict legal analysis undermines the strength of the intellectual endeavor, as well as the integrity of the advisory system itself. As an ex ante consideration, taking into account either competing interests or the resulting policy impact thus runs counter to the purpose of obtaining strict legal advice. Instead, it is for policymakers to balance competing concerns and to determine the most appropriate course of action.

There is much to commend this strict adherence to the distinction between law and policy. The problem with this approach, however, is that it results in a sort of **false silo**, where lawyers ostensibly operate in a manner completely **insulated** from policy concerns. In national security law, this is **simply not the case**. Law and policy – for reasons discussed in Part I of this article – often overlap.

The result of attempting to **ignore the policy side** of the equation, moreover, may sideline law at the front end: that is, when lawyers present not just a particular legal analysis, but act to insert considerations of law qua law into the policymaker's decisionmaking process. Here, identifying and thinking about competing policy concerns provides lawyers with **important knowledge** about how and when to insert legal considerations.

Failure to take account of policy concerns may further entail **a breach of professional responsibility** and **ethical obligations** at the back end. It may be, for instance, that there is no legal bar to acting in a certain manner. (It is precisely for this reason that criminal law continues to evolve.) But absence of prohibition does not automatically translate into permission for action. A strict legal analysis may thus suggest legality, where the actual implications of such actions would run contrary to legal or ethical norms. The role of national security law is here of great importance: as an exercise of power – indeed, at one extreme, the most coercive powers available to the state – failure to take into account the implications of the legal analysis may suggest a failure of professional responsibility.

They Say: "Topic Not Personally Relevant To Us"

1. *Every* student's freedoms are undermined by NSA surveillance.

Collison et al. 14 — Tommy Collison, Student at New York University, et al., with Luc Lewitanski, and Hannah Weverka, 2014 ("New York University Students & Faculty Protest Mass Surveillance," Open Letter by Faculty and Students at New York University, April, Available Online at http://studentsagainstsurveillance.com/NYU/, Accessed 07-23-2015)

We came to New York University with the hope that we could learn with confidence, without fear that what we are studying or investigating could potentially be used against us. Given what we now know from Edward Snowden's leaks, we no longer have that assurance. In an environment of mass surveillance, speech and academic freedom are chilled. People are afraid to speak freely. This is not a healthy environment for learning.

We, as members of the NYU community, protest. Together, we are **taking a stand against mass surveillance** on our campus.

If you're **using the Internet**, you can bet the NSA is watching. They keep a record of **what you've visited** and **whom you've been talking to**. The NSA has the ability to build **a complete picture of your day-to-day activities**.

Why is the NSA doing this? If it's to prevent terrorism or keep the public safe, it's not working. On December 12, 2013, the President's Review Group found that this data collection was "not essential to preventing attacks". [1]

The NSA's mass surveillance programs are ineffective and present a huge potential for abuse.

Their grounds for surveillance are loosely based on association: currently, everyone who is "three hops" away from anyone deemed suspicious by the NSA falls victim to government surveillance. [2] That means if you have called a Pizza Hut, and a known drug dealer has called that Pizza Hut, then the NSA is currently keeping records of your actions -- and the actions of everyone you've spoken to. But it's even broader than that: we know from the leaked Verizon order that "...every call in, to, or from the United States" is collected by the NSA. [3] That's every call, regardless of due process or whether or not you're suspected of doing anything wrong.

The NSA can analyze **your texts and Facebook chats**, read **your emails to friends and family**, and monitor **your bank transactions and web browsing activity** (even if you're using Incognito or Private Browsing mode). [4]

What are the effects on our university population?

* Anyone researching controversial topics could be monitored, and that data could be used against them.

* LGBTQ students and faculty who have not publicized their sexuality can now assume that the government has information that could out them.

* Students seeking mental health assistance may stop seeking care for fear of that information becoming public.

* International students may find a US education less appealing, as being a non-US citizen is an automatic criterion for being spied on.

* You may be less inclined to collaborate on sensitive research with a partner in a different country, because you no longer do so privately.

What's more, our Muslim and Arab peers are being targeted. In February 2012, the AP reported that the NYPD was monitoring Muslim student organizations at NYU, Columbia, and Yale. [5] We now know that the NSA tracked the pornography viewing habits of Muslim clerics to uncover material it could use to ruin the clerics' reputations. [6] In a democracy, people should be free to practice whatever religion they choose without fear of being profiled and tracked like criminals.

Mass surveillance has created **a panopticon**: even if we aren't all being **individually** observed, we are compelled to act **as if we are**. We have a right to **free spaces** such as universities where we can **explore ideas and experiment** without fear of retribution. We have a right to live in a society **free of the need to self-censor**. The First Amendment protects not only the right to speak and associate freely, it provides the right to do so without fear. Sadly, what we know about the NSA shows us that the US government is not valuing its own rule of law and democratic principles. The NSA has set up the infrastructure for a surveillance state. Must we wait until it falls into the hands of the next J. Edgar Hoover or Joseph McCarthy before we feel concerned?

As members of the New York University community, we sign this letter in protest. We protest the U.S. surveillance state and the **chilling effects** it has on our campus life. We call on the U.S. government to **bring the NSA back within the bounds of the constitution**. We want to learn and explore according to our curiosity and we want to do so **without fear of being treated as criminals**.

2. ***All*** **debaters have a personal connection to NSA surveillance. We're *all* being targeted as "suspicious persons" because we've been researching surveillance policy.**

Zetter 14 — Kim Zetter, Senior Staff Reporter at *Wired* covering cybercrime, privacy, and security, 2014 ("The NSA is Targeting Users of Privacy Services, Leaked Code Shows," *Wired*, July 3rd, Available Online at http://www.wired.com/2014/07/nsa-targets-users-of-privacy-services/, Accessed 06-29-2015)

If you use Tor or any of a number of other privacy services online **or even visit their web sites to read about the services**, there's a good chance your IP address has been collected and stored by the NSA, according to top-secret source code for a program the NSA uses to conduct internet surveillance.

There's also a good chance you've been tagged **for simply reading news articles** about these services published by Wired and other sites.

This is according to code, obtained and analyzed by journalists and others in Germany, which for the first time reveals the extent of some of the wide-spread tracking the NSA conducts on people using or interested in using privatizing tools and services—a list that includes journalists and their sources, human rights activists, political dissidents living under oppressive countries and many others who have various reasons for needing to shield their identity and their online activity.

The source code, for the NSA system known as XKeyscore, is used in the collection and analysis of internet traffic, and reveals that **simply searching the web for privacy tools online** is enough to get the NSA to label you an "extremist" and target your IP address for inclusion in its database.

But the NSA's analysis isn't limited to tracking metadata like IP addresses. The system also conducts deep-packet inspection of emails that users exchange with the Tor anonymizing service to obtain information that Tor conveys to users of so-called Tor "bridges."

Legal experts say the widespread targeting of people engaged in constitutionally protected activity like visiting web sites and reading articles, raises questions about the legal authority the NSA is using to track users in this way.

"Under [the Foreign Intelligence Surveillance Act] there are numerous places where it says you shouldn't be targeting people on the basis of activities protected by the First Amendment," says Kurt Opsahl, deputy general counsel for the Electronic Frontier Foundation. "I can't see how this activity could have been properly authorized under FISA. This is suggesting then that they have come up with some other theory of authorizing this."

The findings also contradict NSA longstanding claims that its surveillance targets only those suspected of engaging in activity that threatens national security.

"They say 'We're not doing indiscriminate searches,' but **this is indiscriminate**," Opsahl notes. "It's saying that anyone who is looking for those various [services] are **suspicious persons**."

He notes that the NSA actions are at clear odds with statements from former U.S. Secretary of State Hilary Clinton and others in the government about the importance of privacy services and tools to protect First Amendment freedoms.

"One hand of the government is promoting tools for human rights advocates and political dissidents to be able to communicate and is championing that activity," he says. "While another branch of the government is determining that that activity is suspicious and requires tracking. This may intimidate people from using these very important tools and have a chilling effect that could undermine the free expression of ideas throughout the world."

The findings were uncovered and published by Norddeutscher Rundfunk and Westdeutscher Rundfunk—two public radio and TV broadcasting organizations in Germany. An English-language analysis of the findings, along with parts of the source code for the XKeyscore program—was also published by Jacob Appelbaum, a well-known American developer employed by the Tor Project, and two others in Germany who play significant roles in Tor.

3. This is fundamentally selfish. Even if the affirmative debaters don't feel personally harmed by surveillance, others do. This topic is worth debating.

Shackford 13 — Scott Shackford, Associate Editor at *Reason*, former Editor of *Freedom Communications*—a libertarian media organization, 2013 ("3 Reasons the 'Nothing to Hide' Crowd Should Be Worried About Government Surveillance," *Reason*, June 12th, Available Online at https://reason.com/archives/2013/06/12/three-reasons-the-nothing-to-hide-crowd, Accessed 06-17-2015)

The "nothing to hide" crowd's involvement in political activism is likely limited. That's perfectly fine. Nobody should feel obligated to join the Occupy movement or a Tea Party organization or be the kind of person who might end up on a politician's enemies list. But to say "I have nothing to hide" is **a fundamentally selfish declaration**. What about parents, sisters, brothers, partners, and other loved ones? Can we say the same for them? You don't have to have an illness whose suffering can be eased with the use of medical marijuana to be concerned about the way the federal government treats this industry. Would you say, "I don't need medical marijuana so I don't care if they imprison those who do"? Sadly, some people do. Fundamentally, saying "I have nothing to hide," is similar to saying "**I don't care about those who do**."

4. Surveillance disproportionately affects students.

Russaw 13 — Jeanine Russaw, multimedia journalist, now works as a Digital Production Assistant and Researcher for NBC Nightly News, 2013 ("NSA monitoring directly impacts student internet activity," *The Russaw Report*—Jeanine Russaw's blog, December 18th, Available Online at http://russawreport.org/2013/12/18/nsa-monitoring-directly-impacts-student-internet-activity-2/, Accessed 07-23-2015)

The goal of the National Security Agency [NSA] appears to come at the expense of **student freedom of expression** on the internet. A cultural climate of intrusion may be the inevitable aftermath of its mission "to protect U.S. national security systems and to produce foreign signals intelligence information."

Brian Ogilvie, Hampton University alum and writer of Today's Transcendence, is an active follower of the news on NSA monitoring—including recent debate between NSA representatives and leaders of the New York Civil Liberties Union [NYCLU].

"It [NSA] affects college students **more than any other single demographic**," Ogilvie said. "As students are the early-adopters of all things technology, whatever conclusions you draw about the issue you'd have to amplify further **specifically for that age group**."

They Say: "Surveillance Debates Inevitable Elsewhere"

1. Even if others will debate surveillance in other venues, we should take advantage of *this opportunity* to participate in the dialogue. Student involvement is vital because we are most harmed by surveillance.

2. If students like us don't debate surveillance policy, *no one will*.

Tempera 13 — Jackie Tempera, Summer *USA Today* Collegiate Correspondent, Journalism Student at Emerson College, 2013 ("Viewpoint: Where are the college students protesting NSA surveillance?," *USA Today*, June 19th, Available Online at http://college.usatoday.com/2013/06/19/opinion-where-are-the-college-students-protesting-nsa-surveillance/, Accessed 07-24-2015)

The college-age generation has been known as the protesters, the action takers, ralliers and picketers. The **outspoken policy influencers** and the liberals — working the First Amendment nearly since its inception.

Where is that attitude now? Apparently in Hong Kong, where hundreds of demonstrators stood in support of Snowden last week.

Wake up, undergrads. Channel that 1960s student fighting for civil rights or the hippie anti-war protester. Form an opinion, and act on it. If we students don't support whistle-blowers and oppose government surveillance, **who will?**

It should make you at least a little uneasy that all this information is being cataloged. Didn't anyone else read 1984 in high school?

Snowden revealing this government secret is something college students should live for. That spunky, fight-the-power attitude should run deep in the veins of students everywhere. He should be supported. Not turned on or given a simple, "Meh" while you try to figure out the name of Kanye West and Kim Kardashian's new baby. (Be careful where you look, too, because the government might be recording the search.)

So read an article. Talk to a friend and think about what is happening. Be inspired and stop perpetuating the **self-involved Generation-Y stereotype**. Call a senator, hold a protest or create a hashtag. For all I care, vehemently argue for it — just **do something**.

3. This topic is a once in a generation chance for ordinary citizens to shape the surveillance debate. Neglecting it leaves our perspectives unexpressed.

Froomkin 13 — Dan Froomkin, Senior Washington Correspondent for the *Huffington Post*, former Columnist for *The Washington Post*, 2013 ("Politicians, press dodge crucial debate on surveillance," *Al Jazeera America*, October 9th, Available Online at http://america.aljazeera.com/articles/2013/10/9/nsa-surveillancesnowdenprivacydebate.html, Accessed 07-24-2015)

Throughout all the bombshell revelations this summer about U.S. government surveillance, President Barack Obama and top intelligence officials have insisted they welcome a public debate on the balance between security and privacy.

But in reality, they could not be trying much harder to stifle it.

Thanks to the bountiful leaks from Edward Snowden to The Guardian and other newspapers, the public is finally getting an accurate sense of the vast U.S. electronic surveillance regime that collects, connects and retains massive amounts of information about all of us — although government officials are asking us to believe that almost none of it ever gets looked at by anyone.

Far from being forthcoming, however, when administration representatives have made themselves available for questions, their answers have been defensive — often vague or overly narrow, misleading or plainly untruthful. In oversight hearings, they have attacked the leaks and the leaker, made unsubstantiated complaints about press coverage, misrepresented the concerns of privacy advocates and employed scare tactics.

Sen. Ron Wyden, D-Ore., has been one of the few members of Congress to complain about it, raising one subterfuge in particular: "After years of stonewalling on whether the government has ever tracked or planned to track the location of law-abiding Americans through their cellphones," he said in a statement last week, "once again, the intelligence leadership has decided to leave most of the real story secret — even when the truth would not compromise national security."

The president has charged two ostensibly independent commissions to report back to him on some possible reforms, but he has indicated he thinks the most that might be needed is some tweaks. "People may want to jigger slightly sort of the balance between the information that we can get versus the incremental encroachments on privacy that if haven't already taken place, might take place in a future administration, or as technologies develop further," Obama told reporters in August.

What the nation needs, however, is not reassurance from politicians about a few secret changes to covert programs. We need **an accessible public discussion** of what privacy means in this new era.

Americans have historically had a reasonable expectation that the government was not watching their every move. But the kind of ubiquitous surveillance that once required a massive application of manpower is now cheap, and will soon be effortless.

Thanks to the Snowden revelations, we now know that the government already sweeps up vast amounts of information about Americans, including "metadata" showing whom they talk to, and email, public and commercial information including bank codes, insurance information, Facebook profiles, transportation manifests and GPS-location data.

When you add all that up — even if the government stops short of actually listening in on your phone calls and reading your emails — there is basically no privacy left.

So the central questions posed by the Snowden revelations are these: Is there still a right to privacy in the modern age? And if so, how far does it extend?

And because congressional leaders appear disinclined to call attention to their own historical submissiveness to the executive branch in this area — even though they control the funding and oversight of the intelligence agencies — the following questions will need to be addressed in

public by the media, through probing journalism, on-the-record interviews, public-records requests, and town halls and other **public forums** that encourage **citizen involvement:**

Do American citizens have a right to private electronic communication? Does anyone else, here or abroad? Does that right protect just the content of their communications, or the metadata about those communications as well? Or does the government's duty to protect Americans justify the collection, storage, analysis and monitoring of every electronic communication between persons?

Although most people travel openly in public and do not take precautions about being seen, they do not thereby consent to being tracked. Nor do they expect their phones to be used as tracking devices. So should there be limits to the government's use of location data gathered from cell phones, mobile apps and public video cameras?

What is permissible for other governments to do to Americans? Is the U.S. government protecting Americans from surveillance by foreign governments, or is it sharing our secrets with them? Does the U.S. intelligence community recognize any privacy rights at all for citizens of other countries?

What about attorney-client privilege? Doctor-patient confidentiality? Journalist-source secrecy? Should those be shielded from the scrutiny of U.S. intelligence, either at home or abroad? Should U.S. legislators and judges be subject to the same surveillance as everyone else?

Is the very act of collecting massive amounts of information about Americans and putting it into a giant database a violation of privacy? Or does it matter only when and if that information is accessed and used by officials?

Secure encryption protects Internet commerce, provides security and authenticates identity. Should Americans grant the government the power to undermine it? If so, under what circumstances?

And why should we trust what government officials say about surveillance programs? If nothing else, the Snowden leaks have made it painfully obvious that officials have misled the public for a very long time.

Despite such dishonesty, Americans are being asked to trust that the government will access its massive databases only for legitimate investigative purposes. We are being asked to trust the intelligence community to police itself.

How can the public be confident that any of the rules meant to protect its privacy are really being enforced? How can we be confident that the government can even keep track of what it is doing?

Finally, how much of the surveillance regime itself really needs to be secret? Al-Qaeda operatives are surely aware that the government is watching them in countless ways. What could more disclosure about the general nature of the programs tell them that they do not already surmise? How can Americans assert their rights against encroachment from such programs if they remain ignorant about them?

The Snowden revelations have been so numerous that they are still being processed, and more are to come. Predicting the public's reaction is difficult: More shocks could bring numbness and paralysis — or they could stimulate the public's desire for a coming-to-terms.

The public and the press have perhaps been cowed from demanding a more open and frank discussion of these issues in deference to national security concerns. But the Snowden revelations demand more of us.

The nature of privacy is **too important** to be determined by a small group of experts **behind closed doors**. This is the kind of debate that comes around only **once in a generation**, and is possibly even **unique to this moment in history** as our analog world transitions to a digital one.

The future of this debate depends on how the national press responds. It could allow the story to fade into just so much more background noise. Or the press could embrace its rightful role as the champion of the public interest, and make sure **regular American citizens are a party to important decisions** about what is private and what is not in the digital age.

4. Citizen engagement on the issue of surveillance is ***important*** but ***low***. Our impact is **unique**.

Lyon et al. 12 — David Lyon, Director of the Surveillance Studies Centre, Queen's Research Chair in Surveillance Studies, and Professor of Sociology at Queen's University, Fellow of the Royal Society of Canada, recipient of a Lifetime Achievement Award from the American Sociological Association Communication and Information Technology Section and an Outstanding Contribution Award from the Canadian Sociological Association, holds a Ph.D. in Social Science and History from the University of Bradford, Kevin D. Haggerty, Professor of Sociology and Criminology at the University of Alberta, Member of the Executive Team for the New Transparency Major Collaborative Research Initiative, holds a Ph.D. in Sociology from the University of British Columbia, and Kirstie Ball, Reader in Surveillance and Organization at the Open University Business School, 2012 ("Introducing surveillance studies," *Routledge Handbook of Surveillance Studies*, Edited by Kirstie Ball, Kevin D. Haggerty, and David Lyon, Published by Routledge, ISBN 9780415588836, p. 4)

Any resistance to surveillance ultimately depends upon **an informed, motivated and engaged citizenry**. This points to the fact that perhaps one of the greatest surprises in the field of surveillance studies has been **the comparatively muted public response** to developments in surveillance that seem to be self-evident threats to personal liberties. One wants to be careful here not to discount the vital efforts by anti-surveillance activists and concerned citizens, and some of the important anti-surveillance victories that they have won. At the same time, it is clear that by and large the public has enthusiastically or resignedly accepted such technologies, accepting claims that they are viable ways to secure profit, increase security, or simply as fun devices to play with (Ellerbrok, forthcoming). This **muted public response**, combined with a new willingness by individuals to hand over information on assorted social media applications, has challenged many assumptions that scholars have about citizen engagement and the politics of surveillance.

They Say: "Surveillance Debates Inaccessible"

1. Surveillance expertise is accessible and important. Preparing for and participating in debates about surveillance policy transforms students into citizen-experts.

Batterman 15 — Bill Batterman, Associate Director of Debate at Woodward Academy, 2015 ("How To Become A Citizen-Expert On NSA Surveillance: A Guide For Debaters," *The 3NR*—a blog about high school debate, May 20th, Available Online at http://the3nr.com/2015/05/20/how-to-become-a-citizen-expert-on-nsa-surveillance-a-guide-for-debaters/, Accessed 07-24-2015)

One of the most intriguing things about the surveillance topic is that there are a relatively small number of experts on this subject area. Because the Snowden revelations are only a few years old and new information about NSA programs continues to surface, **diligent (and ongoing) research** is required to stay up-to-date and well-informed. To understand these complicated issues also requires competency in **a wide range of disciplines**—including a background in **information technology and the Internet**, **constitutional law**, and **security policy**.

While preparing for this topic, debaters have the opportunity to become **true subject area experts** with wide-ranging and thorough knowledge of the NSA's surveillance programs, the legal challenges being mounted against them, and the breadth of policy and legal arguments marshaled for and against them in Congress and the courts. To fully participate in **an informed democratic debate** about surveillance policy, citizens need **deep content knowledge** about the issues involved. Thankfully, the opportunity to become **a citizen-expert** in NSA surveillance policies is open to **any** debater willing to invest the time and effort to do so.

But how? Where should one start? Below the fold, a five-step guide is offered to help students dive in to the NSA surveillance debate. Working through this material won't be easy, of course. But for the dedicated student, following this blueprint will provide the deep background knowledge needed to fully delve into the intimidatingly broad and complex surveillance policy literature base.

1. Read Glenn Greenwald's No Place To Hide: Edward Snowden, the NSA, and the U.S. Surveillance State. Published in mid-2014, this book is the definitive account of Snowden's disclosures about NSA surveillance. The first two chapters read more like a spy thriller than an anti-surveillance polemic as Greenwald chronicles his interactions with Snowden; it is a genuinely fascinating story that is as illuminating as it is entertaining. The rest of the book proceeds with an explanation of what Snowden's document archive revealed as well as the moral and legal consequences of the NSA's surveillance regime. Because material from Snowden's archive is peppered throughout the book, readers are offered an insightful look at the NSA's operations as well as their institutional culture (which seems to include a cliched obsession with Powerpoint). For ease of reference, these documents are also neatly packaged for download from Greenwald's site. Reading this book will give debaters an outstanding foundation for their NSA research (as well as quite a few good cards).

2. Watch Laura Poitras's Citizenfour documentary. This is something of a film companion to Greenwald's No Place To Hide; Greenwald and Poitras worked closely with Snowden (and with one another) and Greenwald is a main character in the film. The winner of the 2015 Academy Award for Best Documentary Feature, Citizenfour is considered the third entry in a trilogy of acclaimed documentary films by Poitras that also includes My Country, My Country (about the

U.S. occupation of Iraq) and The Oath (about the U.S. war on terror). It is both a riveting thriller and an informative complement to Greenwald's reporting. Debaters will benefit greatly from watching Citizenfour, a film that should be "required viewing" for anyone researching surveillance.

3. Read the Electronic Frontier Foundation's "NSA Spying on Americans" site. One of the groups (along with the ACLU) at the forefront of legal challenges to NSA spying, the EFF has created an exhaustive resource that includes FAQs, an overview of how NSA surveillance works, profiles of key officials, a repository of NSA primary sources, an explanation of the state secrets privilege, a timeline of events related to NSA surveillance, and a "word games" glossary of contested terms. The EFF site also includes comprehensive information about important legal challenges to NSA surveillance including ACLU v. Clapper, First Unitarian Church of Los Angeles v. NSA, Jewel v. NSA, Klayman v. Obama, Shubert v. Obama, and Smith v. Obama. A debater that thoroughly studied the material on the EFF site would develop a strong working knowledge of the factual and legal issues involved with NSA surveillance.

4. Review ProPublica's summaries of NSA programs and legal challenges to them. A non-profit and independent investigative news organization, ProPublica has done extensive reporting on NSA surveillance. Their summary of the NSA's programs is presented in a single "matrix" that divides programs into quadrants: foreign-bulk, foreign-targeted, domestic-bulk, and domestic-targeted. The chart is accompanied by a sortable, text-based listing (including links to articles from various publications detailing each program), an FAQ article, a podcast, and an online quiz. Another FAQ about NSA surveillance (from 2013) is also helpful. In addition, ProPublica's summary of legal challenges to the NSA's programs is authoritative. As of this writing, it aggregates information about 39 cases and includes the date of filing, the case name, where the case was filed, what is being challenged, a summary of the case, and the current status of the case. When available, the page includes links to the complaints as well as any decisions that have been issued. This is more useful than one might initially think because these resources are located on a variety of sites that would otherwise be relatively difficult (or at least time-consuming) to compile. Thanks to ProPublica, all of this information is already easily-accessible for debaters willing to read and learn it.

5. Read the Privacy and Civil Liberties Oversight Board's oversight reports about NSA surveillance. Formed by Congress in 2004 as an independent federal agency within the executive branch and tasked with reviewing counter-terrorism laws to ensure that they respect individual privacy and civil liberties, the PCLOB has issued three reports: Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court (January 23, 2014), Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act (July 2, 2014), and a Recommendations Assessment Report (January 29, 2015), a follow-up to the previous reports. The PCLOB reports contain thorough explanations of the NSA programs and the legal and policy issues they raise. Debaters that have already read No Place To Hide, watched Citizenfour, and scoured the EFF and ProPublica sites will be well-prepared to digest (and critically analyze) this material.

Why go through the trouble of learning so much about NSA surveillance? Setting aside that it is **an incredibly important issue** about which citizens need to be **informed and engaged** so that government policies are **held accountable to public scrutiny**, debates about the NSA will be ubiquitous at next year's tournaments. For those that debated recent topics, NSA surveillance will

be the Cuba Embargo or Offshore Drilling affirmative of the surveillance topic. While there are important debates to have about other federal surveillance programs, the NSA is definitely the "core of the topic." And by becoming an expert in NSA surveillance, students will have the background knowledge needed to dive into other parts of the surveillance policy literature.

Will the materials outlined by this blueprint teach a student all there is to learn about NSA surveillance? Of course not. But it will go a long way toward transforming debaters into informed citizen-experts capable of participating in—and winning—high-level debates about surveillance policy.

2. Students need to be tech literate to influence the surveillance debate. This is relatively easy but incredibly important.

Meinrath and Ammori 12 — Sascha Meinrath, Vice President and Founder and Director of the Open Technology Institute at the New America Foundation, holds a Ph.D. in Communications and Media from the Institute of Communications Research at the University of Illinois, and Marvin Ammori, Bernard L. Scwartz Fellow at the New America Foundation, Principal of the Ammori Group—a law firm, holds a J.D. from Harvard Law School, 2012 ("Internet Freedom and the Role of an Informed Citizenry at the Dawn of the Information Age," *Emory International Law Review* (26 Emory Int'l L. Rev. 921), Available Online to Subscribing Institutions via Lexis-Nexis)

In Washington, D.C., claims are still being made that we can create the perfect surveillance and monitoring tools (for copyright and law enforcement), and the perfect circumvention tools (to get around surveillance and monitoring). Much like the paradox of an unstoppable force meeting an immovable object, this debate, as currently formulated, has **no resolution**.

[*938] This is why we need to change how we think about the problems facing us at the dawn of the Information Age and the solutions we devise.

Because our work puts us in direct contact with some of the brightest hackers on the planet, we have already seen near-term technologies that fundamentally alter existing surveillance paradigms and business models. The Serval project in Australia is already meshing together cell phones; n58 Cryptocat allows secure communications through existing (decidedly insecure) social media platforms, such as Facebook chat; n59 post-Megaupload file-sharing systems are being set up as we speak; n60 OpenBTS in California and along with several talented Moscow-based hackers have already developed an open GSM stack, allowing anyone to set up their own cell phone base station. n61

The questions before us are not whether we should allow these technologies to exist, but rather, whether we want the coming transitions to be graceful or disruptive, and whether we will make policy in these important areas **with blissful technological ignorance** or **the benefit of expertise** from the people who understand these transformative technologies.

Conclusion

We realize our readers are likely lawyers - and lawyers who will be leaders in our computer-mediated civil society in just a few short years. We urge you to make an effort to **understand the Internet's legal and technical underpinnings**; your ability to post a story on Tumblr or a picture

on Instagram is just the tip of the iceberg. Without understanding what is invisible below the surface, you could formulate **untold harms**; but likewise, with **a modicum of technical acumen** to assist your endeavors, you could help **the technologically illiterate policymakers in D.C.** steer the ship of state **clear of impending disaster**.

They Say: "Topical Debates Preclude Critical Arguments"

1. Topical plans can be negative state action. Advocates of change don't need to defend the state *writ large*. The aff can critique surveillance policy as long as they couple this with a topical plan.

2. Critical theory divorced from policy proposals fails *in the context of surveillance*.

Cohen 15 — Julie E. Cohen, Mark Claster Mamolen Professor of Law and Technology at the Georgetown University Law Center, Member of the Advisory Board of the Electronic Privacy Information Center, holds a J.D. from Harvard University, 2015 ("Studying Law Studying Surveillance," *Surveillance & Society*, Volume 13, Issue 1, Available Online at http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/viewFile/law/lawsurv, Accessed 07-21-2015, p. 96-97)

Surveillance Studies and Law

Relative to legal scholarship, work in Surveillance Studies is more likely to build from a solid foundation in contemporary social theory. Even so, such work often reflects both an **insufficient grasp of the complexity** of the legal system in action and lack of interest in the ways that legal and regulatory actors understand, conduct, and contest surveillance. By this I don't mean to suggest that Surveillance Studies scholars need law degrees, but only to point out what ought to be obvious but often isn't: legal processes are social processes, too, and in overlooking these processes, Surveillance Studies scholars also engage in a form of **black-boxing** that treats law as monolithic and surveillance and government as interchangeable. Legal actors engage in a variety of discursive and normative strategies by which institutions and resources are mobilized around surveillance, and understanding those strategies is essential to the development of an archaeology of surveillance practices. Work in Surveillance Studies also favors a type of theoretical jargon that can seem **impenetrable and**, more importantly, **unrewarding** to those in law and policy communities. As I've written elsewhere (Cohen 2012a: 29), "[t]oo many such works find power everywhere and hope nowhere, and seem to offer well-meaning policy makers little more than **a prescription for despair**." Returning to the topics already discussed, let us consider some ways in which Surveillance Studies might benefit from dialogue with law.

Let us return first to the problem of digitally-enhanced surveillance by law enforcement—the problem of the high-resolution mosaic. As discussed in the section above, works by Surveillance Studies scholars exploring issues of mobility and control offer profound insights into the ways in which continual observation shapes spaces and subjectivities—the precise questions about which, as we have already seen, [end page 96] judges and legal scholars alike are skeptical. Such works reveal the extent to which pervasive surveillance of public spaces is emerging as a new and powerful mode of ordering the public and social life of civil society. They offer rich food for thought—**but not for action**. Networked surveillance is increasingly a fact of contemporary public life, and totalizing theories about its power don't take us very far toward gaining regulatory traction on it. That enterprise is, moreover, essential even if it entails an inevitable quantum of self-delusion. Acknowledgment of pervasive social shaping by networked surveillance need not preclude legal protection for socially-shaped subjects, but that project requires attention to detail. To put the point a different way, the networked democratic society

and the totalitarian state may be points on a continuum rather than binary opposites, but the fact that the continuum exists is still worth something. If so, one needs tools for assessment and differentiation that Surveillance Studies does not seem to provide.

As an example of this sort of approach within legal scholarship, consider a recent article by legal scholars Danielle Citron and David Gray (2013), which proposes that courts and legislators undertake what they term a technology-centered approach to regulating surveillance. They would have courts and legislators ask whether particular technologies facilitate total surveillance and, if so, act to put in place comprehensive procedures for approving and overseeing their use. From a Surveillance Studies perspective, this approach **lacks theoretical purity** because its technology-specific focus appears to ignore the fact that total surveillance also can emerge via the fusion of data streams originating from various sources. But the proposal is **pragmatic**; it does not so much **ignore** that risk as **bracket it while pursuing the narrower goal** of gaining a regulatory foothold within the data streams. And because it focuses on the data streams themselves, it is administrable in a way that schemes based on linear timelines and artificial distinctions between different types of surveillance are not. One can envision both courts and legislatures **implementing** the Citron and Gray proposal in a way that enables far better oversight of what law enforcement is doing.

3. Debating surveillance policy levers is essential to implement insights from critical theory. They can read a topical plan with a critical advantage.

Cohen 15 — Julie E. Cohen, Mark Claster Mamolen Professor of Law and Technology at the Georgetown University Law Center, Member of the Advisory Board of the Electronic Privacy Information Center, holds a J.D. from Harvard University, 2015 ("Studying Law Studying Surveillance," *Surveillance & Society*, Volume 13, Issue 1, Available Online at http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/viewFile/law/lawsurv, Accessed 07-21-2015, p. 99)

Conclusion: Doing Law-and-Surveillance-Studies Differently

The prospects for fruitful interchange and collaboration between legal scholars and Surveillance Studies scholars are likely to remain complicated by pronounced differences in underlying theoretical orientation. But since Surveillance Studies is itself an interdiscipline (Garber 2001), and since legal scholarship has thrived on interdisciplinary exploration, the prospects for effective communication also seem reasonably good. Bridging the gaps requires, first and foremost, efforts by emissaries from both traditions to foster a more tolerant and curious dialogue directed toward improved understanding and, ultimately, toward **methodological hybridization**. Within one's own academic community, it can become too easy to mistake consensus on methodological conventions for epistemological rigor, and to forget that methodological strength also derives from refusal to be **hemmed in** by disciplinary boundaries.

From the standpoint of theory, a more sustained dialogue between law and Surveillance Studies would count as a success if it produced a mode of inquiry about surveillance that melded the theoretical sophistication of Surveillance Studies with lawyerly attention to the **details**, **mechanisms**, and interests that constitute surveillance practices as legal practices, and to the kinds of framing that **mobilize legal and policy communities**. To do Surveillance Studies better, legal scholars need to challenge their own preference for putting problems in categories that fit neatly within the liberal model of human nature and behavior, and Surveillance Studies scholars

can help by calling attention to the social and cultural processes within which surveillance practices are embedded. Surveillance Studies scholars need to do more to resist their own penchant for totalizing dystopian narratives, and should delve more deeply into the legal and regulatory realpolitik that surrounds the administration of surveillance systems; legal scholars can help by demystifying legal and regulatory processes.

From a legal scholar's perspective, however, theory achieves its highest value when it becomes a tool for forcing **productive confrontations** about how to respond to **real problems**. And so I think it would count as an even bigger success if dialogue between law and Surveillance Studies generated not only a hybridized theoretical discourse of law-and-Surveillance-Studies but also the beginnings of **a more accessible policy discourse about surveillance and privacy**, along with **reform proposals** designed to put the animating concepts behind such a discourse into practice. Here the goal would be a hybridization between law's ingrained pragmatism and Surveillance Studies' attentiveness to the social and cultural processes through which surveillance is experienced and assimilated. Working together, legal scholars and Surveillance Studies scholars might advance the project of formulating working definitions of privacy interests and harms, and might develop **more sophisticated projections** of the likely effects of **different policy levers** that could be brought to bear on systems of surveillance.

4. Topical debates promote critical thinking skills that are particularly important in the context of the topic. Topicality *doesn't* exclude critique.

Donohue 13 — Laura K. Donohue, Associate Professor of Law, Director of the Center on National Security and the Law, and Director of the Center on Privacy and Technology at Georgetown University, has held fellowships at Stanford Law School's Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, holds a Ph.D. in History from the University of Cambridge and a J.D. from Harvard Law School, 2013 ("National Security Law Pedagogy and the Role of Simulations," *Journal of National Security Law & Policy*, Volume 6, Available Online at http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf, Accessed 07-23-2015, p. 524-525)

3. Critical Distance

As was recognized more than a century ago, analytical skills **by themselves** are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well.

Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual [end page 524] and potential constructs of law. It is inherently reflective.

For the purpose of practicing **national security law**, critical thought is **paramount**. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny.

Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators' minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take.

Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context.

There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to **recognize problems**, **articulate underlying assumptions and values**, **understand how language is being used**, **assess whether argument is logical**, **test conclusions**, and **determine and analyze pertinent information** depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, [Greek term here] – provides the basis for **advancing the human condition** through reason and intellectual engagement.

They Say: "Topical Debates Require Unethical Defense of the State"

1. Topical plans can be negative state action. Advocates of change don't need to defend the state *writ large*. The aff can critique surveillance policy as long as they couple this with a topical plan.

2. Responding to NSA surveillance by demanding abolition of the state is counterproductive. Calls for negative state action are a more effective challenge. "Reformism bad" oversimplifies.

Weiland 13 — Jeremy Weiland, Activist who has worked with Occupy Richmond and Richmond Industrial Workers of the World, Contributing Writer at the Center for a Stateless Society and Attack The System, Software Developer who has worked for CustomInk, Jobaio, 6th Density LLC, INM United, and ALTERthought, former Systems Analyst for the Computer Sciences Corporation, holds a B.S. in German and Computer Science from the University of Mary Washington, 2013 ("An anarchist critique of the reporting on the Snowden leaks," *Social Memory Complex*—an anarchist blog, December 31st, Available Online at http://www.socialmemorycomplex.net/2013/12/31/an-anarchist-critique-of-the-reporting-on-the-snowden-leaks/, Accessed 07-07-2015)

There is only a political solution

I mentioned earlier that it is the scale at which the NSA operates that makes it dangerous. Only with such concentrated resources and authority can the NSA compromise the entire communications network infrastructure at every layer. Any defense strategy or reform that doesn't squarely address the issues surrounding this unprecedented concentration of power is **worse than useless**. Clever hacking **will not save us from concentrated power**; crypto is a workaround and not a sufficient response to the fundamental challenge here. New oversight practices, such as a "privacy advocate" position in the FISA court, will fail as surely as old ones. Organizations like the NSA specialize in telling themselves and others precisely the narratives that justify their abusive, disingenuous conduct in the dark.

Knowing this, statists of all varieties must wrestle with how to check and balance the government in this era. The sheer level of secrecy and abuse here can't help but give the lie to their minarchist approach of legal reform and institutional counterbalancing. Clearly any government abiding an organization like the NSA is no mere accomplice but rotten to the core. Any reform that does not squarely face this reality is **insufficient and counterproductive on its face**.

While anarchists understand that even this latest outrage **will not bring about the revolution**, I do think we are uniquely positioned to advocate for **extreme measures** that others currently find unthinkable. There literally is no alternative, because who could ever trust anything the government does in secret again? The NSA's power and operation in the dark must be **scaled far, far back** if we are to have **a real solution** to this crisis. Indeed, the state must be made to understand that its very legitimacy is at stake, and this is a core anarchist goal in the first place.

Dissolution of the state and the NSA may not be **politically feasible**, but a sharp and crippling cut to the budget—especially the abolition of the secret black budget—may be **one concession we**

can extract from the establishment. After abolition, containing the budget is **the next best insurance** against power becoming too concentrated in an organization. Granted, this is a long shot, but it both has the virtue of being **measureable** and also marking **a grave reappraisal of the government's legitimacy**.

I'm sure each and every person responsible for bringing the NSA cache of secrets to light has a different vision of what reforms are best. However, we are at a unique juncture in history—one we indeed owe to Snowden, Greenwald, Poitras, and others, but nevertheless one which belongs to all of us. Never before have the people faced such **pervasive and subtle totalitarianism** so undermining to society as we know it. If folks finally consider radical solutions, **it will not be because anarchists berated them into it**. The **right arguments** could ensure the separation of the head from the snake this time, if anarchists can model **a new attitude towards power** that seeks **not to alienate opponents** but **build a qualitatively different consensus**.

3. Reject demands for methodological purity in the context of NSA reform. They can defend a topical plan with a critical advantage.

Weiland 13 — Jeremy Weiland, Activist who has worked with Occupy Richmond and Richmond Industrial Workers of the World, Contributing Writer at the Center for a Stateless Society and Attack The System, Software Developer who has worked for CustomInk, Jobaio, 6th Density LLC, INM United, and ALTERthought, former Systems Analyst for the Computer Sciences Corporation, holds a B.S. in German and Computer Science from the University of Mary Washington, 2013 ("An anarchist critique of the reporting on the Snowden leaks," *Social Memory Complex*—an anarchist blog, December 31st, Available Online at http://www.socialmemorycomplex.net/2013/12/31/an-anarchist-critique-of-the-reporting-on-the-snowden-leaks/, Accessed 07-07-2015)

As the year rolls to an end, I'd like to compile a few thoughts on the handling of the NSA secrets leaked by Edward Snowden to Glenn Greenwald, Laura Poitras, Ryan Gallagher, and others. This debate has occurred on ephemeral media like twitter, and these matters deserve a more extended treatment. There have been many developments since my last post on the subject; one of the most interesting has been the journalistic issues surrounding this episode.

Throughout this post, keep in mind that I approach this as a radical, anti-institutionalist anarchist. My values place very little weight on compromising secret government plots for any reason. I disagree fundamentally with Snowden's desire for selective leaking, though it shouldn't surprise anybody that an ex-NSA employee would maintain very different priorities than an anarchist. **Nothing could be more useless** or moronic than to expect relatively establishmentarian, statist folks like Snowden, Greenwald, or Poitras to act **exactly like I might** were I in their shoes.

However, I have a basic respect for Snowden's sacrifice and Greenwald's work that **transcends my political preferences** (I'm not familiar with Poitras's work prior to this episode, though she has my respect as well). I will not sully that respect by dragging any of these people through the mud, **even if** their chosen acts don't quite conform to my personal standards. Indeed, I wish to advance a critique of their conduct that can **actually contribute to the debate** without **drowning everything in the noise of acrimony and belligerence**.

Unlike many on the radical left, I believe tone is important, both for **maintaining crucial solidarity within the larger resistance** and for disciplining our own thinking against irrational laziness. Snowden, Greenwald, Poitras, and others are **fundamentally on my side of this issue**, regardless of our differences in values and ideology. People on the same side can disagree and debate without devolving into **crude infighting**. I regard it as **shameful**, **juvenile**, and **counter-productive** to elevate **any kind of political or methodological purity** over those **broad interests that unite us**.

They Say: "Topical Debates Trade Off With More Important Debates"

1. Policy debates on this topic are particularly valuable because surveillance is *both* an individual *and* social issue. Their "*global-local*" and "*focus tradeoff*" arguments underestimate the value of topical dialogue.

Snowden Commons 14 — Snowden Commons, a project created at the Berliner Gazette Conference that seeks to publicly share the Snowden document archive in public libraries throughout the world, 2014 ("From the Snowden Files to the Snowden Commons: The Library as a Civic Hub," *Libreas*—an academic library journal, Number 26, Available Online at http://libreas.eu/ausgabe26/08anonym/#from-the-snowden-files-to-the-snowden-commons-the-library-as-a-civic, Accessed 06-28-2015)

From the right to privacy to participatory autonomy

So far, citizens have been **trapped between two strategies** for defending themselves from the forms of surveillance implied in the Snowden files, both of which tend to be **difficult for common citizens to participate in** because they require specialized technical or policy knowledge. On the one hand, individuals have been encouraged to use new digital privacy tools and techniques to create a wall between themselves and the watchers (but is this a solution for everyone?).

On the other, some activists, organizations and human rights advocates have sought to compel governments to better protect citizens' rights through lobbying, legal action and constitutional challenges (but what to do when the government is the watcher?). But there is **a third option**, one that **complements and supports the other two** while creating **something new**. We must **re-create public spaces** where citizens can **learn about the threat they face** and **come up with common, workable solutions**: a place to deliberate **not only about how we are affected as individuals**, but also **as a society** and **as communities**, different communities being affected **in different ways**, and what **multiple perspectives** different people and different communities take on surveillance. In this way we can build **a solid and sustained public dialogue** about security, surveillance, privacy and autonomy.

We envision the public library as a space where social movements are structured through sharing interests, information, strategies, tactics and tools. We call upon librarians to facilitate the publics' reclaimation of the information that impacts all of us.

Why? Because the right to privacy is **not simply a personal matter** of the individual; it is **a societal challenge** which requires **society-level solutions**. Further, human rights are not only something granted under constitutional and international law; they must be continuously demanded, negotiated, and constantly rebuilt from society's grassroots. For instance, while article 5 of the German Constitution guarantees the right of each person to freely express and disseminate their opinions in speech, writing, and pictures and to inform themselves without hindrance from generally accessible sources, such a right must be activated by citizens to be meaningful, effective and transformative.

To confront the new powers of surveillance we need to think broadly about building **zones of autonomy**: autonomy of the individual, autonomy for communities, autonomy for society. The

principle of autonomy translates the ideal of privacy into **concrete goals** grounded in human rights.

Privacy and autonomy are **essential components** of a functional and vibrant democracy; **without them critical citizenship is not possible**. A library could be an autonomous zone proper, librarians its caretakers. We need to **create and re-imagine public institutions** to serve this purpose in the digital age, to make information **widely accessible**, truly **common** and **operative**.

2. This topic presents a once-in-a-lifetime opportunity to educate policymakers about Internet technology. The freedom to engage in debates about other issues depends on the decisions made in D.C. about surveillance.

Meinrath and Ammori 12 — Sascha Meinrath, Vice President and Founder and Director of the Open Technology Institute at the New America Foundation, holds a Ph.D. in Communications and Media from the Institute of Communications Research at the University of Illinois, and Marvin Ammori, Bernard L. Scwartz Fellow at the New America Foundation, Principal of the Ammori Group—a law firm, holds a J.D. from Harvard Law School, 2012 ("Internet Freedom and the Role of an Informed Citizenry at the Dawn of the Information Age," *Emory International Law Review* (26 Emory Int'l L. Rev. 921), Available Online to Subscribing Institutions via Lexis-Nexis)

More than sixty years ago, civil rights activists realized that the most effective route to bettering our country was through mass social movements, civil disobedience, and judicial review. Those whom we hold up today as champions from this era - from Rosa Parks and Thurgood Marshall to Malcolm X and Martin Luther King, Jr. - were part of **sophisticated, nationwide, legal interventions** to stand up for what they believed. To be **an informed citizen** and **an active member of civil society** during this epoch was to be **aware of these battles** and even **participate in them** — taking sides on the street, at the lunch counters, in the pages of the nation's newspapers, and through broadcast radio and television. In law school, reading Brown v. Board of Education n1 and Cooper v. Aaron, n2 you might get the mistaken impression that the judicial branch was the focus of the debate, or the most important agent of change. But this litigation was a purposeful and well-thought-out facet of a far broader social movement and organizing strategy. n3 This social movement focused on a key normative question for civil society: Who can participate in our democracy as a full citizen - with an equal vote, equal treatment under the law, equal access to education, and all the other social resources necessary to enjoy true liberty - and have a meaningful say in our government? n4

Today we are at a similar **critical juncture**, asking similar questions about participation in modern civil society. n5 We have made progress in making our [*922] democracy more racially inclusive, although controversies remain over de facto segregation and voter discrimination. n6 But while the foundation of our democracy includes the right to vote, it also requires the right to access information and disseminate information to others. n7 The Constitution terms it the right to freedom of speech and press, while the Universal Declaration of Human Rights calls it the right to opinion and expression. n8 Today the most powerful tools to amplify our thoughts and ideas are often not newspapers and broadcast stations, controlled by the few and the powerful.

The most powerful tool for a large and growing global constituency is an open Internet and the applications we use every day - from Facebook and Twitter to YouTube and Tumblr. The Internet

has become the core infrastructure of modern free expression and speech. By connecting us, the free and open Internet is the foundation for twenty-first century civil society. The enemies of a robust, democratic civil society know this. It is why Internet freedom is under sustained attack.

The battle over Internet freedom will have a profound impact on the future of civil society and democracy. These attacks sometimes take the form of legislation in cybersecurity or copyright. For example, Senator Lieberman pushed to introduce legislation granting the President authority to shut down the Internet by creating a central "kill switch" - legislation that was only buried when Egypt's President Mubarak used a similar system to take that country offline during its own democratic protests. n9 Congress also nearly passed the hugely controversial Stop Online Piracy Act n10 ("SOPA"), which is often derisively called the Stop Online Privacy Act, and Protect Intellectual Property Act n11 ("PIPA") - bills that resulted in a Wikipedia blackout on January 18, 2012. n12

[*923] Decisions being made **right now in Washington, D.C.**, will affect **the very trajectory of democracy**. Too often, proposed decisions are at odds not only with freedom, but also with technological reality. D.C. is, first and foremost, a city of lawyers. Unfortunately, these lawyers think themselves to be technologists and are running rampant, drafting remarkably bad laws - usually not through malfeasance, but through **ignorance**. Thus, there is **a crucial opportunity to change the course of history** simply by ensuring that key decision-makers **actually understand technology**, its limits, and what it makes possible. To analogize to an earlier era, the decision in Brown v. Board of Education turned on psychological evidence concerning children in segregated schools. n13 Imagine if lawyers based their case on their **"gut feeling"** rather than relying on **social psychological experts** and **research based upon empirical data**.

Sascha directs the Open Technology Institute at the New America Foundation ("OTI"). n14 The New America Foundation is a public interest think tank in Washington, D.C., whose programs span everything from foreign policy analysis to educational reform, and from asset building amongst the poor to how to remake our medical system to be both more affordable and more responsive. The Open Technology Institute is the technology and telecom arm of the New America Foundation's work - a group of technologists working to counter the misinformation campaigns currently running rampant in D.C.

Marvin is one of the few lawyers welcomed to hang out at the Open Technology Institute. He is a veteran of the open Internet battles and the SOPA battle, a First Amendment scholar, and once served as the head lawyer of Free Press. Most importantly, he tries to wield technical know-how to bolster his legal acumen.

Simply put, to defend Internet freedom at this critical juncture, we need not only legal expertise but also **technological expertise**. Interested parties - both corporations and entrenched bureaucracies - take advantage of the woeful technological naivete of most politicians, regulators, and key administration officials. Sowing "Fear, Uncertainty, and Doubt" ("FUD") is often their modus operandi. And this FUD has, for far too long, driven a national debate over [*924] cybersecurity, copyright, surveillance, and open Internet policies. This FUD is **directly undermining our ability, as a democratic society**, to protect human rights online.

Much of the work that OTI does focuses on educating key decision makers - at the Federal Communications Commission, Federal Trade Commission, State Department, and White House; in the Senate and House of Representatives; and at leading advocacy organizations - about technological reality. But the forces of FUD are powerful, and OTI has a modest team of some

fifty tech-savvy staff. What is needed today is **a far more widespread intervention** - with help from technologists across the country and from **average Americans**, who often **know far more about technology** than the average policymaker in D.C.

But why would you want to help? For the same reason you would want to take part in the great debates over civil rights and civil society in the 1950s and 1960s. What stories do we want to be able to tell our children and our grandchildren? We have **a once-in-a-lifetime, perhaps a once-in-a-century**, opportunity. As we transition into the Information Age, we must ask ourselves: How do we support a twenty-first century civil society that is **inclusive**, **decentralized**, and **free** - the kind of society where participatory democracy thrives?

They Say: "Identity Concerns Precede Topicality"

Topical debates access identity issues. Mass surveillance jeopardizes students' identify formation.

Glaser 14 — April Glaser, Staff Activist at the Electronic Frontier Foundation, 2014 ("17 Student Groups Pen Open Letters on the Toxicity of Mass Surveillance to Academic Freedom," Electronic Frontier Foundation, June 9th, Available Online at https://www.eff.org/deeplinks/2014/06/students-against-surveillance-17-university-groups-pen-open-letters-toxicity-mass, Accessed 07-23-2015)

"Certain demographics of students, such as the LGBTQ community that remain closeted, could be **made public**," wrote Liz Hawkins in the letter she composed from the University of Nevada in Las Vegas. "This also includes students in [search] of **mental health care**," the UNLV student letter continues. And she's right.

Students often come to universities excited to **explore their identity** and find community that might **not have been available back home**. But when we know that the government is collecting information and storing it in a way that could be potentially used against us, **we don't say what we would say otherwise**. Students are **less likely to associate with campus groups** and **less likely to engage fully in campus life**.

They Say: "Requiring Topical Plans Violates Academic Freedom"

1. Topical debates access this impact. Surveillance imperils students' freedom to learn. Debating it is vital to academic freedom.

Kebede 14 — Paul Kebede, Tenth Grader at Guildford Park Secondary School (Surrey, British Columbia), Member of the Student Net Alliance—a student-run digital rights organization, 2014 ("Surrey Schools Students/Faculty in Support of Digital Rights," Open Letter to the Board of the Surrey School District no. 36, May, Available Online at http://studentsagainstsurveillance.com/surrey/, Accessed 07-23-2015)

It should not be forgotten that schools should be places where students and faculty alike can learn with confidence, **without fear** that what we are studying or investigating using the web could potentially be a platform **used against us**. However, due to chilling evidence brought up by Snowden's leaks, we no longer have that assurance. It is because of this new environment saturated by mass surveillance- speech and academic freedoms are broken. We, as students and faculty of the global academic and educational community, protest this non-stop practice of illegal mass-surveillance by the CSIS (Canadian Security Intelligence Service) and the NSA (National Security Agency). Together, we are **taking a stand against mass surveillance on our campuses**.

The NSA's as well as the CSIS's grounds for surveillance are loosely based in part of association. NSA essentially claims that any single suspect gives them rights to investigate a large chunk of the world's population. This means that anyone deemed suspicious by the NSA falls victim to government surveillance. For example, if you have called a certain facilitation (let's say, a catering service for a school event, and a known dealer has called that exact same catering service), then the NSA is currently keeping records of your actions -- and the actions of everyone you've spoken to. But it's even broader than that: we know from the leaked order that "...every call in, to, or from the United States" is collected by the NSA. That's every call, regardless of due process or whether or not you're suspected of doing anything wrong.

Closeted homosexual and transsexual students and faculty could be **outed**; students seeking and in need for several physiological assistances may **stop seeking care** in fear that confidential information could visible to the public eye. Also, anyone who has been linked researching controversial topics could be **monitored**, and that data itself could ultimately be **used against them**.

As a proud member of the Student Net Alliance, we sign this letter in protest. We protest the U.S. and Canadian surveillance state and the **chilling effects** it has on our campus life. We call on the U.S. and Canadian government to bring the NSA back to cope within the bounds of the 1982 Charter of Rights and freedoms. Students and even faculty alike want to **learn and explore** the means of the web according to our curiosity and we want to do so **without fear of being treated as criminals**.

2. Topicality turns this impact. NSA surveillance undermines academic diversity.

DeCusatis 14 — Anne DeCusatis, Computer Science Student at the State University of New York at New Paltz, Intern Programmer at IBM, 2014 ("SUNY New Paltz Students/Faculty in Support of Digital Rights," Open Letter by Students and Faculty at the State University of New York at New Paltz, May, Available Online at http://studentsagainstsurveillance.com/sunynp/, Accessed 07-23-2015)

As university students, we have a right to explore ideas, and to have **open discourse and free speech** on a variety of topics. Conversely, it is **our responsibility** to protect these selfsame freedoms when they are threatened. As internet and phone users in the United States, it falls upon us to **stand up for our rights** in the face of the illegal surveillance that is being conducted against us. [1] And as participants in the State University of New York system, we know that we are more powerful when we work together. [2] As members of the community at the State College at New Paltz, we must **unite against surveillance**.

The NSA has the ability to collect a vast amount of metadata on individuals via their cell phones – where they call from, the amount of time they call, who they call. This information can be collected without a warrant. Traditionally, collection of highly revealing data such as this was limited to known criminals, but we have proof now that the NSA can collect and has collected this data from major cell phone networks, targeting a majority of Americans. [3]

How does this affect us? The SUNY system is supposed to be equal access, open to people from all backgrounds. [4] This gives us the opportunity to learn from **a wide variety of experiences**, which may be very unlike our own. When we know that we are being watched, **our behavior changes**. [5] This **negates the positive effects** of our diverse campus. And since we come from such a variety of backgrounds, **to silence us is to silence everyone**.

The claim that the innocent have nothing to fear because they have nothing to hide is simply not true – everyone has things that they wish to keep private. Even if someone had nothing to hide, they would still have the right to privacy.

Most Americans believe that the NSA surveillance goes too far. [6] We, as members of the SUNY New Paltz community, and as informed citizens of the world, sign this letter to protest surveillance. We call on our university administration to create and enforce policies to end on-campus surveillance and protect our freedoms. **We call on the U.S. government** to bring the NSA back within the bounds of the constitution. We deserve the opportunity to learn and explore without fear of being treated as criminals.

They Say: "Topical Plans Trade Off With Individual Action"

There is no tradeoff between *individual* and *collective* action in the context of surveillance. Their anti-collective approach marginalizes surveillance opposition.

Lee 14 — Ashlin Lee, Ph.D. Candidate and Associate Lecturer in Sociology at the School of Social Sciences at the University of Tasmania, Member of The Australian Sociological Association, The Surveillance Studies Network, and the Asia-Pacific Science Technology Studies Network, 2014 ("A Question of Momentum: Critical Reflections on Individual Options for Surveillance Resistance," *Revista Teknokultura*—Journal of Digital Culture and Social Movements, Volume 11, Issue 2, Available Online at http://dialnet.unirioja.es/descarga/articulo/4820459.pdf, Accessed 07-12-2015, p. 434-436)

Concluding Remarks and Future Directions

Is resistance to global surveillance then **pointless** for an individual? Perhaps in some current iterations, but that **does not mean** abandoning resistance is helpful. Global surveillance presents **a pressing moral, legal, and social issue for all** members of contemporary society. Ignoring surveillance, and allowing global surveillance regimes to go unchallenged and unopposed perpetuates a growing asymmetry between those conducting surveillance and the subject(s) of surveillance. It is therefore important that surveillance and its subsequent asymmetries do not go unquestioned or unopposed, whether this be through resistance or alternative means. But any suggested opposition to surveillance, especially for individuals, needs to recognise the current context of surveillance, including issues of technological momentum and surveillance's role in everyday life, which **complicates opposition**.

Because of these points, future discussion on resistance, especially for individuals, may benefit from looking beyond confrontational resistance towards ideas more attuned to dealing with the context. One possible angle for this might be considering ideas around how surveillance can be **controlled or engaged with**, to facilitate a positive outcome for individuals. It is unlikely global surveillance systems will be reversed or halted given the momentum developed so far and the gains these systems have had for those in power. Additionally, this momentum is set to continue to build as a new generation of technologies such as drones (Wall & Monahan, 2011), wearable devices (Whitson, 2013), and algorithmic and intelligent surveillance (Introna & Wood, 2004), are developed and deployed. An individual can never hope to resist, avoid, or destroy **all** these measures of surveillance. **However** if Marx's (2013) assertion that surveillance holds no inherent moral character and is contextually determined holds true, then [end page 434] considering how individuals can engage with surveillance and **determine its course** could be **a good next step**. Such an approach would sidestep the idea of confrontation as the basis for resistance, avoiding problems of technological momentum, while acknowledging the role of surveillance in everyday life. Positive change would occur through **participation**, **engagement**, and **control**, instead of **fighting**, **destroying**, or **hiding** from surveillance. This is not an entirely new idea, with Mann (2013) suggesting that all individuals should adopt veillance (or watching) technologies to address the current asymmetries of a surveillance society (where watching occurs only from above). He suggests harnessing the technological momentum of surveillance to allow all individuals to watch each other and the authorities. Individual thus do not have to resist surveillance when they are able to conduct their own veillance, demonstrating how participating and engaging might be positive for individuals. Through this Mann believes that society "will

tend to be more balanced, just, prosperous and 'livable'" (Mann, 2013, p. 11), in comparison to where there is surveillance only. However any such notion of engagement or control would still need to overcome significant hurdles. While new generations of devices, such as Google Glass, may offer a feasible platform for this, there is no guarantee that uptake will be high enough to create a veillance society. All individuals need equal access and opportunity to engage for a veillance society to work. As a social measure, it would also require **a supportive legislative and political environment**, a difficult proposition given that governments and corporations benefit from the current asymmetries. It also begs the question of how individuals would be able to generate enough momentum, whether this be technological, social, political, or economic, to create and maintain such a radical social arrangement.

Consequently, this would mean **a shift in focus** from **individual** to **group** forms of participation and resistance. An obvious counterpoint to much of the above discussion is that it has not engaged with these kinds of group forms of resistance. As Martin, van Brakel, and Burnhard (2009) state resistance to surveillance is best understood as occurring in relation to multiple actors and groups. It has been well demonstrated that it is possible for individual's to **come together in collectives** or communities to resist or challenge surveillance in these contexts (see Monahan, 2006a). These facts and the necessity to consider groups in the analysis of resistance is not in question, and indeed may offer individuals a way of engaging in resistance. But this should not obscure the fact that surveillance occurs in a world that is increasingly individualised and fragmented (Bauman, 2000) especially for those living in the developed West, and individual options for resistance should still be explored. This article has sought to directly engage with this notion and critique it without at all devaluing or detracting from group options for resistance. Surveillance must be considered as a part of the political economic [end page 435] patterns of society (Lyon, 2007), with individualisation existing as an important factor in these patterns. With traditional forms of sociality and community evolving towards an individually directed project (Bauman, 2000), and surveillance being increasingly ubiquitous to these projects (Lyon, 2001), it is left in the individual's hands how this risk is negotiated. Therefore a consideration of the individual and their capacity to act is important and necessary, as it compliments existing understandings of group resistance.

The importance of having options for enacting positive change upon surveillance is **enormous**, whether these options come from **individuals** or **groups**. But any such notion must be **pragmatic** and **open for development**. It is hoped this article will encourage further discussion in this vein, for the good of all the subjects under surveillance.

They Say: "Why So Serious?"

1. This is a serious topic. Surveillance causes a chilling effect that imperils our academic freedom. The freedom to be different depends on changes to U.S. surveillance policies.

2. Citizens should participate in a substantive debate about surveillance. The aff echoes the media's response to John Oliver's Snowden episode. This results in mass political apathy and hands total power to the surveillance state.

Greenwald 15 — Glenn Greenwald, journalist who received the 2014 Pulitzer Prize for Public Service for his work with Edward Snowden to report on NSA surveillance, Founding Editor of *The Intercept*, former Columnist for the *Guardian* and *Salon*, recipient of the Park Center I.F. Stone Award for Independent Journalism, the Online Journalism Award for investigative work on the abusive detention conditions of Chelsea Manning, the George Polk Award for National Security Reporting, the Gannett Foundation Award for investigative journalism, the Gannett Foundation Watchdog Journalism Award, the Esso Premio for Excellence in Investigative Reporting in Brazil, and the Electronic Frontier Foundation's Pioneer Award, holds a J.D. from New York University School of Law, 2015 ("Why John Oliver Can't Find Americans Who Know Edward Snowden's Name (It's Not About Snowden)," *The Intercept*, April 6th, Available Online at https://firstlook.org/theintercept/2015/04/06/john-oliver-interview-political-disengagement-american-public/, Accessed 06-15-2015)

On his HBO program last night, John Oliver devoted 30 minutes to a discussion of U.S. surveillance programs, advocating a much more **substantive debate** as the June 1 deadline for renewing the Patriot Act approaches (the full segment can be seen here). As part of that segment, Oliver broadcast an interview he conducted with Edward Snowden in Moscow, and to illustrate the point that an insufficient surveillance debate has been conducted, showed video of numerous people in Times Square saying they had no idea who Snowden is (or giving inaccurate answers about him). Oliver assured Snowden off-camera that they did not cherry-pick those "on the street" interviews but showed a representative sample.

Oliver's overall discussion is good (and, naturally, quite funny), but the specific point he wants to make here is misguided. Contrary to what Oliver says, it's actually not surprising at all that a large number of Americans are unaware of who Snowden is, nor does it say much at all about the surveillance debate. That's because a large number of Americans, **by choice**, are **remarkably unaware of virtually all political matters**. The befuddled reactions of the Times Square interviewees when asked about Snowden illustrate little about the specific surveillance issue but a great deal about the **full-scale political disengagement** of a substantial chunk of the American population.

The data on American political apathy is rather consistent, and stunning. Begin with the fact that even in presidential election years, 40 to 50 percent of the voting-age public simply chooses not participate in the voting process at all, while two-thirds chooses not to vote in midterm elections.

Even more striking is what they do and do not know. An Annenberg Public Policy Center poll from last September found that only 36 percent of Americans can name the three branches of

government, and only 38 percent know the GOP controls the House. The Center's 2011 poll "found just 15 percent of Americans could correctly identify the chief justice of the United States, John Roberts, while 27 percent knew Randy Jackson was a judge on American Idol."

A 2010 Findlaw.com poll found that almost two-thirds of Americans — 65 percent — were incapable of naming even a single member of the U.S. Supreme Court. A 2010 Pew poll discovered that 41 percent of Americans are unable to name the current vice president of the U.S; in other words, Oliver could just as easily (if not more easily) compile a video of Times Square visitors looking stumped when asked if they knew who Joe Biden, or Antonin Scalia, is.

These are obviously significant facts which receive far too little discussion, analysis and attention. One reason is that they serve as a rather stinging indictment on the political system which media and political insiders love to glorify: a huge chunk of the population, probably the majority, have simply **turned away entirely from politics**, presumably out of a belief that it makes no difference in their lives. It's difficult to maintain mythologies about the glories of American democracy if most of the population believes it has so little value that it merits literally none of their time and mental attention.

Then there's the role that U.S. media itself plays in this dynamic. I've often cited as the most revealing fact of the post-9/11 era this Washington Post poll from September, 2003 — six months after the invasion of Iraq — which found that "nearly seven in 10 Americans believe it is likely that ousted Iraqi leader Saddam Hussein was personally involved in the Sept. 11 attacks" and that a "majority of Democrats, Republicans and independents believe it's likely Saddam was involved."

Propagandizing 70 percent of the population is not easy to do, and obviously requires **active deceit** or pervasive acquiescence by the country's news media. As part of his discussion last night, Oliver showed my favorite MSNBC clip in order to illustrate the lack of substantive surveillance discussion in the media:

[YouTube video omitted]

As if to prove his point, click-hungry gossip websites (such as one named Time) ignored most of Oliver's **substantive discussion of the Patriot Act and surveillance** and instead seized on the Times Square aspect to mock Snowden for his cultural irrelevance. To the extent that's true, what they're actually (unintentionally) mocking is **the political process** they typically glorify and, most of all, their role within it.

2. The future of the Internet depends on the outcome of surveillance debates. Teaching students to win these debates *is* seriously important.

Meinrath and Ammori 12 — Sascha Meinrath, Vice President and Founder and Director of the Open Technology Institute at the New America Foundation, holds a Ph.D. in Communications and Media from the Institute of Communications Research at the University of Illinois, and Marvin Ammori, Bernard L. Scwartz Fellow at the New America Foundation, Principal of the Ammori Group—a law firm, holds a J.D. from Harvard Law School, 2012 ("Internet Freedom and the Role of an Informed Citizenry at the Dawn of the Information Age," *Emory International Law Review* (26 Emory Int'l L. Rev. 921), Available Online to Subscribing Institutions via Lexis-Nexis)

The Internet has always been, from its genesis, a tool for swapping information amongst participants. And as the power of this tool has grown exponentially, far beyond what anyone could have possibly imagined, so too has **our responsibility** to act as defenders and champions of its openness and fundamentally participatory nature.

Even more importantly, we have **a responsibility to teach future generations** to improve upon what we have created and ensure that the Internet's next [*932] iterations are more inclusive, less discriminatory, and increasingly supportive of our fundamental, inalienable human rights.

The best way we can do this is to ensure that our **pedagogical practices** not only empower students with the digital literacy skills they need to navigate online resources, but also that they have the critical thinking and organizing skills necessary to **actively defend themselves against** online threats of censorship, **surveillance**, and discrimination.

Topicality Surveillance Supplement
Michigan 7

Resolved: The Federal Government Should

Resolved

Resolved means to express by formal vote

Webster's Revised Unabridged Dictionary, 1998 (dictionary.com)

Resolved:

5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

'Resolved' denotes a proposal to be enacted by law

Words and Phrases 64 Permanent Edition

Definition of the word "resolve," given by Webster is "to express an opinion or determination by resolution or vote; as 'it was resolved by the legislature;" It is of similar force to the word "enact," which is defined by Bouvier as meaning "to establish by law".

Firm decision

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

Specific course of action

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

Resolved: – Aff Competition

"Resolved" doesn't require certainty

Webster's 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

Or immediacy

PTE 9 – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: "To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life."

Colon

Colon is meaningless --- everything after it is what's important

Webster's 00 (Guide to Grammar and Writing, 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.

The colon just elaborates on what the community was resolved to debate

Encarta 7 (World Dictionary, "colon", http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861 598666)

co·lon (plural co·lons)

noun

Definition:

1. punctuation mark: the punctuation mark (:) used to divide distinct but related sentence components such as clauses in which the second elaborates on the first, or to introduce a list, quotation, or speech. A colon is sometimes used in U.S. business letters after the salutation. Colons are also used between numbers in statements of proportion or time and Biblical or literary references.

The

"The" is used to denote a specific entity
American Heritage, 00 (Fourth Edition, http://dictionary.reference.com/browse/the)

the1 P (*th before a vowel; th before a consonant*)

def.art.

Used before singular or plural nouns and noun phrases that denote particular, specified persons or things: the baby; the dress I wore. Used before a noun, and generally stressed, to emphasize one of a group or type as the most outstanding or prominent: considered Lake Shore Drive to be the neighborhood to live in these days. Used to indicate uniqueness: the Prince of Wales; the moon. Used before nouns that designate natural phenomena or points of the compass: the weather; a wind from the south. Used as the equivalent of a possessive adjective before names of some parts of the body: grab him by the neck; an infection of the hand. Used before a noun specifying a field of endeavor: the law; the film industry; the stage. Used before a proper name, as of a monument or ship: the Alamo; the Titanic. Used before the plural form of a numeral denoting a specific decade of a century or of a life span: rural life in the Thirties.

The word "the" implies there is only one – as in the USFG
Cambridge Dictionaries Online 7

used to refer to things or people when only one exists at any one time:

'The' means all parts.
Merriam-Websters 8 Online Collegiate Dictionary, http://www.m-w.com/cgi-bin/dictionary

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

'The' denotes uniqueness – distinguishes the federal government from other governments
Merriam-Websters 8 Online Collegiate Dictionary, http://www.m-w.com/cgi-bin/dictionary

used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class <the President> <the Lord>

Federal Government

Federal government is central government

WEBSTER'S 76 NEW INTERNATIONAL DICTIONARY UNABRIDGED**,** p. 833.

Federal government. Of or relating to the central government of a nation, having the character of a federation as distinguished from the governments of the constituent unites (as states or provinces).

Federal government is the national government that expresses power

Black's Law Dictionary, 8th Edition, June 1, 20**04**, pg.716.

Federal government. 1. A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national politics matters – Also termed (in federal states) central government. 2. the U.S. government – Also termed national government. [Cases: United States -1 C.J.S. *United States* - - 2-3]

Federal refers to the national government. It's distinct from state law.

Dictionary of Government and Politics '98 (Ed. P.H. Collin, p. 116)

federal ['federal] adjective (a) referring to a system of government in which a group of states are linked together in a federation; a federal constitution = constitution (such as that in Germany) which provides for a series of semi-autonomous states joined together in a national federation (b) referring especially to the federal government of the United States; federal court or federal laws = court or laws of the USA, as opposed to state courts or state laws.

USFG is the federal government of the USA, based in DC

Dictionary of Government and Politics '98 (Ed. P.H. Collin, p. 292)

United States of America (USA) [ju:'naitid 'steits av e'merike] noun independent country, a federation of states (originally thirteen, now fifty in North America; the United States Code = book containing all the permanent laws of the USA, arranged in sections according to subject and revised from time to time COMMENT: the federal government (based in Washington D.C.) is formed of a legislature (the Congress) with two chambers (the Senate and House of Representatives), an executive (the President) and a judiciary (the Supreme Court). Each of the fifty states making up the USA has its own legislature and executive (the Governor) as well as its own legal system and constitution

Should

Should refers to what should be NOT what should have been
OED, Oxford English Dictionary, **1989** (2ed. XIX), pg. 344

Should An utterance of the word *should*. Also, what 'should be'.

Should means an obligation or duty
AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—1. Used to express obligation or duty: *You should send her a note*.

Should expresses an expectation of something
AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—2. Used to express probability or expectation: *They should arrive at noon*.

Should expresses conditionality or contingency
AHD 92 – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—3. Used to express conditionality or contingency: *If she should fall, then so would I*.

"Should" expresses duty, obligation, or necessity
Webster's 61 – Webster's Third New International Dictionary 1961 p. 2104

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

Should – Mandatory

"Should" is mandatory

Nieto 9 – Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [**15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [**16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as **synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

"Should" means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is **not used in an advisory sense** but has the force or meaning of 'must', or 'ought to' and carries [***8] with it the sense of [*313] obligation and duty equivalent to **compulsion**. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

Should means must

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.D.Cal. 2005. "Should," as used in the Social Security Administration's ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means "must."—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

Should – Not Mandatory

Should isn't mandatory

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.A.6 (Tenn.) 2001. Word "should," in most contexts, is precatory, **not mandatory**. –U.S. v. Rogers, 14 Fed.Appx. 303. –Statut 227.

Strong admonition --- not mandatory

Taylor and Howard 5 (Michael, Resources for the Future and Julie, Partnership to Cut Hunger and Poverty in Africa, "Investing in Africa's future: U.S. Agricultural development assistance for Sub-Saharan Africa", 9-12, http://www.sarpn.org.za/documents/d0001784/5-US-agric_Sept2005_Chap2.pdf)

Other legislated DA earmarks in the FY2005 appropriations bill are smaller and more targeted: plant biotechnology research and development ($25 million), the American Schools and Hospitals Abroad program ($20 million), women's leadership capacity ($15 million), the International Fertilizer Development Center ($2.3 million), and clean water treatment ($2 million). Interestingly, in the wording of the bill, Congress uses the term *shall* in connection with only two of these eight earmarks; the others say that USAID *should* make the prescribed amount available. The **difference** between *shall* and *should* may have **legal significance**—one is clearly **mandatory** while the other is a **strong admonition**—but it makes little practical difference in USAID's need to comply with the congressional directive to the best of its ability.

Permissive

Words and Phrases 2 (Vol. 39, p. 370)

Cal.App. 5 Dist. 1976. Term "should," as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as **recommendation**, and is thus **not mandatory** but **permissive**. West's Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191.

Desirable or recommended

Words and Phrases 2 (Vol. 39, p. 372-373)

Or. 1952. Where safety regulation for sawmill industry providing that a two by two inch guard rail should be installed at extreme outer edge of walkways adjacent to sorting tables was immediately preceded by other regulations in which word "shall" instead of "should" was used, and word "should" did not appear to be result of inadvertent use in particular regulation, use of word "should" was intended to convey idea that particular precaution involved was desirable and recommended, but not mandatory. ORS 654.005 et seq.----Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556.---Labor & Emp. 2857

Should – Desirable

"Should" means desirable --- this does not have to be a mandate

AC 99 (Atlas Collaboration, "Use of Shall, Should, May Can," http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement _will_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

"Should" doesn't require certainty

Black's Law 79 (Black's Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word "would," it **does not ordinarily express certainty** as "will" sometimes does.

Should – Immediate

“Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16

[CONTINUES – TO FOOTNOTE]

13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Should – No Immediate

Should doesn't mean immediate

Dictionary.com – Copyright © **2010** – http://dictionary.reference.com/browse/should

should /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc (e) olde; see shall —Can be confused: could, should, would (see usage note at this entry). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. (You should get your flu shot before winter comes), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would) have called immediately. I should (American would) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or (Archaic) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or (Archaic) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

Substantially

1nc – subsets

Curtail means to limit

MacMillan Dictionary, 15 ('curtail', http://www.macmillandictionary.com/dictionary/american/curtail

curtail

VERB [TRANSITIVE] FORMAL

to reduce or limit something, especially something good

a government attempt to curtail debate

A substantial curtailment must occur across the board – the aff only curtails a single program

Anderson 5 – Brian Anderson, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, Wisconsin Council of Administrators of Special Services (WCASS) Committee Members. 2005 WCASS Research / Special Projects Committee* Report on: A Conceptual Framework for Developing a 504 School District Policy http://www.specialed.us/issues-504policy/504.htm#committee

The issue "Does it substantially limit the major life activity?" was clarified by the US Supreme Court decision on January 8th, 2002 , "Toyota v. Williams". In this labor related case, the Supreme Court noted that to meet the "substantially limit" definition, the disability must occur **across the board** in multiple environments, not only in one environment or one setting. The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student's life, not only in school.

Voting issue – this topic is massive and allows hundreds of minor reform affs – err neg to create a reasonable expectation of preparedness

Substantially – 2%

"Substantial" must be at least 2%
Words & Phrases 60

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making **1/48** of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App. 4.

Substantially – 10%

Less than 10% is insubstantial

Mickels 8 (Alissa, JD Candidate – Hastings College of Law, "Summary of Existing US Law Affecting Fourth Sector Organizations", 7-17, http://www.fourthsector.net/attachments/7/original/Summary_of_US_Law_Affecting_FS.pdf?1229493187)

Substantial v. insubstantial: Modern courts consider competition with commercial firms as "strong evidence of a substantial nonexempt purpose." Living Faith, Inc. v. Comm'r, 60 T.C.M. 710, 713 (1990). Although the tax court has held that the definition of insubstantial is **fact specific**, it has found that **less than ten percent** of a charity's total efforts is **"insubstantial"**, World Family Corp. v. Comm'r, 78 T.C. 921 (1982), where as unrelated business activity generating one-third of an organizations revenue does not qualify for tax-exempt status. Orange County Agric. Soc'y, Inc. v. Comm'r, 55 T.C.M. 1602, 1604 (1988), aff'd 893 F.2d 647 (2d Cir. 1990). However, this may be changing after an increasing emphasis on commensurate test.

Substantially – 33%

“Substantially” means 33 percent

Maples 7 (Larry, “Pitfalls in Preserving Net Operating Losses”, The CPA Journal, 3-1, Lexis)

If a new loss corporation has substantial nonbusiness assets, the value of the old loss corporation must be reduced by the amount of the nonbusiness assets less liabilities attributable to those assets. "Substantial" is defined as one-third of total assets. This is a difficult provision to interpret. IRC section 382(1)(4) provides that a value reduction in the old loss corporation is required if, just after an ownership change, the new loss corporation has substantial nonbusiness assets. This language seems odd because the purpose of IRC section 382 is to prevent loss trafficking, so it would seem that the asset test ought to apply to the old loss corporation.

Substantially – 40%

"Substantially" means 40% --- strict quantification avoids vagueness

Schwartz 4 (Arthur, Lawyer – Schwartz + Goldberg, 2002 U.S. Briefs 1609, Lexis)

In the opinion below, the Tenth Circuit suggested that a percentage figure would be **a way to avoid vagueness issues**. (Pet. App., at 13-14) Indeed, one of the Amici supporting the City in this case, the American Planning Association, produced a publication that actually makes a recommendation of a percentage figure that should be adopted by municipalities in establishing zoning [*37] regulations for adult businesses. n8 The APA's well researched report recommended that the terms "**substantial" and "significant" be quantified at 40 percent** for floor space or inventory of a business in the definition of adult business. n9 (Resp. Br. App., at 15-16)

Substantially – 50%

Less than 50% is insubstantial

Brown 94 (Mark R., Professor of Law – Stetson University College of Law, "The Demise of Constitutional Prospectivity: New Life for Owen?", Iowa Law Review, January, 79 Iowa L. Rev. 273, Lexis)

n241 I am assuming here that "foreseeable" means "probable," as in "more probable than not." This appears to be a safe assumption given the proliferance of cases granting immunity to officials who offend the Constitution. If this definition is correct, deterrence only works and liability should only attach if one's conduct, viewed ex ante, is more likely illegal than legal: the risk of illegality must be more than fifty percent. In other words, one cannot face deterrence, and liability will not attach, if the risk of illegality is less than fifty percent. (When viewed in this fashion, one might perceive a risk of illegality but still not be deterrable because the risk is **not substantial, i.e., not greater than fifty percent**.). Lawful conduct, of course, need not be probably lawful. That is what risk is about. Situations might arise where the objective risk is that conduct is unlawful, but ex post it is lawful. Lest judicial reasoning be completely askew, a fairly strong correlation exists, however, between action that is ex ante probably lawful and that which is lawful ex post in the courts. If this is not true, then courts are reaching objectively improbable conclusions, and the whole idea of reliance is illusory.

Legal experts agree

Davignon v. Clemmey 1 (Davignon v. Clemmey, 176 F. Supp. 2d 77, Lexis)

The court begins the lodestar calculation by looking at the contemporaneous billing records for each person who worked on the plaintiff's case. The absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance. **What is a "substantial reduction"? Fifty percent is a favorite among judges.**

Substantially – 90%

“Substantially” means at least 90%
Words & Phrases 5 (40B, p. 329)

N.H. 1949. -The word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, is 'an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but **cannot be less than 90 per cent** in the ordinary situation. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

Substantial curtailment is 25%

A substantial curtailment is 25%

Senate Hearing, 66 (Possible anticompetitive effects of sale of network TV advertising. Hearings, Eighty-ninth Congress, second session, pursuant to S. Res. 191, Hein Online)

(f) Substantial curtailment of the normal sales of Brown & Williamson tobacco products due to (1) prohibition of the manufacture or sale of tobacco products of Brown & Williamson due to governmental regulations or restrictions; (2) inability to obtain the necessary raw material for the manufacture of Brown ; Williamson tobacco products due to governmental regulations or restrictions. Substantial curtailment is defined for the purpose of this subparagraph (f) as a condition where the total sales volume of Brown & Williamson for any twelve (12) month period has fallen by more than twenty-five percent (25%) from the preceding twelve (12) months' volume.

Substantially – Considerable

"Substantial" means of real worth or considerable value --- this is the USUAL and CUSTOMARY meaning of the term

Words and Phrases 2 (Volume 40A, p. 458)

D.S.C. 1966. The word "substantial" within Civil Rights Act providing that a place is a public accommodation if a "substantial" portion of food which is served has moved in commerce must be construed in light of its **usual and customary meaning**, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

"Substantial" means considerable or to a large degree --- this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, "Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources", Harvard Civil Rights-Civil Liberties Law Review, Winter,
37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. 99 It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, 100 and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). 101

Substantial means "of considerable amount" – not some contrived percentage

Prost 4 (Judge – United States Court of Appeals for the Federal Circuit, "Committee For Fairly Traded Venezuelan Cement v. United States", 6-18,
http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C). In fact, they merely suggest, without disqualifying other alternatives, a "clearly higher/substantial proportion" approach. Indeed, the SAA specifically mentions that no "precise mathematical formula" or "'benchmark' proportion" is to be used for a dumping concentration analysis. SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30. Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a "case-by-case basis." SAA at 860. Finally, the definition of the word "substantial" undercuts the CFTVC's argument. The word "substantial" generally means "considerable in amount, value or worth." Webster's Third New International Dictionary 2280 (1993). **It does not imply a specific number or cut-off**. What may be substantial in one situation may not be in another situation. The very breadth of the term "substantial" undercuts the CFTVC's argument that Congress spoke clearly in establishing a standard for the Commission's regional antidumping and countervailing duty analyses. It therefore supports the conclusion that the Commission is owed deference in its interpretation of "substantial proportion." The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

Substantially – Real

Substantially means real, not imaginary

Wollman '93 (Circuit Judge, US Court of Appeals – 8th Circuit, Kansas City Power & Light Company, a Missouri corporation, Appellee, v. Ford Motor Credit Company, a Delaware corporation; McDonnell Douglas Finance Corporation, a Delaware corporation; HEI Investment Corp., a Hawaii corporation, Appellants, 995 F.2d 1422; 1993 U.S. App. LEXIS 13755, L/N)

Instruction No. 10 was not given in isolation, however. The district court's instructions also contained a definition of "substantial." Instruction No. 11 defined "substantial" as meaning "true, real or likely to materialize" and as not meaning "imaginary or unlikely to materialize." This instruction properly limited the potential bases for the jury's decision, which is the essential function of jury instructions. When combined with the contract and the verdict-directing instructions, [*1432] which tracked the operative language of the contract, Instruction No. 11 required the jury to find that KCPL had determined a real risk, not some imaginary hypothetical risk premised solely on a reduction in the DRD. Because the contract provided only one means of creating a risk of making an indemnity payment--a demand notice from an Investor--the jury's discretion was properly channelled into deciding whether KCPL had sufficiently studied and honestly considered the likelihood of receiving such a demand notice. That determination is all that the contract required.

"Substantial" means actually existing, real, or belonging to substance

Words and Phrases 2 (Volume 40A) p. 460

Ala. 1909. "Substantial" means "belonging to substance; actually existing; real; *** not seeming or imaginary; not elusive; real; solid; true; veritable

"Substantial" means having substance or considerable

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 644)

having substance; considerable

Substantially – In the Main

"Substantial" means in the main
Words and Phrases 2 (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 "Substantial" means in substance, in the main, essential, including material or essential parts

Substantially – Without Material Qualification

Substantially is without material qualification

Black's Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

Substantially – Durable

"Substantial" means durable

Ballantine's 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful ("a substantial supply"); actual, concrete, existent, physical, righteous, sensible, tangible ("substantial problem"); affluent, comfortable, easy, opulent, prosperous, solvent.

Substantially – Not Covert

"Substantially" means not covert

Words & Phrases 64 (40 W&P 759)

The words "outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean **not concealed**; **not hidden**; **exposed to view**; **free from concealment**, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

AT: Arbitrary

‘Substantially’ isn’t precise --- but still must be given meaning. The most objective way to define it contextually.

Devinsky 2 (Paul, “Is Claim "Substantially" Definite? Ask Person of Skill in the Art”, IP Update, 5(11), November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm)

In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," **erroneously concluded** the term "substantially" made a claim fatally indefinite. Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine. The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips. The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite. The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence: "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention." Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention." The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

“Substantially” needs to be given a quantitative meaning --- any other interpretation is more arbitrary

Webster’s 3 (Merriam Webster’s Dictionary, www.m-w.com)

Main Entry: sub.stan.tial

b : considerable in quantity : significantly great <earned a substantial wage>

Make the best determination available. Substantially must be given meaning

Words and Phrases 60 (Vol. 40, State – Subway, p. 762)

“Substantial” is a relative word, which, while it must be used with **care and discrimination**, **must nevertheless be given effect**, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

Using context removes the arbitrariness of assigning a fixed percentage to "substantial"

Viscasillas 4 – professor at the Universidad Carlos III de Madrid, (Pilar, "Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG)", CISG Advisory Council Opinion No. 4, 10-24, http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146)

2.8. Legal writers who follow the economic value criterion have generally quantified the term "substantial part" by comparing Article 3(1) CISG (substantial) with Article 3(2) CISG (preponderant): substantial being less than preponderant. In this way, legal writers have used the following percentages to quantify substantial: 15%,[14] between 40% and 50%,[15] or more generally 50%.[16] At the same time, other authors, although they have not fixed any numbers in regard to the quantification of the term "substantial" have declared that "preponderant" means "considerably more than 50% of the price" or "clearly in excess of 50%".[17] Thus it seems that for the latter authors, the quantification of the term "substantial" is placed above the 50% figure. Also, some Courts have followed this approach.[18]

2.9. To consider a fixed percentage might be arbitrary due to the fact that the particularities of each case ought to be taken into account; that the scholars are in disagreement; and that the origin of those figures is not clear.[19]

Therefore, it does not seem to be advisable to quantify the word "substantial" *a priori* in percentages. **A case-by-case analysis is preferable** and thus it should be determined on the basis of an overall assessment.

Contextual definitions of "substantial" solve arbitrariness

Tarlow 2k – Nationally prominent criminal defense lawyer practicing in Los Angeles, CA. He is a frequent author and lecturer on criminal law. He was formerly a prosecutor in the United States Attorney's Office and is a member of The Champion Advisory Board (Barry, The Champion January/February, lexis)

In *Victor,* the trial court instructed that: "A reasonable doubt is an actual and substantial doubt . . . as distinguished from a doubt arising from mere [*64] possibility, from bare imagination, or from fanciful conjecture." Victor argued on appeal after receiving the death penalty that equating a reasonable doubt with a "substantial doubt" overstated the degree of doubt necessary for acquittal. Although the court agreed that the instruction was problematic given that "substantial," could be defined as "that specified to a large degree," it also ruled that any ambiguity was removed by reading the phrase in the context of the sentence in which it appeared. Finding such an explicit distinction between a substantial doubt and a fanciful conjecture was not present in the *Cage* instruction, it held that the context makes clear that "substantial" was used in the sense of existence rather than in magnitude of the doubt and, therefore, it was not unconstitutional as applied. *Id. at 1250*.

Even if substantial isn't precise --- you should still exclude their Aff for being tiny. Even judges can make a gut check.

Hartmann 7 – Judge, Hong Kong (IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE, 8/20, http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=58463&currpage=T

The word ‘substantial’ is not a technical term nor is it a word that lends itself to a precise measurement. In an earlier judgment on this issue, that of S. v. S. [2006] 3 HKLRD 251, I said that it is not a word —

“… that lends itself to precise definition or from which precise deductions can be drawn. To say, for example, that ‘there has been a substantial increase in expenditure’ does not of itself allow for a calculation in numerative terms of the exact increase. It is a statement to the effect that it is certainly more than a little but less than great. It defines, however, a significant increase, one that is weighty or sizeable.”

Context – Obama reforms 'substantial'

Contextually Obama's surveillance reforms are 'substantial' despite maintaining robust intelligence

Edgar, 4/13/15 - visiting fellow at the Institute and adjunct professor of law at the Georgetown University Law Center (Timothy, "The Good News About Spying"

https://www.foreignaffairs.com/articles/united-states/2015-04-13/good-news-about-spying

In 2013, Obama called for a national dialogue on surveillance and privacy. Since then, he has made genuine attempts at reform. The job is far from over, but Washington has already come farther than many believe. Today, the United States confronts a variety of threats—ranging from the Islamic State, to Iran's nuclear program, to cyber intrusions from China, North Korea, and Russia. Each of these threats requires robust intelligence capabilities. Obama has maintained these capabilities, but at the same time, has ordered surveillance reforms that are substantial indeed. Privacy and civil liberties advocates have a friend in the White House, even if they do not realize it. Obama has led, and it is time for others to follow.

Obama's reforms are transparency, extending privacy protections to foreign persons, and creating protections against the use of bulk data

Edgar, 4/13/15 - visiting fellow at the Institute and adjunct professor of law at the Georgetown University Law Center (Timothy, "The Good News About Spying"

https://www.foreignaffairs.com/articles/united-states/2015-04-13/good-news-about-spying

In 2013, at Obama's direction, the Office of the Director of National Intelligence (ODNI) established a website for the intelligence community, IC on the Record, where previously secret documents are posted for all to see. These are not decades-old files about Cold War spying, but recent slides used at recent NSA training sessions, accounts of illegal wiretapping after the 9/11 attacks, and what had been highly classified opinions issued by the Foreign Intelligence Surveillance Court about ongoing surveillance programs.

Although many assume that all public knowledge of NSA spying programs came from Snowden's leaks, many of the revelations in fact came from IC on the Record, including mistakes that led to the unconstitutional collection of U.S. citizens' emails. Documents released though this portal total more than 4,500 pages—surpassing even the 3,710 pages collected and leaked by Snowden. The Obama administration has instituted other mechanisms, such as an annual surveillance transparency report, that will continue to provide fodder for journalists, privacy activists, and researchers.

The transparency reforms may seem trivial to some. From the perspective of an intelligence community steeped in the need to protect sources and methods, however, they are deeply unsettling. At a Brown University forum, ODNI Civil Liberties Protection Officer Alexander Joel

said, “The intelligence community is not designed and built for transparency. Our culture is around finding our adversaries’ secrets and keeping our own secrets secret.” Accordingly, until only a few years ago, the intelligence community resisted making even the most basic information public. The number of FISA court opinions released to the public between 1978 and 2013 can be counted on one hand.

Beyond more transparency, Obama has also changed the rules for surveillance of foreigners. Until last year, privacy rules applied only to “U.S. persons.” But in January 2014, Obama issued Presidential Policy Directive 28 (PPD-28), ordering intelligence agencies to write detailed rules assuring that privacy protections would apply regardless of nationality. These rules, which came out in January 2015, mark the first set of guidelines for intelligence agencies ordered by a U.S. president—or any world leader—that explicitly protect foreign citizens’ personal information in the course of intelligence operations. Under the directive, the NSA can keep personal information in its databases for no more than five years. It must delete personal information from the intelligence reports it provides its customers unless that person’s identity is necessary to understand foreign intelligence—a basic rule once reserved only for Americans.

The new rules also include restrictions on bulk collection of signals intelligence worldwide—the practice critics call “mass surveillance.” The NSA’s bulk collection programs may no longer be used for uncovering all types of diplomatic secrets, but will now be limited to six specific categories of serious national security threats. Finally, agencies are no longer allowed simply to “collect it all.” Under PPD-28, the NSA and other agencies may collect signals intelligence only after weighing the benefits against the risks to privacy or civil liberties, and they must now consider the privacy of everyone, not just U.S. citizens. This is the first time any U.S. government official will be able to cite a written presidential directive to object to an intelligence program on the basis that the intelligence it produces is not worth the costs to privacy of innocent foreign citizens.

Context – ending bulk data collection

Ending bulk data collection is a 'substantial curtailment' of surveillance

Timmons, 6/1/15 – staff for Quartz (Heather, "The US government can no longer spy on every US citizen at once" Quartz, http://qz.com/416262/the-us-government-can-no-longer-spy-on-every-us-citizen-at-once/

The US government's ability to collect information on American citizens was **substantially curtailed** on midnight Sunday, after an extension of the Patriot Act expired before the US Congress passed a replacement bill aimed at reforming it.

What's expiring: The Patriot Act extension, signed into law in 2011. This includes the controversial Section 215, which, as the ACLU explains it, "allows the [Federal Bureau of Investigation] to force anyone at all—including doctors, libraries, bookstores, universities, and Internet service providers—to turn over records on their clients or customers." Because of this expiration, the National Security Agency and others can also no longer collect this information, including US citizens' phone calls, in bulk. In addition, agencies abilities to conduct roving wiretaps, and spy on so-called "lone wolf" terrorists not connected to any organization are curbed.

Who is responsible. Republican presidential candidate Rand Paul, a longtime privacy advocate, dug in his heels and said he would refuse to allow a replacement bill to be adopted in time to replace the now-expired parts of the Act. In a special Sunday session of the Senate, he appeared to harass his fellow Republicans while they were speaking.

National security hawks and Senate leader Mitch McConnell "badly underestimated the shift in the national mood," which the Democrats and Libertarians understand, The New York Times reported.

What happens next. The replacement bill, named, without apparent irony, the "USA Freedom Act," is still expected to pass as early as this week. While it still gives widespread information gathering powers to US security agencies, it will prohibit them from collecting American citizens' phone records and other information in bulk, limiting such collecting to specific searches.

Curtail

Curtail violations

1nc – curtail means decrease size

Curtail means to reduce the extent or quantity of

Oxford Dictionaries, 15 ("curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail)

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

That precludes qualitative modifications – the plan violates by maintaining the existing scope of surveillance

State v. Knutsen, 3 - 71 P. 3d 1065 - Idaho: Court of Appeals, http://caselaw.findlaw.com/id-court-of-appeals/1320950.html

By its plain language, Rule 35 grants a district court the authority within a limited period of time to reduce or modify a defendant's sentence after relinquishing jurisdiction. To "reduce" means to diminish in size, amount, extent or number, or to make smaller, lessen or shrink. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1905 (1993). To "modify" means to make more temperate and less extreme, or to lessen the severity of something. Id. at 1452. Thus, under the plain meaning of its language, Rule 35 authorizes a district court to diminish, lessen the severity of, or make more temperate a defendant's sentence. An order placing a defendant on probation lessens the severity of a defendant's sentence and thus falls within the district court's authority granted by Rule 35. Other state jurisdictions have held likewise in interpreting similar rules for reduction of sentence. See State v. Knapp, 739 P.2d 1229, 1231-32 (Wy.1987) (similar rule of criminal procedure authorizes reduction of a sentence of incarceration to probation); People v. Santana, 961 P.2d 498, 499 (Co.Ct.App.1997) (grant of probation is a "reduction" under Colorado Cr. R. 35(b)).

Voting issue –

1. **Limits – every existing program can be modified any number of ways, they create hundreds of new cases**

2. **Negative ground – all predictable disad links stem from cutting the size of federal surveillance – qualitative reforms don't link**

1nc – net curtailment

Curtail means to reduce the extent or quantity of

Oxford Dictionaries, 15 ("curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail)

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

It must be a net reduction measured against the status quo baseline – the plan violates by merely preventing a future increase

Howell, 14 - US District Court Judge (Beryl, HUMANE SOCIETY OF THE UNITED STATES, et al., Plaintiffs, v. SALLY JEWELL, Secretary of the Interior, et al.,1 Defendants, v. STATE OF WISCONSIN, et al. Intervenor-Defendants. 1 Pursuant to Federal Rule of Civil Procedure 25(d), Sally Jewell, Secretary of the Interior, is automatically substituted for her predecessor in office. Civil Action No. 13-186 (BAH) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA 2014 U.S. Dist. LEXIS 175846 December 19, 2014, Decided December 19, 2014, Filed

Moreover, by defining "significant portion of a species' range" in the final rule as referring only to a species' "current range," the FWS explicitly contradicts the conclusions by courts finding that "range" must include the "historical range" and the ESA's legislative history. LEG. HIST. at 742 (H. Rep. 95-1625, from Committee on Merchant Marine and Fisheries, regarding ESAA) ("The term 'range' [in the ESA] is used in the general sense, and refers to the historical range of the species."); Defenders of Wildlife, 258 F.3d at 1145. It also **renders meaningless the word "curtailment"** in 16 U.S.C. § 1533(a)(1)(A), since it is **impossible** [*162] to determine the "present . . . curtailment of [a species'] habitat or range" without knowing what the species' historical range was prior to being curtailed.

Voting issue to protect negative ground – we can't get predictable disad links or counterplans against affirmatives that merely codify status quo actions

--xt – requires a baseline

Curtail requires a measurable baseline

Federal Register, 80 (45 Fed. Reg. 45107 1980, Hein Online)

A number of commenters offered various definitions for the terms “curtailments” and "requirements." "Curtailment" was generally agreed to be the inability to deliver the volumes of gas demanded or necessary to meet contract requirements. Commenters explained that the term "curtailment" has long been used by the gas industry to cover any situation in which an operating gas company by reason of emergencies, shortages of supply or other factors, cannot make the deliveries of gas to which its customers are entitled under governing instruments such as curtailment plans, tariffs and service agreements. Furthermore, the operational definition of "curtailment" may-vary somewhat from pipeline .to pipeline with regard to the index from which curtailment is to be measured. All of the commenters agreed that "curtailment" should not be merely a reduction in deliveries from contractual - requirements, but rather should continue to be **measured relative to actual base period** end-use data for some period of time prior to a shortage and adjusted for specific factors such as weather. Some commentdrs suggested that ERA not adopt a standardized definition of '"curtailment."

1nc – budget authority

Curtail means reducing the budget authority for a program – the aff is only a regulatory change

Dembling, 78 – General Counsel, General Accounting Office; (Paul, "OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974" HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online)

Application of curtailment procedure.-The review procedure is triggered by an executive branch decision to 'curtail" a program which has been made subject to the bill. The definition of "curtail" (subsection (a)(3)) requires that the executive branch decision result in a **reduction of budget authority** applied in furtherance of the program. As noted above, the level of budget authority for this purpose would be the amount so specified in an appropriation act. The reduction relates to the use of funds "in furtherance of the program." Thus, although the full amount of budget authority may be spent in some manner, e.g., to pay contract termination costs or other liabilities incident to the curtailment, such a use of funds still involves a reduction in funding for affirmative program purposes which triggers the review provisions.

Curtailment review procedure.-The review procedure would generally be similar to the procedure for reviewing deferrals of budget authority under the Impoundment Control Act, except that congressional disapproval would take the form of a concurrent resolution. The President would report a proposed curtailment decision to Congress, together with appropriate information (subsection (b)), and supplementary reports would be made for any revisions (subsection (c)(3)). The proposal, and any supplementary reports, would be printed in the Federal Register (subsection (c)(4)).

Voting issue to protect limits and negative ground. Allowing regulatory changes explodes the topic by creating many small affs that don't link to very much – only a hard budgetary limit forces affirmatives to take large enough actions to ensure adequate disad links and counterplan competition

--xt budget authority

Curtail means discontinuing a program and reducing budget authority for it

Dembling, 78 – General Counsel, General Accounting Office; (Paul, "OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974" HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online)

(3) "Curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

1nc – third party curtailment

Curtail means cutting away the authority

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL

transitive verb

: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

That requires a third party restriction – executive self-restraint isn't topical 8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being **taken from** the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind **curtailment** resulting from substitution of **some third party** as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

Voting issue for limits and negative ground. This is the largest topic in memory and allowing executive self-restraint explodes the number of solvency advocates and takes away core negative CP ground

--xt – third party curtailment

Curtail is a rule limiting action

Gibbons 99 – PhD in Statistics

(Jean, "Selecting and Ordering Populations: A New Statistical Methodology," p 178)

In general, **curtailment** is defined with respect to any **rule** as terminating the drawing of observations at a number smaller than n as soon as the final decision is determined; here n is the maximum number of observations that one is allowed to take. Thus curtailment is an "early stopping rule" and it yields a saving in the number of observations taken. Therefore we now discuss curtailment with respect to our sampling rule of looking for the cell with the highest frequency in n observations; we wish lo evaluate the amount of saving that may result for various values of k and n.

1nc - Curtail not abolish

Curtail means a partial restriction – the aff is a cancelation of a program, not curtailment

San Fellipo, 92 (John, "OREGON'S TELEPHONE INFORMATION DELIVERY SERVICE LAW: A CONSUMER PROTECTION STEP TOO FAR" 28 Willamette L. Rev. 455 1991-1992, Hein Online)

131. The author understands "limit" as used in OR. ADMIN. R. 860-21-505(8) (1991) to mean cancel, as opposed to the word "curtail" used in section (7), meaning only a partial restriction.

Voting issue to create reasonable limits and protect negative ground. They increase the number and quality of affirmative solvency advocates on a topic that is already the broadest in memory.

--xt curtail is not abolish

Curtail means reduce – not abolish

Black's Law Dictionary, 90 (Sixth Edition,
http://archive.org/stream/BlacksLaw6th/Blacks%20Law%206th_djvu.txt

Curtail. To cut off the end or any part of; hence to shorten, abridge, diminish, lessen, or reduce; and term has no such meaning as abolish. State v. Edwards, 207 La. 506, 21 So.2d 624, 625.

Curtail cannot abolish
Supreme Court of Connecticut 85

(IN RE JUVENILE APPEAL (85-AB), Lexis)

1. In an attempt to suggest that the statutory right to a private hearing under General Statutes § 46b-122 is not really nullified by their opinion, the majority points to General Statutes § 46b-124. While recognizing, as they must, that their position does result in publicity, they nevertheless argue that § 46b-124 by prohibiting disclosure of records and proceedings in juvenile matters does "curtail the additional publicity that a public trial would generate." Two points should be made to counter this "justification." First, as one court said: "[I]n common parlance, or in law composition, the word `curtail' has no such meaning as `abolish.'" State v. Edwards, 207 La. 506, 511, 21 So.2d 624 (1945). Rather, it means "`to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce.'" Id. Second, the statutory right to a private hearing in § 46b-122 does not talk at all in terms of relativity, of something is to be diminished, lessened or reduced. It confers a right that is not to be diluted, let alone nullified.

Curtail means reduce, not end – prefer definitions in the context of restricting executive power

Tatro et al, 15 – Director and Asst. General Counsel for Union Electric Company (Wendy, REPLY BRIEF OF AMEREN MISSOURI, 4/10,
https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935923768

Noranda does describe some options if it should encounter problems. In its brief, Noranda quotes from its SEC filings on this issue.345 Notably, these filings never say "close," let alone "will close." They do, however, use the term "curtailment."346 Webster's defines "curtail" as "to make less by or as if by cutting off or away some part," as in "curtail the power of the executive branch."347 Thus, Noranda discusses reducing its operations, but **not closure**. In these same filings, Noranda also uses the terms "restructuring," "bankruptcy," and "divest."348 Thus, while Noranda argues to this Commission that closure "will" occur, the fine print in Noranda's SEC filings list every option but closure. Outside of illogical and factually unsupported threats, Noranda presents nothing that suggests the smelter's mandatory closure.

Curtail is a reduction – distinct from termination
2nd Circuit Court of Appeals 49

(Commission of Dep't of Public Utilities v. New York, N. H. & H. R. Co., 178 F.2d 559, Lexis)

When these provisions are read in the light of the background stated and particularly the rejection of express provisions for the power now claimed by the New Haven, it is obviously difficult to accept the New Haven's present view that a complete abandonment of passenger service was not intended. Even the words used point to the decisive and- under the circumstances- clean-cut step. The word 'discontinue' is defined by Webster's New International Dictionary, 2d Ed. 1939, as meaning ' * * * to put an end to; to cause to cease; to cease using; to give up'- meanings quite other than the connotations implicit in the word 'curtail,' which it defines ' * * * to shorten; abridge; diminish; lessen; reduce.' It goes on to give the meaning of 'discontinue' at law as being 'to abandon or terminate by a discontinuance'- an even more direct interpretation of the critical term. An interesting bit of support from the court itself for this view is found in Art. XI, §. 2(m), of the final Consummation Order and Decree, which reserved jurisdiction in the District Court: 'To consider and act on any question respecting the 'Critical Figures' established by the Plan with respect to the termination by the Reorganized Company of passenger service on the Old Colony Lines.' A 'termination' is quite different from a 'reduction.'∂ In this light the provision substituting a contractual for a franchise obligation for the maintenance of Old Colony passenger service assumes understandable significance. A plan approved by the I.C.C. might properly provide for abandonment of service upon the happening of a stated event; the crucial factors of public interest have been weighed and evaluated just as they would be on a proposal for immediate abandonment, and only the final event, conclusively detrimental to the continuance of the road, is needed for operation of the announced step. Surely, however, no such consideration can properly apply to the substitution of a contractual undertaking so broad and general in its terms as to permit a railroad to cease, taper off, continue, or expand its operations at will. Should such a provision appear in even a fully consummated plan, I should think it still sufficiently unusual and vulnerable that its validity could not be considered conclusively determined. In this connection reference should be made to the New Haven's claim of 'option' even when the critical figures of loss are reached. A choice between continuing or abandoning the service is a much more limited one than the wide authority to operate substantially at will here asserted. But there is, indeed, little to indicate that even this choice was contemplated in the plan. About the only thing looking in this direction is the provision as to the option, inserted as an afterthought on the state's insistence, giving Massachusetts the right to buy the Braintree line at salvage value in the event the passenger losses exceed the critical figure and as a result the road 'shall elect' to discontinue the service. Definite interpretation of this might well await the clearer light of fuller discussion; meanwhile I apprehend that it does not contemplate anything as extensive as a purely discretionary power in the officers of the road to continue incurring these losses as they choose. The lines of the device to [569] be rid of the Old Colony had been firmly fixed before this appeared; at most it should permit the road to operate after the happening of the stated event only with the consent of the vitally interested parties and the representative of the public so long as losses stayed near the critical figure. Anything beyond this would again tend to nullify the plan. It was certainly never contemplated that the passenger service would be continued when the losses

incurred were four and a half times as great as those specified as critical.∂ In reaching their differing conclusion, my brethren rely upon the circumstance that on a few occasions during this long reorganization the Commission or our court has spoken of a 'curtailment of service' or of discontinuing passenger service 'in whole or in part.' Neither by themselves nor in their contexts do these offhand characterizations or references appear to me to support the inference sought to be drawn from them. Indeed several are only statements of contentions or arguments presented and without further significance. True, the word 'curtailment' has occasionally been used; but it must be recalled that in the total picture of Old Colony service, complete abandonment of passenger trains is only a 'curtailment,' since freight trains are still to run. Thus it is that discontinuing passenger travel must be authorized by the I.C.C. under the bankruptcy power, rather than under its normal power over abandonment, since it constitutes only a partial abandonment. Moreover, no stress can properly be put on the Commission's statement early in the proceedings that the public was 'alive to the danger that service may be discontinued, in whole or in part.' 244 I.C.C. 239, 264. For this was soon after the time that the New Haven had been seeking a curtailment of Old Colony passenger service, rather than a discontinuance, in the form of its abortive attempt to close 88 passenger stations. The Commonwealth, various towns, and commuters groups had just finished fighting to prevent any curtailment of service, and were as aware of that as a danger as they were of discontinuance as a danger. See Rood, Protecting the User Interest in Railroad Reorganization, 7 Law & Contemp.Prob. 495, 1940. It is a fact that as early as 1939 the New Haven trustees had tried to discontinue passenger service on the Boston Group of Old Colony lines, and the efforts of the reorganization judge were required to induce them to hold off on this move while a satisfactory compromise was sought. Id. at 502.

Not abolishment
Supreme Court of Louisiana 45

(State v. Edwards, 207 La. 506, Lexis)

Police Jury of Concordia Parish, La., Ordinance No. 202 (April 14, 1943) provided that three open seasons for the hunting of squirrels were curtailed, but the ordinance did not specify how much the state open hunting seasons were to be curtailed. La. Gen. Stat. § 2947 (1926) provided that the annual open season for hunting squirrels was from October 1st to January 15, and defendant was convicted of killing squirrels on October 1, 1944. The ordinance was purportedly enacted to exercise the discretion given to parish authorities to curtail the hunting season by La. Gen. Stat. § 2939 (1926), but defendant claimed that the ordinance was invalid because it was meaningless. The court annulled defendant's conviction, finding that the ordinance was meaningless because the time frame in which hunting was to be curtailed was not specified. The state's argument that the parish abolished all hunting for the three seasons was rejected because the Ordinance's use of the term "curtailed" indicated that there was a **reduction of the hunting season and not its abolishment**. Also the court had jurisdiction to review the conviction because its jurisdiction extended to ordinances that imposed penalties.∂ Outcome∂ The court annulled the conviction and sentence that had been imposed on defendant, and it ordered that the prosecution of defendant be dismissed.∂ Hide sectionLexisNexis® Headnotes∂ Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources∂ Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review∂ Constitutional Law > ... > Jurisdiction > Subject Matter Jurisdiction > Amount in Controversy∂ Criminal Law & Procedure > Appeals > General

Overview∂ HN1 The Supreme Court of Louisiana has jurisdiction of the question of constitutionality or legality of an ordinance under La. Const. art. VII, § 10, which states that it shall have appellate jurisdiction in all cases where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof. Shepardize - Narrow by this Headnote∂ Environmental Law > Natural Resources & Public Lands > Topic Summary ReportFish & Wildlife Protection∂ HN2 La. Gen. Stat. § 2947 (1926) provides that the annual open season for hunting squirrels is from October 1st to January 15th; and, according to La. Gen. Stat. § 2925 (1926), the term "open season" includes the first and the last of the two days mentioned. Shepardize - Narrow by this Headnote∂ Counsel: A. B. Parker, of Jena, and C. T. Munholland and Theus, Grisham, Davis & Leigh, all of Monroe (W. T. McCain and J. W. Ethridge, both of Colfax, of counsel), for defendant-appellant.∂ Fred S. LeBlanc, Atty. Gen., M. E. Culligan, Asst. Atty. Gen., and Jesse C. McGee, Dist. Atty., of Harrisonburg (Jos. M. Reeves, of Vidalia, of counsel), for plaintiff-appellee. ∂ Judges: O'Niell, Chief Justice. ∂ Opinion by: O'NIELL ∂ Opinion∂ [507] The appellant was convicted of killing squirrels out of season, in violation of a parish ordinance, and was sentenced to pay a fine of $ 25 and the costs of court or be imprisoned in the parish jail for 30 days.∂ In a motion to quash the bill of information, and again in a motion for a new trial and a motion in arrest of judgment, the defendant pleaded that the parish ordinance [508] was unconstitutional, for several reasons which we find it unnecessary to consider. He pleaded also that in any event the ordinance was illegal because it was so worded as to have no meaning or effect. The motions were overruled.∂ HN1 This court has jurisdiction of the question of constitutionality or legality of the ordinance, under the provision in Section 10 of Article VII of the Constitution that the Supreme Court shall have appellate jurisdiction in all cases "where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof."∂ The charge in the bill of information, stated specifically, is that on the 1st day of October, 1944, the defendant "did unlawfully hunt and take six squirrels during the closed season, contrary to the provisions of Ordinance 202 of the Police Jury of Concordia Parish". Under the state law the 1st day of October was within the open season for hunting squirrels. HN2 In Section 1 of Article III of Act 273 of 1926, being Section 2947 of Dart's General Statutes, the annual open season for hunting squirrels is from October 1st to January 15th; and, according to Section 1 of Article I of the act, being Section 2925 of Dart's General Statutes, the term "open season" includes the first and the last of the two days mentioned. Hence the defendant is not accused of violating the state law.∂ The ordinance purports to "curtail" the open season for hunting squirrels, or deer [509] or bear, as fixed by the state law, but does not give the extent of the curtailment, or indicate whether it shall be cut off from the beginning or from the end of the open season, from October 1st to January 15th. The first section of the ordinance, adopted on April 14, 1943, reads as follows: "Section 1. Be it ordained by the Police Jury of the Parish of Concordia, State of Louisiana, in lawful session convened, that the open seasons for the hunting and taking of wild deer, bear and squirrels within the boundaries of the Parish of Concordia, State of Louisiana, are hereby curtailed for the open seasons of 1943-1944, the open seasons of 1944-1945, and the open seasons of 1945-1946, it being apparent that a curtailment of the open seasons so that such game life may restock themselves by natural breeding is necessary, and written consent having been given by the Conservation Commissioner of the State of Louisiana to the Police Jury of the Parish of Concordia, to adopt this ordinance."∂ The second section of the ordinance imposes the penalty, -- a fine not less than $ 25 or more than $ 100, or imprisonment for a period not exceeding 60 days, or both the fine and imprisonment; the third section repeals all ordinances in conflict with

Ordinance No. 202; and the fourth or last section provides that Ordinance No. 202 shall become effective after promulgation in the official journal of the parish, once a week for four consecutive weeks. Such promulgation is required by the third paragraph of Section 15 of Article I of Act 273 of 1926, Section 2939 of Dart's General [510] Statutes. Ordinance No. 202 was adopted under authority of that section of the statute, which section reads as follows:∂"Section 15. The Police Jury of any parish may apply to the Conservation Commissioner for the right to adopt an ordinance to curtail the open season in such parish, or any part thereof, when it becomes apparent that the game bird and game quadruped life are in need of a curtailment of the open seasons so that such game life may restock themselves by natural breeding.∂"Upon receipt of such application and if conditions indicate the need of adding protection for any game bird or game quadruped or all of them, the Commissioner may give written consent to the police jury of the parish to adopt, in their discretion, an ordinance to curtail the open season, but for not more than three consecutive years, which curtailment shall apply to everyone, including the residents of such parish.∂"Such curtailment shall become effective only after notice of the adoption of such ordinance shall have been promulgated by the police jury, in the official parish journal, once a week for four consecutive weeks prior to the regular annual open seasons for hunting. Annual special parish close seasons on the game birds and game quadrupeds shall commence on the legal date of the open seasons in each year."∂The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the period of three years. The ordinance **does not read that way, or convey any such meaning.** According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "**curtail" has no such meaning as "abolish**". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

It cannot ‘make surveillance impossible’

Baker 7 - author of Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System

(“Proceedings of the Standing Senate Committee on Foreign Affairs and International Trade,” http://www.parl.gc.ca/Content/SEN/Committee/391/fore/15evb-e.htm?comm_id=8&Language=E&Parl=39&Ses=1)

Mr. Baker: I agree with the point that you were making about the World Bank. Many people in the World Bank are extremely dedicated to curtailing poverty in developing countries. Some others are looking for the next opportunity in the private sector and may be less aggressive in

fighting corruption and money laundering; perhaps less aggressive in taking on the kinds of problems we are talking about here.

You are correct when you talk about oil revenues going out into foreign banks. They do not go to other African banks, but come frequently through the structure I talked about, the illicit financial structure, but ultimately into Western economies.

Part of what fascinates me is that it is almost entirely a permanent outward transfer; very little turns around and goes back in at a later date to developing countries. The little bit that turns around and goes back almost always goes back as foreign direct investment, FDI; that is to say it has gone abroad, has acquired a foreign nationality as a company, investment fund or trust account, and it comes as FDI with the intention of going abroad again as dividends, interest on principal payments on loans or as transfer pricing disguised in inter-company transactions.

You used the words "make it impossible"; I use the word "curtail." I am interested in curtailing the outflow of illicit money, **not trying to stop it entirely**. Curtailing it is a matter of political will; stopping it is draconian. I am not certain I favour that.

General curtail definitions

Reduce

Curtail means to reduce

American Heritage, 15 (‘curtail’, https://www.ahdictionary.com/word/search.html?q=curtail

cur·tail (kər-tāl ˙)

tr.v. cur·tailed, cur·tail·ing, cur·tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

Means to reduce or limit

MacMillan Dictionary, 15 (‘curtail’, http://www.macmillandictionary.com/dictionary/american/curtail

curtail

VERB [TRANSITIVE] FORMAL

to reduce or limit something, especially something good

a government attempt to curtail debate

Impose a restriction

Curtail means impose a restriction

Oxford Dictionaries, 15 ("curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail)

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

Curtail means place restrictions on

Vocabulary.com, 15 ('curtail' http://www.vocabulary.com/dictionary/curtail

DEFINITIONS OF:

curtail

v place restrictions on

"curtail drinking in school"

Synonyms:

curb, cut back, restrict

Curtail means cutting away authority

Curtail means cutting away some authority

Merriam-Webster, 15 ('curtail', http://www.merriam-webster.com/dictionary/curtail

Full Definition of CURTAIL

transitive verb

: to make less by or as if by cutting off or away some part <curtail the power of the executive branch> <curtail inflation>

Curtail means reduce duration

Curtail can apply to duration

OED, 15 (Oxford English Dictionary, 3rd edition, 'curtail', http://www.oed.com.proxy.lib.umich.edu/view/Entry/46170?rskey=Xeus0B&result=2#eid

curtail, v.

3. To shorten in duration or extent; to cut down; to abbreviate, abridge, diminish, or reduce, in extent or amount.

Curtail requires prevention

Curtail requires prevention, not just stopping current actions

Doss, 99 (Julie, “PEER TO PEER SEXUAL HARASSMENT UNDER TITLE IX: A DISCUSSION OF LIABILITY STANDARDS FROM DOE v. LONDONDERRY” 34 Tulsa L.J. 443 1998-1999, Hein Online)

The court also turned to the OCR policy interpretations for guidance acknowledging that the OCR requires school districts to "take reasonable steps to curtail peer sexual harassment" and holds those districts to a "knows or should have known" standard."' 9 The word "curtail" suggests that the districts are **required to prevent as well as stop** sexual harassment.

AT: Curtail excludes abolish

Curtailment can discontinue a program in whole or in part

Dembling, 78 – General Counsel, General Accounting Office; (Paul, "OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974" HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online)

(3) "Curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

Curtailment includes complete elimination

FASB 85

(Financial Accounting Standards Board, EMPLOYERS' ACCOUNTING FOR SETTLEMENTS AND CURTAILMENTS OF DEFINED BENEFIT PENSION PLANS AND FOR TERMINATION BENEFITS (ISSUED 12/85))

Statement 87 continues the past practice of delaying the recognition in net periodic pension cost of (a) gains and losses from experience different from that assumed, (b) the effects of changes in assumptions, and (c) the cost of retroactive plan amendments. However, this Statement requires immediate recognition of certain previously unrecognized amounts when certain transactions or events occur. It prescribes the method for determining the amount to be recognized in earnings when a pension obligation is settled or a plan is curtailed. Settlement is defined as an irrevocable action that relieves the employer (or the plan) of primary responsibility for an obligation and **eliminates** significant risks related to the obligation and the assets used to effect the settlement. A curtailment is defined as a significant reduction in, or an **elimination of,** defined benefit accruals for present employees' future services.

Eliminating part curtails the whole

Chase, 49 – US Circuit Court judge (COMMISSION OF DEPARTMENT OF PUBLIC UTILITIES OF COMMONWEALTH OF MASSACHUSETTS v. NEW YORK, N.H. & H.R. CO. No. 40, Docket 21392 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 178 F.2d 559; 1949 U.S. App. LEXIS 3864 November 10, 1949, Argued December 13, 1949, Decided, lexis)

In reaching their differing conclusion, my brethren rely upon the circumstance that on a few occasions during this long reorganization the Commission or our court has spoken of a 'curtailment [**32] of service' or of discontinuing passenger service 'in whole or in part.' Neither by themselves nor in their contexts do these offhand characterizations or references appear to me

to support the inference sought to be drawn from them. Indeed several are only statements of contentions or arguments presented and without further significance. True, the word 'curtailment' has occasionally been used; but it must be recalled that in the total picture of Old Colony service, **complete** abandonment of passenger trains is only a 'curtailment,' since freight trains are still to run. Thus it is that discontinuing passenger travel must be authorized by the I.C.C. under the bankruptcy power, rather than under its normal power over abandonment, since it constitutes only a partial abandonment. Moreover, no stress can properly be put on the Commission's statement early in the proceedings that the public was 'alive to the danger that service may be discontinued, in whole or in part.' 244 I.C.C. 239, 264. For this was soon after the time that the New Haven had been seeking a curtailment of Old Colony passenger service, rather than a discontinuance, in the form of its abortive attempt to [**33] close 88 passenger stations. The Commonwealth, various towns, and commuters groups had just finished fighting to prevent any curtailment of service, and were as aware of that as a danger as they were of discontinuance as a danger. See Rood, Protecting the User Interest in Railroad Reorganization, 7 Law & Contemp.Prob. 495, 1940. It is a fact that as early as 1939 the New Haven trustees had tried to discontinue passenger service on the Boston Group of Old Colony lines, and the efforts of the reorganization judge were required to induce them to hold off on this move while a satisfactory compromise was sought. Id. at 502.

No limiting function – curtailing to make an agency non-functional has the same effect as abolition

Hildebrandt, 37 – chair of the Subcommittee of the Committee on the Post Office and Post Roads ("Foreign Air Mail," HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON THE POST OFFICE AND POST ROADS HOUSE OF REPRESENTATIVES SEVENTY-FIFTH CONGRESS, Hein Online)

The CHAIRMAN. By the authority to curtail or reduce service you have the right to destroy or to eliminate the contractor. He cannot render service if you reduce the service, for instance, to one round trip a month. You have ample authority under the provision you now recommend to destroy a route if you wish to do so.

Mr. CROWLEY. One could not probably put that construction on the word "curtail." It seems to reduce, but it would not be held to reduce to such an extent as to destroy the contract itself.

The CHAIRMAN. You could cut the service down so much that a contractor could not operate.

Curtail allows almost elimination

Brooke, 77 – US Senator (9 Housing and Transportation of the Handicapped Laws Histories and Administrative Documents Bernard D. Jr. ed. 17792 1977-1978, Hein Online

Mr. BROOKE. The Senator said "closing of the base." I think he used the word "curtail," because sometimes a base may not be closed, but it will be cut back to such an extent that it is almost closed anyway.

Context – Levi Guidelines

The Levi Guidelines 'curtailed' domestic intelligence gathering

Berman, 14 - Visiting Assistant Professor of Law, Brooklyn Law School (Emily Berman, Regulating Domestic Intelligence Collection, 71 Wash. & Lee L. Rev. 3,

http://scholarlycommons.law.wlu.edu/wlulr/vol71/iss1/5

Since the FBI's inception, there has been tension embedded in its mission. It is charged not only with solving crimes but also with preventing them.26 While the two goals often complement one another, they call for very different types of investigative activities. Focus on crime solving argues for a set of investigative powers enabling inquiries into specific acts, with an eye toward successful prosecution of the perpetrators.27 Preventive work, by contrast, requires the collection of much broader swaths of information—information about illicit organizations, their members, their goals, their capacities, and their sources of funding as well as information about possible targets.28

Over time, both the Bureau's focus and the rules governing its activities have swung back and forth along the spectrum between the targeted investigations of crime solving and the broader intelligence gathering associated with prevention. The Guidelines themselves are the product of the FBI's early-1970s move away from intelligence collection. After the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, commonly known as the Church Committee for its chair Senator Frank Church (D-ID), revealed that decades of unregulated intelligence collection by the FBI had resulted in widespread abuses of the government's investigative powers,29 Congress determined that the FBI should be subject to a legislative charter setting out strict limits on its intelligence-collection authority.30 In an effort to stave off potentially more restrictive legislative action, President Gerald Ford's Attorney General, Edward Levi, issued in 1976 the first set of Attorney General's Guidelines—known as the Levi Guidelines.31

The Levi Guidelines **strictly curtailed** domestic intelligence investigations through a basic regulatory structure that subsequent versions of the Guidelines have largely retained.32 This structure consists of multiple investigative levels. For each successive level, a higher threshold of suspicion is necessary to proceed; the investigative tools agents may use are more intrusive; and procedural safeguards, such as the need for supervisory approval and limits on the temporal length of investigations, are more robust.33 The Guidelines continue to function as the **primary constraint** on the FBI's operations and remain a justification for the lack of a statutory charter governing the FBI's activities, but they have not remained static.34 Multiple modifications made in the years between 1976 and 2001 eased, though ultimately retained, restrictions on intelligence collection.35

Its

Its denotes ownership

‘Its’ is a possessive pronoun showing ownership
Glossary of English Grammar Terms, 2005

(http://www.usingenglish.com/glossary/possessive-pronoun.html)

Mine, yours, his, hers, its, ours, theirs are the possessive pronouns used to substitute a noun and to show possession or ownership.

EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

US must be the possessor or agent of surveillance
Merriam Webster No date (http://www.merriam-webster.com/dictionary/its its AWEY)

Full Definition of ITS¶ : of or relating to it or itself especially as **possessor**, **agent**, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

“Its” means belonging to it or that thing

Oxford English Dictionary 14 http://www.merriam-webster.com/dictionary/its

Its

A. As adj. poss. pron. Of or belonging to it, or that thing (L. ejus); also refl., Of or belonging to itself, its own (L. suus).

Grammatically, this refers solely to U.S. policy
Manderino 73 (Justice – Supreme Court of Pennsylvania, “Sigal, Appellant, v. Manufacturers Light and Heat Co”., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [***10] usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling [*236] semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage **make difficult, if not impossible, a**

clear understanding of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

Its is possessive and refers to the party preceding its use – the USFG
US District Court 7

(United States District Court for the District of the Virgin Islands, Division of St. Thomas and St. John, "AGF Marine Aviation & Transp. v. Cassin, 2007 U.S. Dist. LEXIS 90808," Lexis)//BB

The Court inadvertently used the word "his" when the Court intended to use the word "its." The possessive pronoun was intended to refer to the party preceding its use--AGF. Indeed, that reference is consistent with the undisputed facts in this case, which indicate that Cassin completed an application for the insurance policy and submitted it to his agent, Theodore Tunick & Company ("Tunick"). Tunick, in turn, submitted the application to AGF's underwriting agent, TL Dallas. (See Pl.'s Mem. of Law in Supp. of Mot. for Summ. J. 5.)

Grammatically, this refers to the United States Federal Government
Manderino 73 – Justice, Supreme Court of Pennsylvania

("Sigal, Appellant, v. Manufacturers Light and Heat Co., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

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Possessive means "owning" – Merriam Webster

(Merriam Webster, 2014 access date, http://www.merriam-webster.com/dictionary/possession)//BB

: the condition of having or **owning** something

: something that is owned or possessed by someone

law : the crime of having something that is illegal (such as a drug or weapon)

That means the USFG must <u>own</u> the surveillance program
Supreme Court of Oklahoma 34

(Swindall v. State Election Board, 168 Okla. 97, Lexis)//BB

However, I view another phase of the act which is not considered in the majority opinion. It is my opinion that the expression, "its nominees," should have been construed by this court. Had this court so construed those words, it would have assisted the State Election Board in the furtherance of its ministerial duties, and would have set to rest the immediate question. It is my theory that the correct interpretation to place upon those words, "its nominees," is to the effect that those words do not mean all the nominees of any particular party. <u>The word "its" is the possessive case</u>, or the possessive adjective <u>of "it", meaning</u> of or **<u>belonging to it.</u>** Webster's International Dictionary. In other words, the expression, "its nominees," as applied to the Republican party, means nominees of it (the Republican party). The words, "nominees" of the "Republican party," do not and necessarily cannot mean all the nominees of the Republican party. Those words, however, do mean more than one nominee. It seems reasonable to conclude, in the absence of an expression like "all of its nominees," or words of similar import, that it was not the intent of the Legislature to make those words, "its nominees," all inclusive. It seems to me that a fair and reasonable interpretation would be that those words support and embrace the thought expressed by the New York statute, to wit, that it is the intention of the candidate to support generally at the next general election the nominees of the party from which he seeks his nomination, or that it is his intention to support a majority of the candidates of that party.

Its is associated with

Its means associated with

Dictionary.com, 9 (based on Collins English Dictionary, http://dictionary.reference.com/browse/its?s=t)

its (ɪts)

— determiner

a. of, belonging to, or associated in some way with it: its left rear wheel

b. (as pronoun): each town claims its is the best

Domestic

Domestic violations

1nc - Domestic means within US borders

Domestic surveillance is the collection of information within national borders
Avilez et al, 14 - Ethics, History, and Public Policy Senior Capstone Project at Carnegie Mellon University (Marie, "Security and Social Dimensions of City Surveillance Policy" 12/10, http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf

Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity within national borders; this can be carried out by federal, state and/or local officials

The plan violates – they restrict surveillance on US persons regardless of borders

Voting issue to protect limits and negative ground. They explode the topic by allowing a wide range of international affirmatives where US nationals are tangentially involved with foreign terrorism – requiring a geographic limit is more predictable

--xt - Domestic means within the US

Domestic means wholly within the United States

Meyer, 14 – lawyer at Stanford (Jonathan, "Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier" 12/3, http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/

3. These Aren't "Domestic" Communications Under FISA and the Wiretap Act

Both the Wiretap Act and FISA include exclusivity provisions. The Wiretap Act text, in 18 U.S.C. § 2511(2)(f), reads:

[Procedures] in [the Wiretap Act, the Stored Communications Act, and FISA] shall be the exclusive means by which electronic surveillance, as defined in [FISA], and the interception of domestic wire, oral, and electronic communications may be conducted.

The similar FISA text, in 50 U.S.C. § 1812, says:

Except as [otherwise expressly authorized by statute,] the procedures of [the Wiretap Act, the Stored Communications Act, the Pen Register Act, and FISA] shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

Once again unpacking the legalese, these parallel provisions establish exclusivity for 1) "electronic surveillance" and 2) interception of "domestic" communications. As I explained above, intercepting a two-end foreign wireline communication doesn't constitute "electronic surveillance." As for what counts as a "domestic" communication, the statutes seem to mean a communication **wholly within** the United States.7 A two-end foreign communication would plainly flunk that definition.

So, there's the three-step maneuver. If the NSA intercepts foreign-to-foreign voice or Internet traffic, as it transits the United States, that isn't covered by either FISA or the Wiretap Act. All that's left is Executive Order 12333.

Domestic surveillance means within the geographic territory of the US

Sladick, 12 – blogger for the Tenth Amendment Center, (Kelly, "Battlefield USA: The Drones are Coming" http://blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/

In a US leaked document, "Airforce Instruction 14-104", on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, "any imagery collected by satellite (national or commercial) and airborne platforms that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas." In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises.

Federal definitions concur
Letters of Credit

(2-6 Letters of Credit § 6.04, Lexis)

The second type of transaction out of which eligible acceptances arise is transactions involving the domestic shipment of goods.12Link to the text of the note The word "domestic" in this context has been defined by the Federal Reserve Board to mean "within the United States."13Link to the text of the note The requirements of connection between the acceptance and the domestic shipment transaction parallel those for the import- export transaction: The draft should be drawn by the buyer or seller of the goods, in an amount reasonably equal to the cost of the transaction, and should finance a current shipment. Like the import-export transaction, the domestic shipment transaction should be self-liquidating.

--excludes the cloud

The cloud is outside of US borders

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

These other types of programs can potentially yield significant amounts of information. The NSA appears to be collecting email address books for most major webmail companies, and storing the information in multiple databases. n136 According to the Washington Post, the yield is "hundreds of millions of contact lists from personal e-mail and instant messaging accounts around the world." n137 On any representative day, in turn, the NSA appears to collect approximately half a million buddy lists and inboxes (which frequently include the first part of the messages that have been sent). n138

Another example of collection under Executive Order 12,333 is the interception of content flowing between data centers overseas. In October 2013, the Washington Post reported that the NSA was collecting hundreds of millions of records, ranging from metadata to content, transiting fiber optics cables between Google and Yahoo data centers. n139 The principal tool used to analyze the infor [*153] mation, MUSCULAR, appears to be operated jointly with the U.K.'s Government Communications Headquarters (GCHQ). n140 The collection of information held on the cloud, **outside U.S. borders**, shifts the program outside the FISA framework. n141

--includes foreign intelligence

Refers to searches within the United States---this can include relevant information about foreign sources

Truehart 2 – J.D., Boston University School of Law

(Carrie, "CASE COMMENT:UNITED STATES v. BIN LADEN AND THE FOREIGN INTELLIGENCE EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF "UNITED STATES PERSONS" ABROAD," 82 B.U.L. Rev. 555)

This Case Comment uses the word "domestic" to refer to searches and investigations conducted within the United States. The term "domestic foreign intelligence investigations" at first glance seems like an oxymoron, but it is not. As used in this Case Comment, the term refers to investigations conducted within the United States to obtain foreign intelligence information - that is, information pertaining to foreign nationals and their respective governments or international groups - as opposed to investigations conducted within the United States to obtain domestic intelligence information - that is, information pertaining to United States persons only. Notice that a United States person residing in the United States, however, could become the target of a foreign intelligence investigation if the Government were investigating that individual's relationship with a foreign government or international terrorist group. In other words, the difference between whether an investigation is a "domestic foreign intelligence investigation" or a "domestic intelligence investigation" turns on whether the investigation focuses in part on a foreign government or international group.

The line between "foreign intelligence investigations" and "criminal investigations" is admittedly a blurry one. This is especially true where the target of the investigation is suspected of involvement in espionage or terrorism because these activities are crimes as well as national security concerns. See United States v. Troung Dinh Hung, 629 F.2d 908, 915-16 (stating that "almost all foreign intelligence investigations are in part criminal investigations" because, "although espionage prosecutions are rare, there is always the possibility that the targets of the investigations will be prosecuted for criminal violations"); Bin Laden, 126 F. Supp. 2d at 278 (stating that "[a] foreign intelligence collection effort that targets the acts of terrorists is likely to uncover evidence of crime"). For the purpose of this Case Comment, the term "foreign intelligence investigations" refers to investigations conducted primarily for the purpose of obtaining foreign intelligence. "Criminal investigations" refers to investigations conducted specifically for the purpose of obtaining information to prosecute crimes.

FISA only applies to domestic surveillance of foreigners on US soil

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

C. The Protect America Act

Four months after McConnell's proposal, Congress passed the Protect America Act (PAA), easing restrictions on the surveillance of foreigners where one (or both) parties were located overseas. n53 In doing so, it removed such communications from FISA's definition of "electronic surveillance," narrowing the term to include **only domestic** communications. The attendant restrictions, such as those related to probable cause that the target be a foreign power or an agent thereof, or likely to use the facilities to be placed under surveillance, or specifications related to the facility in question, dropped away.

Includes foreigners on US soil

Adelson 8 – Program Director of the Human Rights and Immigration Law Project, Center for the Advancement of Human Rights, Florida State University College of Law; BA, Brandeis University; MPhil, University of Cambridge; JD, University of Miami School of Law

(Wendi, "CHILD PROSTITUTE OR VICTIM OF TRAFFICKING?," 6 U. St. Thomas L.J. 96)

Although the TVPA was not enacted specifically to prevent the prostitution of U.S. born children, some of the legislative debates reflect that certain legislators had that goal in mind. For example, the late Senator Wellstone imagined that Congress designed the TPVA "to help federal law enforcement officials expand anti-trafficking efforts here and abroad; [and] to expand domestic anti-trafficking and victim assistance efforts." 30Link to the text of the note His use of the word "domestic" likely refers to efforts that take place on U.S. soil as well as actions geared toward the aid of "domestic" or U.S. born victims. [102] As executed, the language of the TVPA is broad enough to extend its protective blanket to foreign born as well as LPR and U.S. children exploited in this manner.

--US persons definition unlimits

Their interpretation allows affs about data collection anywhere in the world

Tracy, 15 (Sam, "NSA WHISTLEBLOWER JOHN TYE EXPLAINS EXECUTIVE ORDER 12333" 3/18, http://warrantless.org/2015/03/tye-12333/

It's been widely reported that the NSA, under the constitutionally suspect authority of Section 215 of the PATRIOT Act, collects all Americans' phone metadata. Congress has not yet passed any reforms to this law, but there have been many proposals for changes and the national debate is still raging. Yet Americans' data is also being collected under a different program that's entirely hidden from public oversight, and that was authorized under the Reagan-era Executive Order 12333.

That's the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled "Why I spoke out against the NSA." Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 governs data collected overseas, as opposed to domestic surveillance which is authorized by statute. However, because Americans' emails and other communications are stored in servers all over the globe, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

--AT: Geography definition overlimits

A wide range of genuinely domestic affs exists

Thompson, 13 – Legislative Attorney for the Congressional Research Service (Richard, "Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses" https://www.fas.org/sgp/crs/natsec/R42701.pdf

1 The term "domestic drone surveillance" as used in this report is designed to cover a **wide range** of government uses including, but not limited to, investigating and deterring criminal or regulatory violations; conducting health and safety inspections; performing search and rescue missions; patrolling the national borders; and conducting environmental investigations.

--AT: ‘originated within’ CI

Physically located within---distinct from originated

Beppu 8 – Senior Articles Editor, Cardozo Law Review. J.D. Candidate (June 2007), Benjamin N. Cardozo School of Law

(Daisuke, “WHEN CULTURAL VALUE JUSTIFIES PROTECTIONISM: INTERPRETING THE LANGUAGE OF THE GATT TO FIND A LIMITED CULTURAL EXCEPTION TO THE NATIONAL TREATMENT PRINCIPLE,” 29 Cardozo L. Rev. 1765)

Although there is no provision in the Vienna Convention that deals with this contingency, 80Link to the text of the note and although the Appellate Body has not [1779] expressly formulated a rule that would help to decide the matter, 81Link to the text of the note it is a sound assumption to make, based on the fact that the Oxford Dictionary is the one most often cited, that the Appellate Body would defer to the Oxford Dictionary. 82Link to the text of the note In other words, the Oxford definition prevails when the Oxford Dictionary offers a definition that differs significantly from that of Webster's Dictionary. 83Link to the text of the note Relying primarily on the Appellate Body's preference for the Oxford Dictionary, the result for the purposes of this analysis is that the word "domestic" comes to mean "physically located within boundaries." Therefore, the Oxford meaning of "domestic" - being physically located within boundaries - is different from "national origin" - a source of national character.

1nc – domestic means US persons

Domestic surveillance means that it must target US persons – not just be collected within the US

McCarthy, 6 – former assistant U.S. attorney for the Southern District of New York. (Andrew, "It's Not "Domestic Spying"; It's Foreign Intelligence Collection" National Review, 5/15, Read more at: http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

Eggen also continues the mainstream media's propagandistic use of the term "domestic surveillance [or 'spying'] program." In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not "domestic." A call is not considered "domestic" just because one party to it happens to be inside the U.S., just as an investigation is not "domestic" just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been "domestic spying." The calls NSA eavesdrops on are "international," not "domestic." If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating **both within and without** the U.S. That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence.

That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not "domestic surveillance."

Voting issue to protect limits – they explode the topic by expanding 'domestic' to cover immigration and foreign counter-intelligence – which are both big enough to be separate topics

--Excludes FISA

Domestic surveillance only observes conduct of potential criminal activity – foreign intelligence gathering is a legally distinct category of federal policy

Fisher, 4 - Associate Professor of Law and Director, Center for Social Justice, Seton Hall Law School (Linda, "GUILT BY EXPRESSIVE ASSOCIATION: POLITICAL PROFILING, SURVEILLANCE AND THE PRIVACY OF GROUPS" ARIZONA LAW REVIEW [Vol. 46:621)

There is ample precedent for adopting a reasonable suspicion of criminality standard for political surveillance. This standard remains as a requirement for police departments accepting federal aid.237 Its substantial equivalent was successfully employed in the FBI's domestic surveillance guidelines for over twenty-five years.238 It was also incorporated into the Chicago Red Squad consent decree.239 The Church Committee endorsed the reasonable suspicion standard as a predicate for terrorism investigations in 1976.240 Notably, it was recently adopted in the Denver police spying consent decree.241 And it was enacted in a Seattle ordinance.242 Other political surveillance litigation was not as successful.243 However, the Dale Court's affirmation of a robust right of association strengthens and reinforces those First Amendment arguments previously available.

(footnote 238)

238. See ATTORNEY GENERAL GUIDELINES, supra note 13; Lininger, supra note 13. These guidelines apply to domestic surveillance only; that is, surveillance of conduct that involves potential criminal activity, rather than foreign intelligence. The guidelines governing foreign intelligence are classified. Portions of prior foreign intelligence surveillance guidelines from 1995 have been released, but nothing since that time has been made available to the public. The 1995 guidelines give investigators much greater leeway to collect intelligence than do the domestic surveillance guidelines. See ATTORNEY GENERAL GUIDELINES FOR FBI FOREIGN INTELLIGENCE COLLECTION AND FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS (1995), available at http://www.politrix.org/foia /fbi/fbi-guide.htm.

The FISC is exclusively about foreign surveillance, not domestic

Berman, 14 - Visiting Assistant Professor of Law, Brooklyn Law School (Emily Berman, Regulating Domestic Intelligence Collection, 71 Wash. & Lee L. Rev. 3,

http://scholarlycommons.law.wlu.edu/wlulr/vol71/iss1/5

Another barrier to enlisting the FISC in intelligencecollection governance is that the intelligence-collection activities governed by the Guidelines extend beyond the scope of the FISC's jurisdiction. The FISC oversees electronic foreign intelligence surveillance and physical searches of premises connected with foreign powers.322 **It has no role in overseeing purely domestic surveillance** of Americans absent probable cause that those Americans are agents of a foreign

power.323 The content of the Guidelines and the activities they regulate—such as physical surveillance of Americans, infiltration of religious or political groups, the use of informants, requests for internet history— rarely fall within the FISC's jurisdiction. Individuals who wish to challenge FBI activity—if they can establish standing—do not have access to the FISC.324 Thus, it is unclear what role the FISC could play in reviewing many activities in which the FBI engages.

FISA only governs foreign surveillance even if it operates within the United States

Harper, 14 – JD, University of Chicago (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism" The University of Chicago Law Review [81:1123, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf

The Foreign Intelligence Surveillance Act of 1978 1 (FISA) regulates, among other things, the government's acquisition of electronic surveillance within the United States for foreign intelligence purposes. FISA allows a federal officer to seek an order from a judge at a specially designated court "approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information." 2 As long as the requisite foreign nexus can be shown, FISA warrants are preferable to their possible substitutes because they are easier to obtain and allow for more secretive and penetrating investigations.3

Consistent with FISA's foreign focus, the government may use the statute to investigate members of international terrorist groups within the United States.4 However, the activities of **purely domestic** terrorist groups do not fall under FISA and must therefore be investigated using standard criminal investigative tools.5 Often, terrorists will easily be identified as international; members of designated "foreign terrorist organizations" operating within the United States are clearly international terrorists. But the proliferation of modern communication technologies has caused increasing slippage between the definitions of domestic and international terrorism. For example, many homegrown terrorists are inspired by international groups to commit attacks in the United States.6 In many cases, the government seems to classify these actors as international terrorists based on Internet activity that ranges from viewing and posting jihadist YouTube videos to planning attacks with suspected foreign terrorists in chat rooms, thus using FISA's formidable investigatory weapons against them.7 The government is aided in this task by FISA's definition of international terrorism, which has an extremely vague and potentially loose internationality requirement.8 An expansive interpretation of this requirement could be used to subject what might properly be considered domestic terrorist groups to FISA surveillance.

FISA doesn't apply to domestic surveillance

Harper, 14 – JD, University of Chicago (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism" The University of Chicago Law Review [81:1123, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf

Although the Supreme Court has not explicitly said that members of international and domestic terrorist groups should receive differing levels of Fourth Amendment protection,153 there is strong implicit support for this proposition. The Keith Court, by limiting its decision to domestic organizations, implicitly acknowledged that the surveillance of international groups would trigger different considerations, even noting that warrantless surveillance "may be constitutional where foreign powers are involved." 154 Moreover, Congress unequivocally stated that domestic terrorist groups should not be subject to FISA surveillance, implying that a different balancing of interests is at stake for the two groups.155

--Excludes section 702

Section 702 is purely targeted towards non-US persons outside of the United States

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

1. Section 702

FISA Section 702 empowers the Attorney General (AG) and the Director of National Intelligence (DNI) jointly to authorize, for up to one year, "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information." n64 Five limitations apply. Acquisition may not intentionally (a) target a person known to be located in the United States; n65 (b) target an individual reasonably believed to be located outside the United States, if the actual purpose is to target an individual reasonably believed to be located in domestic bounds; n66 (c) target a U.S. person reasonably believed to be outside domestic bounds; n67 or (d) obtain wholly domestic communications. n68 In addition, (e), all acquisition must be conducted consistent with the Fourth Amendment. n69

PRISM governs foreign intelligence gathering, not domestic surveillance

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

Edward Snowden's disclosures have thus far centered on two NSA programs. One is domestic - the so-called metadata program, operated pursuant to section 215 of the USA PATRIOT Act, n13 and entailing the bulk collection of call record information, including phone numbers and times of calls. n14 The other is foreign - the PRISM program, operated pursuant to section 702 of the Foreign Intelligence Surveillance Act (FISA). n15 Under section 702, the government may conduct surveillance targeting the contents of communications of non-U.S. persons reasonably believed to be located abroad when the surveillance will result in acquiring foreign intelligence information. n16 The FISC must approve any government request for surveillance under section 702, although these requests can [*2141] describe broad types of communications without identifying particular individuals. n17

Under section 702, "foreign intelligence information" that the government may acquire includes a number of grounds related to national security, such as information relating to an "actual or potential attack" or "other grave hostile acts of a foreign power or an agent of a foreign power." n18 It also includes information relating to possible sabotage n19 and clandestine foreign "intelligence activities." n20 Another prong of the definition appears to sweep more broadly, including information relating to "the conduct of the foreign affairs of the United States." n21

Despite the greater breadth of this provision, President Obama informed a domestic and global audience that U.S. intelligence agencies seek a narrow range of information centering on the national security and foreign intelligence concerns described above. n22 While the U.S. intelligence agencies acquire a substantial amount of data that does not fit under these rubrics, the president's speech confirmed that U.S. analysts do not rummage through such data randomly or for invidious purposes. n23 A scatter-shot approach of this kind would be unethical, illegal, and ineffective. Instead, NSA officials query communications using specific "identifiers" such as phone numbers and email addresses that officials reasonably believe are used by non-U.S. persons abroad to communicate foreign intelligence information. n24 The government must also have in place minimization procedures to limit the acquisition, retention, and dissemination of nonpublic information about U.S. persons. n25 The NSA deletes all irrelevant content, including content from non-U.S. persons, after five years. n26

In acknowledging the "legitimate privacy interests" of both U.S. and non-U.S. persons, President Obama affirmed the U.S. commitment to core principles in January 2014. n27 First, he narrowed the operating definition of [*2142] foreign intelligence information, limiting it to "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." n28 In addition, he asserted that the NSA would engage in bulk collection of communications for purposes of "detecting and countering" terrorism, espionage, nuclear proliferation, threats to U.S. forces, and financial crimes, including evasion of duly enacted sanctions. n29 Addressing anticipated concerns that these limits still left the NSA with too much discretion, President Obama declared what the United States would not do. First, it would not collect communications content "for the purpose of suppressing or burdening criticism or dissent, or for disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion." n30 Second, it would disseminate and store information regarding any person based on criteria in section 2.3 of Executive Order 12,333 n31: cases involving "foreign intelligence or counterintelligence," public safety, or ascertainment of a potential intelligence source's credibility. n32

PRISM only governs foreign intelligence information

Greenwald, 13 – Glenn Greenwald is a fomer columnist on civil liberties and US national security issues for the Guardian. An ex-constitutional lawyer, he was until 2012 a contributing writer at Salon. (Glenn, "NSA Prism program taps in to user data of Apple, Google and others" The Guardian, 6/7, http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data

A senior administration official said in a statement: "The Guardian and Washington Post articles refer to collection of communications pursuant to Section 702 of the Foreign Intelligence Surveillance Act. This law does not allow the targeting of any US citizen or of any person located within the United States.

"The program is subject to oversight by the Foreign Intelligence Surveillance Court, the Executive Branch, and Congress. It involves extensive procedures, specifically approved by the court, to ensure that only non-US persons outside the US are targeted, and that minimize the acquisition, retention and dissemination of incidentally acquired information about US persons.

"This program was recently reauthorized by Congress after extensive hearings and debate.

"Information collected under this program is among the most important and valuable intelligence information we collect, and is used to protect our nation from a wide variety of threats.

"The Government may only use Section 702 to acquire foreign intelligence information, which is specifically, and narrowly, defined in the Foreign Intelligence Surveillance Act. This requirement applies across the board, regardless of the nationality of the target."

--Excludes XO 12333

XO 12333 only governs exclusively foreign surveillance – curtailing it isn't topical

Kehl, 14 – Policy Analyst at New America's Open Technology Institute (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity" July, https://www.newamerica.org/oti/surveillance-costs-the-nsas-impact-on-the-economy-internet-freedom-cybersecurity/

Over the course of the past year, the world has learned that this bulk collection program was just one small part of the NSA's massive surveillance apparatus.4 Just a day after the first leak, The Washington Post ran a story about PRISM, the NSA's "downstream" collection program authorized under Section 702 of the Foreign Intelligence Surveillance Act (FISA). Under the PRISM program, the NSA compels major tech companies like Google, Yahoo, Microsoft, Facebook, and Twitter to turn over the contents of communications stored on company servers that have been sent or received by targets that the NSA reasonably believes are outside of the United States.5 While few details are known about the programs the NSA operates under Section 702, and several of the details regarding the PRISM program are a subject of debate,6 a declassified 2011 Foreign Intelligence Surveillance Court opinion revealed that the NSA collects more than 250,000,000 Internet communications annually using Section 702 and that "the vast majority of these communications are obtained from Internet service providers" through the PRISM program.7 The remainder of those communications comes from Section 702 surveillance that is conducted "upstream"—that is, surveillance conducted not by obtaining stored communications from cloud providers' servers but by tapping directly into the U.S. Internet backbone network that carries domestic, international, and foreign communications.8

Beyond NSA surveillance **inside the U**nited **S**tates under Section 215 and Section 702, the NSA engages in massive surveillance of Internet and telephone communications outside of the country as well. Unconstrained by statute and subject only to Executive Branch oversight under the Reagan-era Executive Order 12333,9 this extraterritorial surveillance was revealed in October 2013 to include the monitoring of key private data links that connect Google and Yahoo data centers around the world—monitoring that in just 30 days processed 181,280,466 new records that traversed those links.10 Similarly, the NSA is using Executive Order 12333 to authorize the collection of millions of email address books globally,11 and the recording of vast numbers of international phone calls—sometimes all of the phone traffic in an entire country.12 Executive Order 12333 is also presumably the authority under which the NSA is assisting British intelligence agencies in acquiring millions of webcam photos sent by users of Yahoo,13 and under which the NSA is collecting over five billion cell phone location data points per day, enabling it to track individuals' movements and relationships with others.14

--Excludes internet surveillance

Internet surveillance isn't 'domestic' if it's targeted towards foreign persons

Thompson, 13 - Chief Operating Officer of the non-profit Lexington Institute and Chief Executive Officer of Source Associates. Prior to holding my present positions, I was Deputy Director of the Security Studies Program at Georgetown University (Loren, "Why NSA's PRISM Program Makes Sense" Forbes, 6/7, http://www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense/

President Obama's firm defense of the National Security Agency's "domestic" surveillance program on Friday should calm some of the more extravagant fears provoked by public disclosure of its existence. I put the word "domestic" in quotes because the effort to monitor Internet and other communications traffic isn't really about listening in on Americans, or even foreign nationals living here, but rather intercepting suspicious transmissions originating overseas that just happen to be passing through the United States.

That is an eminently sensible way of keeping up with terrorists, because it is so much easier than tapping into network conduits in other countries or under the seas (not that we don't do that). In order to grasp the logic of the NSA program, which is code-named PRISM, you have to understand how the Internet evolved. It was a purely American innovation at its inception, with most of the infrastructure concentrated in a few places like Northern Virginia.

I live a few miles from where the Internet's first big East Coast access point was located in the parking garage of an office building near the intersection of Virginia's Routes 7 and 123, an area that some people refer to as Internet Alley. Because the Worldwide Web grew so haphazardly in its early days, it was common until recently for Internet traffic between two European countries to pass through my neighborhood. There were only a few major nodes in the system, and packet-switching sends messages through whatever pathway is available.

The Washington Post story on PRISM today has a graphic illustrating my point about how bandwidth tends to be allocated globally. Like a modern version of ancient Rome's Appian Way, all digital roads lead to America. It isn't hard to see why Director of National Intelligence James R. Clapper could say on Thursday that "information collected under this program is among the most important and valuable foreign intelligence information we collect." No kidding: PRISM generated an average of four items per day for the President's daily intelligence briefing in 2012.

The key point to recognize, though, is that this **really is foreign intelligence.** The architecture of the Internet enables NSA to collect it within U.S. borders, but there is no intention to spy on U.S. citizens. A few elementary algorithms used in narrowing the analysis of traffic should be sufficient to assure that the privacy of American citizens is seldom compromised. President Obama stressed in his comments today that safeguards have been put in place to prevent the scope of NSA surveillance from expanding beyond its original purpose.

I don't want to minimize the dangers to civil liberties associated with such a program. It needs to be monitored closely, which is one reason why Congress has been kept informed about its existence. However, compared with the threat posed by terrorists bent upon destroying America,

PRISM presents at worst only modest danger to our liberties. Its main purpose is to protect those liberties, not subvert them.

--xt - Domestic means US persons

Domestic surveillance is the acquisition of nonpublic information about US persons

IT Law Wiki, no date - This wiki is an encyclopedia of the legal issues, cases, statutes, events, policies, people, organizations and publications that make up the global fields of information law, information technology law ("domestic surveillance" http://itlaw.wikia.com/wiki/Domestic_surveillance

Domestic surveillance is the acquisition of nonpublic information concerning United States persons.

Domestic refers to citizens of the US

POWELL, 72 – US Supreme Court Justice (UNITED STATES v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN ET AL. (PLAMONDON ET AL., REAL PARTIES IN INTEREST) No. 70-153 SUPREME COURT OF THE UNITED STATES 407 U.S. 297; 92 S. Ct. 2125; 32 L. Ed. 2d 752; 1972 U.S. LEXIS 38

8 Section 2511 (3) refers to "the constitutional power of the President" in two types of situations: (i) where necessary to protect against attack, other hostile acts or intelligence activities of a "foreign power"; or (ii) where necessary to protect against the overthrow of the Government or other clear and present danger to the structure or existence of the Government. Although both of the specified situations are sometimes referred to as "national security" threats, the term "national security" is used only in the first sentence of § 2511 (3) with respect to the activities of foreign powers. This case involves only the second sentence of § 2511 (3), with the threat emanating -- according to the Attorney General's affidavit -- from "domestic organizations." Although we attempt no precise definition, we use the term "domestic organization" in this opinion to mean a group or organization (whether formally or informally constituted) composed of citizens of the United States and which has no significant connection with a foreign power, its agents or agencies. No doubt there are cases where it will be difficult to distinguish between "domestic" and "foreign" unlawful activities directed against the Government of the United States where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of foreign powers. But this is not such a case.

--2nc limits

Domestic surveillance is the acquisition of nonpublic information concerning United States persons – this is already very broad – expanding it further prevents focused analysis

Small, 8 - United States Air Force Academy (Matthew, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to **narrow the scope of the term "domestic surveillance**." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Adhering to the above definition allows for a focused analysis of one part of President Bush's domestic surveillance policy as its implementation relates to the executive's ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis.

--AT: Geographic limit best

Geographic interpretation of 'domestic' is outdated in the surveillance context

Sanchez, 14 - Senior Fellow at the Cato Institute. His work focuses on technology, privacy, and civil liberties, particularly national security and intelligence surveillance. (Julian, "Snowden: Year One" 6/5, http://www.cato-unbound.org/2014/06/05/julian-sanchez/snowden-year-one

The second basic fact is that modern communications networks obliterate many of the assumptions about the importance of geography that had long structured surveillance law. A "domestic" Internet communication between a user in Manhattan and a server in Palo Alto might, at midday in the United States, be routed through nocturnal Asia's less congested pipes, or to a mirror in Ireland, while a "foreign" e-mail service operated from Egypt may be hosted in San Antonio. "What we really need to do is all the bad guys need to be on this section of the Internet," former NSA director Keith Alexander likes to joke. "And they only operate over here. All good people operate over here. All bad guys over here." It's never been quite that easy—but General Alexander's dream scenario used to be closer to the truth. State adversaries communicated primarily over dedicated circuits that could be intercepted wholesale without much worry about bumping into innocent Americans, whereas a communication entering the United States could generally be presumed to be with someone in the United States. The traditional division of intelligence powers by physical geography—particularized warrants on this side of the border, an interception free-for-all on the other—no longer tracks the reality of global information flows.

It's terrible for both teams – it unlimits the topic, but also means no aff could actually solve, since the internet has made borders a non-factor

Bedan, 7 - J.D. Candidate, Indiana University School of Law (Matt Echelon's Effect: The Obsolescence of the U.S. Foreign Intelligence Legal Regime," Federal Communications Law Journal: Vol. 59: Iss. 2, Article 7. Available at: http://www.repository.law.indiana.edu/fclj/vol59/iss2/7

Apart from the issue of private corporations gathering and sharing intelligence, FISA's surveillance definition is antiquated due to the distinction it makes between data acquired inside or outside of the U.S. Again, government observation only qualifies as surveillance if the data is acquired inside the U.S. or if one or more of the parties is a known U.S. person, inside the U.S., who the government is targeting intentionally. In other words, unrestrained and indiscriminate eavesdropping by the NSA is allowed under FISA as long as the communication is not physically intercepted within the U.S., and the target is either: (1) someone known to be a non-U.S. person, (2) someone who is intentionally targeted but whose identity is unknown, or (3) anyone else in the world who is not intentionally being targeted.

Today, the requirement that the interception of electronic communications takes place outside U.S. borders is hardly an obstacle to intelligence agencies. The proliferation of the Internet and

other global communication networks has made **physical distance and political borders a nonfactor** in the realm of communications. To increase efficiency, Internet traffic is often routed through the least congested server regardless of the server's physical location.58 For instance, two neighbors in Nebraska chatting on an instant messenger program might have their communications routed through servers in Hong Kong and back, despite being only 30 feet apart.

A territorial limit doesn't reflect the changing nature of technology that renders territory obsolete

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

[*2151] As I suggest in my forthcoming article, however, the effective control test is inadequate for the cyber and communications realm. n78 Here, physical control over persons or territory is unnecessary. n79 The NSA can remotely control much of the communication of a foreign national abroad. It can eavesdrop on those communications and may be able to filter the communications received by that individual or alter the content the individual receives. n80 According to press reports, the NSA can break many forms of encryption used around the world because of "back doors" it has engineered in many software systems. n81 The NSA apparently also has the capacity to gain control of computers not directly connected to the internet, because of the implantation of tiny radio transmitters in many computers manufactured in the United States and elsewhere. n82 Consider as well that the United States has relationships with internet and telecommunications companies that facilitate surveillance. Since, at the present time, much of the world's internet traffic is routed through the United States, that virtual power is unprecedented. Moreover, the United States has the capacity to directly access undersea cables and other carriers of internet and telephonic communications. n83 The extended duration and seamlessness of U.S. control [*2152] in the virtual sphere constitutes an ongoing state presence that is in some ways more pervasive than states' dominance within their physical territory. A narrow standard requiring physical control does not do justice to the challenge of rapidly evolving technology in a changing world. n84 The virtual control test supplies a broader standard that meets this challenge.

General domestic definitions

Patriot Act definition

Patriot Act definition of 'domestic' terrorism

Casman, 11 – master's thesis for Master of Arts Degree in Ethics and Policy Studies Department of Political Science at UNLV (Betsey, "The Right to Privacy in Light of the Patriot Act and Social Contract Theory" May, UNLV Theses/ Dissertations/Professional Papers/Capstones. Paper 1086,
http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=2087&context=thesesdissertations

These modifications of the First Amendment seem to stem from the provision for the right to free speech, but the right to assembly has also called into question. Though as noted a person's exercising of their First Amendment's rights is not in and of itself enough to initiate an investigation, but that seems to be more theory than fact. Rackow writes the legislation of Section 802, "Section 802 of the Patriot Act amends 18 U.S.C. 2331, which defines international terrorism by instituting a new crime of 'domestic terrorism'. The Act broadly defines 'domestic terrorism' as activities that:

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or any State;

(B) appear to be intended –

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States

Upon review of this expansive definition it becomes clear that many acts of political dissent and activism now will be characterized as 'domestic terrorism' (Rackow 2002, 1688). The attitude of "you are either for us or against" has grown to mean that if you speak against "us" then you are against "us" then you support terrorism. As was the case with the passing of the Patriot Act, no discourse on the legislation was allowed or "terrorism" would win. There is a prevailing understanding that United States citizens have the right to free speech and a right to assemble (among other rights enumerated within the First Amendment); however, to exercise these rights in light of 9/11, especially to criticize the government, can lead and has led to accusations of terrorism. This is not talking about sedition or incitement to violence which are not covered speech under the First Amendment, but the ability to voice dissent in open in public forums without being the subject of prosecution. The most basic of American rights can garner attention, followed by investigation. Despite laws stating specifically that the practice of one's First Amendment rights shall not lead to investigation, the definitions involved in the expansive definition of domestic terrorism do not lead to any confidence that that will be the case.

AT: FISA is only international

No bright line exists between foreign and domestic terrorists

Harper, 14 – JD, University of Chicago (Nick, "FISA's Fuzzy Line between Domestic and

International Terrorism" The University of Chicago Law Review [81:1123, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf

Consistent with FISA's foreign focus, the government may use the statute to investigate members of international terrorist groups within the United States.4 However, the activities of purely domestic terrorist groups do not fall under FISA and must therefore be investigated using standard criminal investigative tools.5 Often, terrorists will easily be identified as international; members of designated "foreign terrorist organizations" operating within the United States are clearly international terrorists. But the proliferation of modern communication technologies has caused increasing slippage between the definitions of domestic and international terrorism. For example, many homegrown terrorists are inspired by international groups to commit attacks in the United States.6 In many cases, the government seems to classify these actors as international terrorists based on Internet activity that ranges from viewing and posting jihadist YouTube videos to planning attacks with suspected foreign terrorists in chat rooms, thus using FISA's formidable investigatory weapons against them.7 The government is aided in this task by FISA's definition of international terrorism, which has an extremely vague and potentially loose internationality requirement.8 An expansive interpretation of this requirement could be used to subject what might properly be considered domestic terrorist groups to FISA surveillance.

FISA's internationality requirement has been stretched into the domestic sphere

Harper, 14 – JD, University of Chicago (Nick, "FISA's Fuzzy Line between Domestic and

International Terrorism" The University of Chicago Law Review [81:1123, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf

Subsections (c)(1) and (c)(2) together limit the applicability of the provision to activities that are serious violations of criminal law in the United States and that are intended to serve typical terrorist goals (intimidating a population, influencing government policy, and so forth).63 Subsection (c)(3), however, is the focus of this Comment, as its language regarding criminal activities that "transcend national boundaries" defines the extent of the international nexus that is required to permit FISA surveillance. This internationality requirement is FISA's attempt to **draw the line between domestic and international terrorism**.

This Part seeks to understand precisely where FISA draws the line between domestic and international terrorist groups. It begins in Section A by considering the text and legislative history

of FISA's definition of international terrorism. Section B then looks to a similar provision in the Antiterrorism Act to divine how courts might apply the international terrorism provision in FISA. Finally, Section C locates the outer boundary of FISA's definition of international terrorism by examining the limited public record of two modern FISA cases. This analysis finds minimal discernible international connections and therefore argues that FISA's definition of international terrorism has been stretched further into the domestic sphere than was originally intended by Congress.

FISA's line between domestic and international terrorism is blurry

Harper, 14 – JD, University of Chicago (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism" The University of Chicago Law Review [81:1123, https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/81_3/Harper_CMT.pdf

The House report provides the most thorough explanation of the legislature's intended scope of the international terrorism definition generally and the internationality requirement specifically. In fact, given that courts faced with FISA challenges do not engage in public interpretations of this language,78 the House report may be the only authority that provides meaningful insight into this provision. The report frames its analysis by noting that activities that transcend national boundaries must have a "substantial international character."79 It then proceeds to list several activities of otherwise-domestic terrorist groups that would or would not meet this standard:

The fact that an airplane is hijacked while flying over Canada between Alaska and Chicago does not by itself make the activity international terrorism. A domestic terrorist group which explodes a bomb in the international arrivals area of a U.S. airport does not by this alone become engaged in international terrorism. However, if a domestic group kidnaps foreign officials in the United States or abroad to affect the conduct of that foreign government this would constitute international terrorism. If a domestic group travels abroad and places a bomb in a foreign airplane, this too would be international terrorism.80

This excerpt is not extraordinarily illuminating, but it does help establish some data points. First, the fact that a hijacking of a domestic flight over Canadian airspace does not transcend national boundaries indicates that the standard should not be satisfied by every activity that crosses a US border. At the other end of the spectrum, travelling to a foreign destination to engage in terrorist activities does meet the internationality requirement. The examples between these two extremes do not substantially narrow the focus, although it appears that targeting politically salient international interests within the United States creates a sufficient international nexus.

Beyond these examples, the House report further notes that a domestic terrorist group has a sufficient international nexus if it receives "direction or substantial support" from a foreign government or terrorist group.81 This support must be "material, technical, training, or other substantive support" of the terrorist activities, rather than mere "moral or vocal support."82 Finally, and importantly, the report states that "[a]ctivities parallel to or consistent with the desires of a foreign power do not by themselves satisfy the requirement that the foreign power is directing the domestic group."83

Three general conclusions can be drawn from this report. First, it seems clear that the phrase "transcend national boundaries" was not intended to reach as far as its plain meaning permits. As was noted, the language could encompass any activities that go beyond US borders,84 but the House report seems to envision a more substantial international connection. Second, while the examples might be seen as establishing the outer boundaries of a necessary international nexus, the legislature **left plenty of gray area** in which the government can operate. Third, this loose demarcation of the necessary international nexus **becomes more difficult to interpret with each passing year**, as the Internet increasingly makes international connections a part of everyday life.

US person definition

A US person is a citizen, corporation, or lawful permanent resident

Jordan, 6 - LL.M., New York University School of Law (2006); cum laude, Washington and

Lee University School of Law (2003) (David, "Decrypting the Fourth Amendment: Warrantless NSA Surveillance and the Enhanced Expectation of Privacy Provided by Encrypted Voice Over Protocol" 47 B.C.L. Rev. 505 (2006), http://lawdigitalcommons.bc.edu/bclr/vol47/iss3/2

8 FISA's provisions require the government to obtain a FISA warrant when seeking to surveil a "United States person." A U.S. person is defined as a U.S. citizen, a permanent resident, a corporation incorporated in the United States, or an unincorporated association consisting of mostly U.S. citizens or permanent residents. FISA, 50 U.S.C. § 1801(1) (2000).

AT: No brightline – speech

An agent of a foreign power isn't determined by speech

Bedan, 7 - J.D. Candidate, Indiana University School of Law (Matt Echelon's Effect: The Obsolescence of the U.S. Foreign Intelligence Legal Regime," Federal Communications Law Journal: Vol. 59: Iss. 2, Article 7. Available at: http://www.repository.law.indiana.edu/fclj/vol59/iss2/7

In addition to court-ordered surveillance, FISA permits the President to authorize electronic surveillance without a court order for a period of up to one year, provided the Department of Justice ("DOJ") certifies that the surveillance is: (1) only for foreign intelligence information; (2) targets only foreign powers or their agents; and (3) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party.29 In each of those cases, the Attorney General is required to certify compliance with those conditions to the FISC.30 In addition, the Attorney General is required to provide a semiannual report on the use of surveillance under overall compliance to the House Permanent Select Committee on Intelligence as well as the Senate Select Committee on Intelligence detailing the extent of surveillance being conducted without a court order.31

Under the statute, a U.S. person can be classified as an "agent of a foreign power" upon a finding that he or she acts for a foreign power, is or may be involved in espionage for a foreign power, or is involved in international terrorism. An important caveat to this definition is that no U.S. person can be classified as an agent of a foreign power based solely on his participation in activities protected by the First Amendment. 33

Surveillance

Surveillance violations

1nc control violation

Surveillance is monitoring with preventive intent

Lemos, 10 - Associate Professor at Faculty of Communication at Federal University of Bahia, Brazil (Andre, ""Locative Media and Surveillance at the Boundaries of Informational Territories",

http://www.irma-international.org/viewtitle/48348/

Although they often appear to be synonymous, it is important to distinguish between informational control, monitoring and surveillance so that the problem can be better understood. We consider control to be the supervision of activities, or actions normally associated with government and authority over people, actions and processes. Monitoring can be considered a form of observation to gather information with a view to making projections or constructing scenarios and historical records, i.e., the action of following up and evaluating data. Surveillance, however, can be defined as an act **intended to avoid something**, as an observation whose **purposes are preventive** or as behavior that is attentive, cautious or careful. It is interesting to note that in English and French the two words "vigilant" and "surveillance", each of which is spelt the same way and has the same meaning in both languages, are applied to someone who is particularly watchful and to acts associated with legal action or action by the police intended to provide protection against crime, respectively. We shall define surveillance as actions that imply control and monitoring in accordance with Gow, for whom surveillance "implies something quite specific as the intentional observation of someone's actions or the intentional gathering of personal information in order to observe actions taken in the past or future" (Gow. 2005. p. 8).

According to this definition, surveillance actions presuppose monitoring and control, but not all forms of control and/or monitoring can be called surveillance. It could be said that all forms of surveillance require two elements: **intent with a view to avoiding/causing something** and identification of individuals or groups by name. It seems to me to be difficult to say that there is surveillance if there is no identification of the person under observation (anonymous) and no preventive intent (avoiding something). To my mind it is an exaggeration to say, for example, that the system run by my cell phone operator that controls and monitors my calls is keeping me under surveillance. Here there is identification but no intent. However, it can certainly be used for that purpose. The Federal Police can request wiretaps and disclosure of telephone records to monitor my telephone calls. The same can be said about the control and monitoring of users by public transport operators. This is part of the administrative routine of the companies involved. Once again, however, the system can be used for surveillance activities (a suspect can be kept under surveillance by the companies' and/or police safety systems). Note the example further below of the recently implemented "Navigo "card in France. It seems to me that the social networks, collaborative maps, mobile devices, wireless networks and countless different databases that make up the information society do indeed control and monitor and offer a real possibility of surveillance.

Violation – they curtail information gathering, not surveillance

Voting issue – for limits and ground. All information gathering is topical under their interpretation and the negative loses security based disads and critiques

--2nc limits

Conflating surveillance with information gathering explodes limits and wrecks topic education

Fuchs, 11 – Professor of Social Media at the University of Westminster's Centre for Social Media Research (Christian, "New Media, Web 2.0 and Surveillance" Sociology Compass 5/2 (2011): 134–147, 10.1111/j.1751-9020.2010.00354.x, http://fuchs.uti.at/wp-content/uploads/Web20Surveillance.pdf

'Living in ''surveillance societies'' may throw up challenges of a fundamental – ontological – kind' (Lyon 1994, 19). Social theory is a way of clarifying such ontological questions that concern the basic nature and reality of surveillance. An important ontological question is how to define surveillance. One can distinguish neutral concepts and negative concepts.

For Max Horkheimer, neutral theories 'define universal concepts under which all facts in the field in question are to be subsumed' (Horkheimer 1937/2002, 224). Neutral surveillance approaches define surveillance as the systematic collection of data about humans or non-humans. They argue that surveillance is a characteristic of all societies. An example for a well-known neutral concept of surveillance is the one of Anthony Giddens. For Giddens, surveillance is 'the coding of information relevant to the administration of subject populations, plus their direct supervision by officials and administrators of all sorts' (Giddens 1984, 183f). Surveillance means 'the collation and integration of information put to administrative purposes' (Giddens 1985, 46). For Giddens, all forms of organization are in need of surveillance in order to work. 'Who says surveillance says organisation' (Giddens 1981, xvii). As a consequence of his general surveillance concept, Giddens says that all modern societies are information societies (Giddens 1987, 27; see also: Lyon 1994, 27).

Basic assumptions of neutral surveillance concepts are:

• There are positive aspects of surveillance.

• Surveillance has two faces, it is enabling and constrainig.

• Surveillance is a fundamental aspect of all societies.

• Surveillance is necessary for organization.

• Any kind of systematic information gathering is surveillance.

Based on a neutral surveillance concept, all forms of online information storage, processing and usage in organizations are types of Internet surveillance. Examples include: the storage of company information on a company website, e-mail communication between employees in a governmental department, the storage of entries on Wikipedia, the online submission and storage of appointments in an e-health system run by a hospital or a general practitioner's office. The example shows that based on a neutral concept of surveillance, the notion of Internet surveillance is fairly broad.

Negative approaches see surveillance as a form of systematic information gathering that is connected to domination, coercion, the threat of using violence or the actual use of violence in order to attain certain goals and accumulate power, in many cases against the will of those who are under surveillance. Max Horkheimer (1947/1974) says that the 'method of negation' means 'the denunciation of everything that mutilates mankind and impedes its free development' (Horkheimer 1947/1974, 126). For Herbert Marcuse, negative concepts 'are an indictment of the totality of the existing order' (Marcuse 1941, 258).

The best-known negative concept of surveillance is the one of Michel Foucault. For Foucault, surveillance is a form of disciplinary power. Disciplines are 'general formulas of domination' (Foucault 1977, 137). They enclose, normalize, punish, hierarchize, homogenize, differentiate and exclude (Foucault 1977, 183f). The 'means of coercion make those on whom they are applied clearly visible' (Foucault 1977, 171). A person that is under surveillance 'is seen, but he does not see; he is the object of information, never a subject in communication' (Foucault 1977, 200). The surveillant panopticon is a 'machine of power' (Foucault 2007, 93f).

In my opinion, there are important arguments speaking against defining surveillance in a neutral way:

1. Etymology: The French word surveiller means to oversee, to watch over. It implies a hierarchy and is therefore connected to notions, such as watcher, watchmen, overseer and officer. Surveillance should therefore be conceived as technique of coercion (Foucault 1977, 222), as 'power exercised over him [an individual] through supervision' (Foucault 1994, 84).

2. Theoretical conflationism: Neutral concepts of surveillance put certain phenomena, such as taking care of a baby or the electrocardiogram of a myocardial infarction patient, on one analytical level with very different phenomena, such as preemptive state-surveillance of personal data of citizens for fighting terrorism or the economic surveillance of private data or online behaviour by Internet companies (Facebook, Google, etc.) for accumulating capital with the help of targeted advertising. Neutral concepts might therefore be used for legitimatizing coercive forms of surveillance by arguing that surveillance is ubiquitous and therefore unproblematic.

3. Difference between information gathering and surveillance: If surveillance is conceived as systematic information gathering, then no difference can be drawn between surveillance studies and information society studies and between a surveillance society and an information society. Therefore, given these circumstances, there are no grounds for claiming the existence of surveillance studies as discipline or transdiscipline (as argued, for example, by Lyon 2007)

4. The normalization of surveillance: If everything is surveillance, it becomes difficult to criticize coercive surveillance politically.

Given these drawbacks of neutral surveillance concepts, I prefer to define surveillance as a negative concept: surveillance is the collection of data on individuals or groups that are used so that control and discipline of behaviour can be exercised by the threat of being targeted by violence. A negative concept of surveillance allows drawing a clear distinction of what is and what is not Internet surveillance. Here are, based on a negative surveillance concept, some examples for Internet surveillance processes (connected to: harm, coercion, violence, power, control, manipulation, domination, disciplinary power, involuntary observation):

• Teachers watching private activities of pupils via webcams at Harriton High School, Pennsylvania.

• The scanning of Internet and phone data by secret services with the help of the Echelon system and the Carnivore software.

• Usage of full body scanners at airports.

• The employment of the DoubleClick advertising system by Internet corporations for collecting data about users' online browsing behaviour and providing them with targeted advertising.

• Assessment of personal images and videos of applicants on Facebook by employers prior to a job interview.

• Watching the watchers: corporate watch systems, filming of the police beating of Rodney King (LA 1992), YouTube video of the police killing of Neda Soltan (Iran 2009).

There are other examples of information gathering that are oriented on care, benefits, solidarity, aid and co-operation. I term such processes monitoring. Some examples are:

• Consensual online video sex chat of adults.

• Parents observing their sleeping ill baby with a webcam that is connected to their PC in order to be alarmed when the baby needs their help.

• The voluntary sharing of personal videos and pictures from a trip undertaken with real life friends who participated in the trip by a user.

• A Skype video chat of two friends, who live in different countries and make use of this communication technology for staying in touch.

--xt – control violation

Surveillance requires linkage to decisions to use the data coercively to be meaningful – defining it as data collection alone trivializes surveillance

Bennett, 5 – professor of political science at the University of Victoria (Colin, Global Surveillance and Policing, edited by Elia Zureik and Mark Slater, p. 132-133)

Have I been the subject of surveillance or, more precisely, 'dataveillance' (Clarke 1989)? Again, the literature would suggest that any capture of personal information (however benign) constitutes a surveillance process. Surveillance, Lyon contends, is 'any collection and processing of personal data, whether identifiable or not, for the purposes of influencing or managing those whose data have been garnered.' It is simply the outcome of the 'complex ways in which we structure our political and economic relationships' (2001: 2). Marx (1988) has also argued that there is a 'new surveillance' - routine, everyday, invisible and pre-emptive. Linked to this broad definition is the power of classification and sorting. It is a powerful means of creating and reinforcing social identities and divisions (Gandy 1993; Lyon 2003).

Without dissenting from these judgements, two insights suggest themselves as a result of the case studies above. First, my personal data (so far as I know) has not been processed for any purpose beyond that of ensuring that I am a valid passenger on the days and flights reserved. It has not been analysed, subjected to any investigation, manipulated or used to make any judgement about me. No doubt, a certain amount of data mining of de-identified information occurs within the industry to analyse general travel patterns and demands. No doubt, had I not opted out under the Aeroplan privacy policy, my data might have ended up with a variety of Aeroplan's partners, and I might have received related, and unrelated, promotional materials.

It seems, however, that there is a **fundamental difference** between the routine capture, collection and storage of this kind of personal information, and any subsequent analysis of that information from which decisions (benign or otherwise) might be made about me. The new process for AP1/PNR analysis serves to highlight the distinction. As a passenger, when I return to Canada, that information is automatically transferred ahead of my arrival to the CCRA's Passenger Assessment Unit at the Canadian airport, and it is systematically analysed. Anybody within a 'high-risk' category is then subject to further investigation. The crucial process, therefore, **is not the capture and transmission of the information**, but the prior procedures, and the assumptions that underpin them, about who is or is not a high-risk traveller. Surveillance might be 'any collection and processing of personal data, whether identifiable or not.' If we are to use such a broad definition, however, we need to find another concept to describe the active intervention of human agents who then monitor that data to make decisions about individuals. 'Surveillance' conflates a number of distinct processes. To describe what has happened to me as surveillance perhaps serves to trivialize the real surveillance to which some individuals, perhaps with 'risky' surnames and meal preferences, can be subjected during air travel.

Surveillance is the elimination of privacy with the explicit goal of changing individual behavior – it's distinct from 'watching over'

Huey, 9 – assistant professor of sociology at the University of Western Ontario (Laura, Surveillance: Power, Problems, and Politics. Hier, Sean P., and Greenberg, Joshua, eds. p. 221-222, ebrary

The past few years have witnessed incredible growth in the field of surveillance studies. Remarkably, despite this growth, there is no consensus on what forms of human activity are encompassed by the term "surveillance." Derived from the French for watching over, surveillance encompasses the basic activity of watching others. Brian Martin (1993, 115) uses surveillance in this sense when he describes it as "keeping a close watch on others." However, this basic definition has been variously expanded upon and/or challenged. Gary Marx (1998), among others, suggests that there has been a notable shift in what constitutes surveillance. Marx distinguishes between what he terms traditional surveillance, involving close observation of a targeted individual (e.g., the police officer who trails a suspect), and the new surveillance: technologies designed to systematically extract and collect personal data (e.g., the database that collects, sorts, and creates data profiles of targeted individuals and groups). Whereas traditional surveillance is an exceptional activity, proliferating technologies have made the new surveillance a routine, everyday activity that is largely invisible to those people whom it targets. What these two forms of surveillance share, however, is that each seeks to "eliminate privacy in order to determine normative compliance or to influence the individual" (Marx 2003, 370).

For Colin Bennett (2005), such an understanding of surveillance is insufficient. Bennett argues that the use of technology to systematically capture and analyze data must be understood in relation to institutional, cultural, and political contexts and goals: **an action alone does not constitute surveillance**; it does so **only in relation to its stated uses** and goals. To illustrate this point, Bennett distinguishes between the mundane collection and use of his personal data when taking a flight to Toronto and the experience of someone who has been targeted for close observation and special treatment by virtue of his or her name or meal preferences. According to Bennett, then, understanding surveillance as the simple act of watching over – the mother over the child, for example – **"trivializes" its meanings**, its uses, and the experiences of its targets.

Most predictable - Information collection for control of the population is the only unifying theme in diverse definitions of surveillance

Gill, 7 – professor of politics and security in the School of Social Science, Liverpool John Moores University, UK (Peter, Reforming Intelligence: Obstacles to Democratic Control and Effectiveness, Bruneau, Thomas C., and Boraz, Steven C., eds, ebrary)

Surveillance is a core concept in explaining modern governance. Though discussed in different ways by social theorists such as Dandeker, Giddens, and Foucault, 2 there is a **core of similarity** in their definition of surveillance, as constituted by two primary components: first, the gathering and storing of information and, second, the **supervision of people's behavior**. In other words, it is concerned with knowledge and power. In contemporary Western social theory, surveillance is

seen as the central aspect both of the establishment of modern ‘‘sovereign’’ state forms and of the more recent decline of sovereignty as it is replaced by ‘‘governance’’ (or, for Foucault, ‘‘governmentality’’), 3 including the concomitant recognition of the significance of private forms of governance. Furthermore, studies of non-Western societies show that surveillance is similarly central there: its philosophical basis may be crucially different (for example, the rejection of individualism), but its core goals— understanding and control— remain. 4 So, not surprisingly, global surveillance is argued by David Lyon to be an intrinsic part of the general economic restructuring of capitalism that is referred to as globalization, 5 and post-9/11 developments have served only to accelerate this already existing trend. 6

Surveillance requires a direct control relationship – otherwise ALL information gathering is topical

Monahan, 10 - Associate Professor of Communication Studies at The University of North Carolina at Chapel Hill (Torin, Critical Issues in Crime and Society : Surveillance in the Time of Insecurity, p. 8-9 ebrary) **ICT = information and communication technologies**

Surveillance Infrastructures

Surveillance has become a powerful, if dubious, symbol of national security. However, as with all technologies, surveillance functions in a polyvalent way to mediate and regulate interactions among people, organizations, and the built world. To the extent that information and communication technologies (ICTs) have the capacity to capture and store data for retrieval and analysis, whether at a later date or on the fly, they possess a modality for surveillance. Broadly defined, surveillance systems are those that afford **control of people** through the identification, tracking, monitoring, or analysis of individuals, data, or systems. **The control element is crucial** for determining **whether surveillance is occurring** because **otherwise all interactions** with ICTs would constitute a surveillant relationship. Surveillance is, by definition, about power. That being said, people are subject to surveillance throughout their everyday lives and are often completely unaware of it. Moreover, one need not wait until some exercise of control is felt in order to predict what systems have surveillance potential and under what conditions surveillance might be asserted. Surveillance systems, seen as such, proliferate throughout society: in urban infrastructures, transportation systems, cell phones, identification documents, computer programs, frequent shopper cards, medical and consumer products, and much more. Whether mobilized by the government, industry, employers, or peers, surveillance systems modulate experiences of the world.

Surveillance requires data collection for a purpose – it must be acted upon – it’s distinct from observation

Farrall, 9 – PhD dissertation at the University of Pennsylvania (Kenneth, “SUSPECT UNTIL PROVEN GUILTY, A PROBLEMATIZATION OF STATE DOSSIER SYSTEMS VIA TWO CASE STUDIES: THE UNITED STATES AND CHINA” Publicly accessible Penn Dissertations. Paper 51, http://repository.upenn.edu/edissertations/51

DEFINING SURVEILLANCE

Surveillance, according to Ball & Webster (2003), involves the "observation, recording and categorization of information about people, processes, and institutions." Lyon (2004) offers a definition of surveillance that is similar to Ball & Webster's, but with an important addition. According to Lyon, surveillance involves the "rationalized control of information within modern organizations, and involves in particular processing personal data for the purposes of influence, management, or control" (p. 135).The key distinction here is that the information is gathered for a purpose and that that purpose involves some form of action. Data that is simply gathered, but never acted upon or attended to by a human being, does nothing.

Surveillance differs from the more general form, observation, in its more systematic nature. It is practiced by institutions, not individuals. Using the language of cybernetics, I define surveillance in society as the systematic production of informational feedback about people, processes and institutions which facilitates the internal regulation of a social system. We can break down this feedback into two branches: 1) the continuous flow of real-time information about the system in question to the regulator and 2) the matrix of stored historical data about this system (memory) accessible to the regulator. While the regulators of many simple cybernetic systems may operate without this second channel of feedback 3 , social systems and their institutions of surveillance have become very reliant on them.

--Excludes genetic surveillance

Collection of genetic information isn't surveillance unless it's used for a forensic purpose

Epstein, 9 – Associate Professor of Law at Widener University School of Law (Jules, ""GENETIC SURVEILLANCE"-THE BOGEYMAN RESPONSE TO FAMILIAL DNA INVESTIGATIONS" 2009 U. Ill. J.L. Tech. & Pol'y 141 2009, Hein Online)

Beyond Professor Mnookin's stated concerns is the sound-bite derogation of familial DNA investigations, made by other critics,' 59 as "lifelong genetic surveillance." The term "surveillance" is itself a mis-nomer, as no one is watching or re-testing the profile once it is collected; rather, it is stored passively, and only compared against new crime scene profiles uploaded into the database.160 This distinction is not insignificant, as there is **no ongoing examination of the sample to learn more about the individual**. Given the authoritarian, "Big Brother"' 61 connotation of lifelong surveillance, use of the terminology is ill-advised.

The term is disproportionate for a second reason-the limited number of instances in which familial DNA "searching" will even occur. Here, the more aggressive British experience is telling. "In 2004, . .. approximately 20 familial searches had been undertaken. . . The reasons for this limited application include a recognition of the novelty of the process and also the volume of partial matches it may provide.'" 62 Although the ever-increasing use of DNA database searches cannot be disputed, 163 the likelihood of substantial familial searching has not been demonstrated. The only validity of the term "genetic surveillance" is that of the risk of use of the stored DNA information for non-forensic purposes. This concern, if valid, applies primarily to the individual in the database, and not (for the most part) to relatives.

1nc – nonpublic information

Violation – the aff curtails the use of federal acquisition of public information – that's not surveillance, which requires that an expectation of privacy is violated

Bedan, 7 - J.D. Candidate, Indiana University School of Law (Matt, "Echelon's Effect: The Obsolescence of the U.S. Foreign Intelligence Legal Regime," Federal Communications Law Journal: Vol. 59: Iss. 2, Article 7. Available at: http://www.repository.law.indiana.edu/fclj/vol59/iss2/7

The definition of surveillance, in pertinent form, is the acquisition of a communication either sent or received by a "particular, known United States person who is in the United States," if the communication was acquired by "intentionally targeting" that person, and if the circumstances are such that they have a reasonable expectation of privacy. 53 Alternatively, "surveillance" also means the acquisition of any communication to or from someone located in the United States, if the acquisition occurs within the United States.54

It is clear from both FISA and Supreme Court precedent that an individual must have a reasonable expectation of privacy for "surveillance" to occur. In United States v. Miller, the Supreme Court held that individuals have no expectation of privacy in information held by a third party.55 Through the use of National Security Letters, the FBI and the NSA routinely exploit this rule of law to acquire vast amounts of personal information on U.S. citizens from private corporations, such as phone companies and Internet service providers. 56 Because FISA's definition of surveillance fails to account for this practice, the government is not required to get a warrant or make any certification of probable cause. Considering how much the technological capacity of the private sector for gathering and retaining personal information has increased in recent years, the privacy implications of government access to this data are huge.

Voting issue –

1. limits – they explode the topic to cover governmental use of ALL types of information, like height, weight, your facebook status or twitter accounts – it's infinite

2. negative ground – 'privacy bad' is core ground on a surveillance topic, but their interpretation completely avoids the link

--xt - nonpublic information

Domestic surveillance means the acquisition of non-public information – it's distinct from the broader 'intelligence gathering' and requires an expectation to privacy

Small, 8 - United States Air Force Academy (Matthew, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to **narrow the scope of the term "domestic surveillance**." Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of **nonpublic** information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

Adhering to the above definition allows for a focused analysis of one part of President Bush's domestic surveillance policy as its implementation relates to the executive's ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis.

Considering an American citizen's claim to a right to privacy, the proposed analysis is not limited to electronic surveillance alone but rather includes those actions that would seek, or at least appear, to abridge a civil liberty. The previously presented definition of electronic surveillance itself implies an infringement into a person's expected right, in this case the right is to privacy. Acknowledging the intrusion **inherent in the definition**, the question of how far the president can push this intrusion becomes even more poignant. As such, President Bush's policies are not the sole subject of scrutiny, but rather his supposed power to abridge civil liberties in the interest of national security. The first part of the analysis, then, turns to a time where the national security of the United States was most at jeopardy, during its fight for independence.

It requires the elimination of a privacy interest – otherwise they make all trivial uses of information 'surveillance'

Huey, 9 – assistant professor of sociology at the University of Western Ontario (Laura, Surveillance: Power, Problems, and Politics. Hier, Sean P., and Greenberg, Joshua, eds. p. 221-222, ebrary

The past few years have witnessed incredible growth in the field of surveillance studies. Remarkably, despite this growth, there is no consensus on what forms of human activity are encompassed by the term "surveillance." Derived from the French for watching over, surveillance encompasses the basic activity of watching others. Brian Martin (1993, 115) uses surveillance in this sense when he describes it as "keeping a close watch on others." However, this basic definition has been variously expanded upon and/or challenged. Gary Marx (1998), among others, suggests that there has been a notable shift in what constitutes surveillance. Marx distinguishes between what he terms traditional surveillance, involving close observation of a targeted individual (e.g., the police officer who trails a suspect), and the new surveillance: technologies designed to systematically extract and collect personal data (e.g., the database that collects, sorts, and creates data profiles of targeted individuals and groups). Whereas traditional surveillance is an exceptional activity, proliferating technologies have made the new surveillance a routine, everyday activity that is largely invisible to those people whom it targets. What these two forms of surveillance share, however, is that each seeks to "eliminate privacy in order to determine normative compliance or to influence the individual" (Marx 2003, 370).

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Even the broadest definition doesn't include information provided with consent

Pounder 9 – PhD, Director, Amberhawk Training and Amberhawk Associates

(Chris, "NINE PRINCIPLES FOR ASSESSING WHETHER PRIVACY IS PROTECTED IN A SURVEILLANCE SOCIETY," Scholar)

This paper uses the term "surveillance" in its widest sense to include data sharing and the revealing of identity information in the **absence of consent** of the individual concerned. It argues that the current debate about the nature of a "surveillance society" needs a new structural framework that allows the benefits of surveillance and the risks to individual privacy to be properly balanced.

Surveillance is not shared information

Hypponen 14 - computer security expert and columnist

(Mikko, http://www.brainyquote.com/quotes/quotes/m/mikkohyppo633646.html)

Governmental surveillance is **not** about the government collecting the information you're sharing publicly and willingly; it's about collecting the information you don't think you're sharing at all, such as the online searches you do on search engines... or private emails or text messages... or the location of your mobile phone at any time.

Must be secret

Baker 5 – MA, CPP, CPO

(Brian, "Surveillance: Concepts and Practices for Fraud, Security and Crime Investigation," http://www.ifpo.org/wp-content/uploads/2013/08/surveillance.pdf)

Surveillance is defined as **covert** observations of places and persons for the purpose of obtaining information (Dempsey, 2003). The term covert infers that the operative conducting the surveillance is **discreet and secretive**. Surveillance that maintains a concealed, hidden, undetected nature clearly has the greatest chance of success because the subject of the surveillance will act or perform naturally. Remaining undetected during covert surveillance work often involves physical fatigue, mental stress, and very challenging situations. Physical discomfort is an unfortunate reality for investigators, which varies from stinging perspiration in summer to hard shivers during the winter.

Must be covert

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(Info Justice, OPERATIONS, SURVEILLANCE AND STAKEOUT PART 1, http://www.infojustice.com/samples/12%20Operations,%20Surveillance%20And%20Stakeout%20Part%201.html)

Surveillance is defined as the systematic observation of persons, places, or things to obtain information. Surveillance is carried out **without** the knowledge of those under surveillance and is concerned primarily with people.

--third party data not topical

The Third Party Doctrine means individuals don't have an expectation of privacy if their data is available to third parties

Turner, 15 - Brad Turner is a graduate of Duke Law School and a practicing attorney in Ohio. ("When Big Data Meets Big Brother: Why Courts Should Apply United States v. Jones to Protect People's Data" 16 N.C. J.L. & Tech. 377, January, lexis)

"Big Brother is Watching You." n1 Big Data n2 is fast becoming big business. n3 In an effort to target consumers with advertisements that connect consumers with goods and services that they are likely to buy, businesses track, collect, store, analyze, and share consumer data. n4 From smartphones n5 to smart thermostats, n6 from customer loyalty cards n7 to in-store motion detectors, n8 from cookies n9 to web beacons n10 and beyond, n11 [*380] companies obtain people's data from every source possible in an attempt to transform that data into consumer sales. n12

Of course, Big Data is valuable to more than just the private sector. Governments of all shapes and sizes are quickly learning the potential value of obtaining and using Big Data. n13 Unlike business, however, government cannot obtain huge troves of data about its citizens without raising the specter of Orwell's Big Brother. n14 Recent revelations about the size and scope of the National Security Agency's ("NSA") data-collection efforts, for example, have sparked a national debate about the propriety of the government collecting huge quantities of highly-detailed data about its citizens. n15 In a post-9/11 age when people conduct much of their daily lives online, Americans are understandably concerned about whether our national security apparatus strikes the proper balance between national security and civil liberties. n16

Thankfully, unlike the citizens in Orwell's 1984, n17 Americans have a tough, old friend to protect them from Big Brother: the [*381] Fourth Amendment. n18 The Fourth Amendment's protections against unreasonable searches and seizures have protected Americans' persons, papers, and effects for generations. And in an age when people's lives are constantly being tracked, recorded, analyzed, and shared by third parties, n19 its protections have never been more important.

The problem, exposed by the NSA's continued snooping, is a bit of Fourth Amendment jurisprudence called the "Third-Party Doctrine." n20 Long ago, the Supreme Court said that a person has no reasonable expectation of privacy in information that person knowingly exposes to others. n21 While such a policy may have made sense at a time when ubiquitous government surveillance was a practical and political impossibility, it makes little sense today. Nearly everything people do today becomes data. And nearly every bit of data is shared, knowingly or unknowingly, voluntarily or involuntarily, with others. The script has flipped: it is as difficult today for a person to avoid being tracked as it was thirty or forty years ago for the government to track that same person. Thus, a once small and manageable exception to the Fourth Amendment, the Third-Party Doctrine, now threatens to **swallow whole the privacy** guaranteed by the Fourth Amendment.

As the institution that created the Third-Party Doctrine so many years ago, n22 courts have the duty to ensure that it does not completely destroy privacy in the information age - an era where constant and pervasive surveillance is the norm. This Article suggests that courts adopt the Klayman v. Obama n23 approach and hold that the Fourth Amendment applies to government [*382] acquisitions of Big Data, including metadata. More specifically, courts should follow Justice Alito's reasoning in United States v. Jones n24 to hold that government acquisitions of Big Data are searches subject to the reasonableness requirements of the Fourth Amendment. Surely, if the government's collection of someone's global positioning system ("GPS") data in Jones was intrusive enough to constitute a search, then so are government acquisitions of Big Data.

Though such a holding would leave unresolved many challenging questions, such as whether the collection of bulk data would require a warrant, it would be an important first step that would bring the Fourth Amendment into the twenty-first century and enable the next generation of Americans to conduct their lives without fear of unreasonable government searches and seizures of their data.

No data privacy exists whatsoever – companies track every activity consumers make

Turner, 15 - Brad Turner is a graduate of Duke Law School and a practicing attorney in Ohio. ("When Big Data Meets Big Brother: Why Courts Should Apply United States v. Jones to Protect People's Data" 16 N.C. J.L. & Tech. 377, January, lexis)

II. Big Data and The Illusion of Privacy

Despite whatever Americans may believe or desire about privacy, their activities are far from private. Every website visit, every hyperlink click, every Facebook message sent, and every YouTube video watched is being tracked. n25 Even offline activities, like shopping, driving, walking, and exercising are being tracked. n26 In the words of the Jurassic Park ranger tracked by a pack of velociraptors, n27 "We are being hunted." n28 Instead of velociraptors hunting Americans for lunch, Americans are being hunted for the purpose of advertising, or more generally, for the purpose of making money from their data. Only, unlike the trained Jurassic Park ranger, many Americans do not know they are being hunted. [*383] One scholar compared this to a two-way mirror: the end-user sees her own activities reflected in the two-way mirror, and does not realize that on the other side, she is actually being observed by any number of faceless, non-descript organizations that she probably does not even know exist. n29

A. Tracking Online Activities

Nearly everything a person does online is tracked in some way. Advertisers are looking for valuable ad space, and companies with that space are eager to cash-in.

1. The Fundamentals of Online Tracking: Cookies, Website Activity Logs, Form Data, and Web Beacons

When a person visits a website, the website will place a "cookie" on the person's computer or electronic device that tracks the person's activities on the website. n30 These cookies can be set to

erase themselves after the individual leaves the website - or not. n31 Persistent (multi-session) cookies stay on a person's computer and can stay there until they expire, which can be months or even years. n32 Persistent cookies are the objects of code on a person's computer that enable a website to "remember" a visitor so that a visitor need not, for example, re-enter her username and password each time she wishes to log on to her email. n33 Typically, cookies [*384] can be read only by the website generating the cookie. n34 That, however, is not always the case. Sometimes the cookie can be read by multiple websites, permitting information-sharing between several different websites visited by the same person. n35 Thankfully, cookies can be blocked, n36 although often at the cost of severely reduced functionality. n37 New cookie-like technology dubbed "canvas fingerprinting," however, may be "virtually impossible to block." n38

Cookies are not the only way an online entity can track a user's activities. Users are tracked in any number of ways that do not require the ability to store a cookie on a user's computer or electronic device. For example, websites n39 keep detailed activity logs of every visitor, n40 like an automatically generated visitor log or guestbook. These logs gather raw user-data, like the accessing-device's IP address, the access date and time, and cookie data, if it exists. n41 Software then reads and interprets this raw data to provide the website operator with information about user behavior. n42 Of course, any data directly entered by visitors into [*385] form fields, like name, contact information, etc., is stored in the webserver's database. Cookie data, website activity log data, and form data can then be combined and associated to build a comprehensive snapshot of a particular visitor's activity on the website. n43

Web beacons are another popular, very simple, and very effective way of tracking people's online whereabouts without using a cookie. Each time someone visits a website embedded with a tracker's web beacon, the tracker is notified, like a blip on a radar. n44 From the blips, the tracker can surreptitiously track a visitor's online whereabouts across any website embedded with the beacon. Embed enough web beacons into enough websites, and a tracker can learn a great deal about a visitor: everything from the visitor's political ideology to the visitor's sexual preferences.

2. The Incentive to Track and Collect as Much Data as Possible - Big Data's Raison d'Etre

Hosting websites and providing services is not cheap, and it certainly is not free. To the pay the bills, companies often sell ad space to online advertising agencies eager to reach a broader audience. n45 And when selling ad space pays the bills, information about the company's electronic visitors is very valuable. The more information that advertising agency has about a particular company's electronic visitors, the better the ad agency is able to [*386] display ads that influence those visitors. n46 The more effective the ad, the more money the advertisement agency makes from its clients. n47 The more money advertising agencies make from advertising on a particular electronic space, the more money the host-company can charge for that ad space. n48

Such an information and data-driven system encourages ad space hosts, as well as the advertising agencies that buy ad space, to collect as much personal data as possible from visitors. Though a particular website may enjoy access to only its visitors' information, an advertising agency has access to the visitor information of all of the electronic spaces where it displays ads (e.g., websites, smartphone apps, software, console gaming systems, etc.). n49 The ability to compile data from so many different sources helps advertising agencies create a three-dimensional, high-detailed image of any particular visitor. n50 Complex algorithms [*387] then track that visitor's

electronic movements and place advertisements on websites, between songs, and before and during videos that are more likely to influence the visitor. n51

Facebook and Google have become two of the most pervasive data-aggregating advertising agencies. Google's AdSense advertisement system dwarfs most other online ad agencies, boasting more than two million affiliates. n52 Facebook's advertising program is different, but just as massive. Facebook enjoys access to the data of more than 950 million users. n53 Facebook records more than 2.5 billion status updates, wall posts, photos, videos, and comments every day. n54 Facebook also collects data about users visiting any platform that contains a Facebook "Like" button, whether the Facebook user clicks the "Like" button or not. n55 One company estimates that these "Like" buttons exist on nearly one million websites. n56 With access to so much high-quality data, it is no wonder why Google and Facebook are able to target users and visitors with such eerily accurate web ads. n57

B. "Offline" Tracking

Going offline will not stop the hunt; people are tracked even when they think they are offline. Smartphones, GPS systems, [*388] customer-loyalty cards, video cameras, and even radio frequency identification ("RFID") devices track the whereabouts, purchasing habits, and seemingly offline activities of Americans every single day, even though Americans may not realize it or approve.

1nc – technical means

Surveillance requires information collection through the use of technology

Odoemelam, 15 - Chika Ebere Odoemelam is with University of Western Ontario, London,

Ontario, Canada ("Adapting to Surveillance and Privacy Issues in the Era of

Technological and Social Networking" International Journal of Social Science and Humanity, Vol. 5, No. 6, June 2015, http://www.ijssh.org/papers/520-H140.pdf)

According to an article by the United Nations Office on Drugs and Crime, (2009) [3], "Surveillance is the collection or monitoring of information about a person or persons through the use of technology". Thus, from the above definition, one can see that surveillance involves a wide range of technology and practices aimed at monitoring the activities of people possibly without their knowledge and permission. For instance, there is audio surveillance which involves phone-tapping and listening devices, visual surveillance which involves in-car video devices, hidden video surveillance, and closed-circuit television camera (CCTV), tracking surveillance which includes global positioning systems (GPS) and mobile phones and data surveillance which involves computer, internet and keystroke monitoring. The majority of the above devices are constantly used to monitor people without their prior permission.

Furthermore, surveillance according to David Lyon (2007) [4] is "the focused, systematic and routine attention to personal details for the purposes of influence, management, protection or direction". The above definition shows that surveillance is an instrument used by the authorities for the monitoring and management of the activities of its citizenry. Thus, to achieve this objective, nations use electronic communication technologies such as wiretapping telephone conversations, tracking people with biometric data and using infrared cameras. In the same vein, marketing firms sometimes use social media technologies such as Facebook, Twitter, blogs and instant messaging devices to collect data about individual users, and in most cases, end up in violating the privacy of the users.

Violation – the aff curtails the use of physical searches, it's distinct

Voting issue to preserve limits – search and seizure law should be a separate topic – they explode surveillance into the entire body of Fourth Amendment jurisprudence and make it impossible to predict or prepare for

--xt technical means

Observation from a distance---requires electronic equipment

Aydin 13 – PhD, Associate Professor

(Mehmet, "Perception of Surveillance: An Empirical Study in Turkey, USA, and China," International Journal of Business, Humanities and Technology, 3.4)

Information Technology (IT) transformation in government can be seen as a revolution in terms of quality and cost of public services. However, it is also a reality that governments' use of IT may pose a threat to civil rights and liberties. In the last decade, there is an abundance of news in the media regarding with the continuing assault on citizens' privacy arising from some Information Technology (IT) applications. The most critical part of IT use is related to surveillance activities. Surveillance is the monitoring of the behavior, activities, or information for the purpose of influencing, managing, directing, or protecting (Lyon, 2007). In fact, surveillance is a highly complicated issue with its positive and negative sides. It generally involves observation of individuals or groups by government organizations. The word surveillance generally refers to observation from a **distance** by means of electronic equipment (such as closed circuit television- CCTV), or interception of electronically transmitted information (such as Internet traffic or phone calls). These surveillance categories (CCTV, Internet and telephone) will also be the subject of this study. In the empirical part, attitudes of students towards those technologies will be analyzed in depth.

Requires distance and technology

KAB 15

(Cutting edge technology solutions, Surveillance System Services, http://www.kabcomputers.com/Services/Security-and-Surveillance-System-Services.htm)

Surveillance Systems (CCTV)

KAB Computer Services offers several surveillance services. By definition, system surveillance is the process of monitoring the behavior of people, objects or processes within systems for conformity to expected or desired norms in trusted systems for security or social control. The word surveillance is commonly used to describe **observation from a distance** by means of electronic equipment or other technological means.

Typical Surveillance System Services:

Closed Circuit Television (CCTV)

Surveillance Cameras

Hidden or Covert Cameras

GPS Tracking (Real-Time and Data Loggers)

Surveillance requires the use of technical means

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Ontario, Canada ("Adapting to Surveillance and Privacy Issues in the Era of

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Still contributing in the definition of surveillance, Gary T. Marx, (2002) [7], adds to the definition of surveillance by describing it as "The use of technical means to extract or create personal data. This may be taken from individuals or contexts". The above definition suggests that those that have the power or authority, such as police and other members of law enforcement agencies, can carry out surveillance activities beyond what individuals disclose to them and without their prior notice or permission. Hence, to carry out such operations in the context, law enforcement agents look at patterns and settings of relationships while using surveillance technologies, such as data profiling of individuals.

Surveillance is scrutiny through technical means to create or extract personal data – most predictable because it best reflects current government practice

Marx, 4 – Professor Emeritus from M.I.T. (Gary, "Some Concepts that may be Useful in Understanding the Myriad Forms and Contexts of Surveillance, Intelligence and National Security," 19:2, 226-248, DOI: 10.1080/0268452042000302976

WHAT IS SURVEILLANCE?

The dictionary definition of surveillance as it is applied to many contemporary new forms such as video, computer dossiers, electronic location and work monitoring, drug testing and DNA analysis is **woefully inadequate** or worse.7 For example in the Concise Oxford Dictionary surveillance is defined as 'close observation, especially of a suspected person'. Yet today many of the new surveillance technologies are not 'especially' applied to 'a suspected person'. They are commonly applied categorically. In broadening the range of subjects the term 'a suspected person' takes on a different meaning. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular time periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand.

The dictionary definition also implies a clear distinction between the object of surveillance and the person carrying it out and a non-co-operative relationship. In an age of servants listening behind closed doors, binoculars and telegraph interceptions, that separation made sense. It was easy to distinguish the watcher from the person watched. Yet self-surveillance, cosurveillance and reciprocal surveillance have emerged as important themes, often blurring the easy distinction between agent and subject of surveillance. Well-publicised warnings that surveillance might be present seek to create self-restraint. A general ethos of self-surveillance is also encouraged by the availability of home products such as those that test for alcohol level, pregnancy, AIDS and other medical conditions.

Nor does the traditional definition capture contemporary cases of 'cooperative' parallel or co-monitoring, involving the subject and an external agent in which the former voluntarily sends a remote message (as with location and some implanted physiological monitoring devices). Individuals may agree to wear badges and have transmitters for toll roads or as anti-theft means installed on their cars. They may join programmes that invite police to search their vehicles if driven late at night. Many bio-metric forms involve some degree of co-operation, or at the least, implicit co-operation by the failure to take steps to block transmission.

The border between the watched and the watcher may also be blurred in that there can be a continuous transmission link between sender and receiver as with brain waves or scents. The sender and receiver are in one sense electronically joined. It may be difficult to say where the subject stops and the agent begins. As with questions of copyright and electronic media, new issues of the ownership and control of property appear. Such transmissions are 'personal' but leave the person's body and control. The line between what is public and private is hazy in such settings.

The term 'close observation' also fails to capture contemporary practices. Surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and work. Nor need it be 'close' as in detailed – much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail. It is both farther away and closer than the conventional definition implies.

The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in 'observation'. The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (for example, saying 'I see' for understanding or being able to 'see through people'). Indeed, 'seeing through' is a convenient short-hand for the new surveillance.

To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (for example, written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to 'observe' a text or a printout is in many ways different from a detective or supervisor directly observing behaviour. The eye as the major means of direct surveillance is increasingly joined or replaced by hearing, touching and smelling. The use of multiple senses and sources of data is an important characteristic of much of the new surveillance.

A better definition of contemporary forms of surveillance is needed. The new forms of surveillance involve scrutiny through the use of technical means to extract or create personal data, whether from individuals or contexts. The data sought may or may not be known by the subject, who may be willing or unwilling to have it discovered or revealed. It may involve revealed information for which verification is sought.

The use of 'technical means' to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples involve an automated process and most extend the senses by using material artefacts or software of some kind, but the means for rooting out can also be sophisticated forms of deception as with undercover operations, ruses and pretexts. The use of 'contexts' along with 'individuals' recognises that much modern surveillance also looks at settings and patterns of relationships. Systems as well as persons are of interest.

This definition excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a co-operative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.

I use the more neutral and broader verb 'scrutinise' rather than 'observe' (with its tilt toward the visual) in the definition because the nature of the means (or the senses involved) suggests sub-types and issues for analysis that ought not to be foreclosed by a definition. For example how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity? In addition much surveillance is automated and hence 'observation' (if that is what it is by a machine, is of a different sort).

While the above definition captures some common elements among new surveillance means, contemporary tactics are enormously varied.8 There is need for a conceptual language that brings some parsimony and unity to the vast array of old and new surveillance activities and which can permit more systematic comparisons and explanations. The next section suggests dimensions that can be used to categorise the means aspect of surveillance.

--AT: Physical surveillance is topical

Surveillance requires information gathering from a distance – even if physical surveillance is part of it, that just means observation not searches

Shahabuddin, 15 - JD, Chapman University Dale E. Fowler School of Law (Madiha, ""The More Muslim You Are, the More Trouble You Can Be":1 How Government Surveillance of Muslim Americans2 Violates First Amendment Rights" Chapman Law Review [Vol. 18:2)

Professor Christopher Slobogin defines surveillance as "government efforts to gather information about people **from a distance**, usually covertly and without entry into private spaces."21 Surveillance as a general phenomenon is then broken down into three categories: 1) communications surveillance, which is "the real-time interception of communications"; 2) physical surveillance, which is "the real-time observation of physical activities"; and 3) transaction surveillance, which is the "accessing [of] recorded information about communications, activities, and other transactions."22 According to Slobogin, since 9/11, "the United States government has been obsessed, as perhaps it should be, with ferreting out national security threats," but "more than occasionally it has also visited significant intrusion on large numbers of law-abiding citizens—sometimes inadvertently, sometimes not."23 Within the context of national security, intelligence gathering24 of pattern occurrences in neighborhoods and communities is intended to "analyze broad or meaningful trends" as a means of assessing the validity and likelihood of a national security threat.25

Such intelligence gathering, however, armed with a prejudicial purpose can result in "selective surveillance" that imposes burdens on Muslim Americans' First Amendment rights, further alienating this particular community from the government.26 The surveillance of Muslim Americans operates along a similar, yet covert, vein of the "Broken Windows"27 theory of policing. Developed by James Q. Wilson and George L. Kelling, this theory posits that when a community riddled with violence and crime becomes less tolerant of the minor causes of social disorder, a decrease in violent crime will result.28 Implementation of the Broken Windows theory has resulted in aggressive "zero tolerance policing" in New York City, with its stated goal being to increase misdemeanor arrests on the streets in an effort to reduce other, more violent crime.29 While there has been much social science research conducted to test the Broken Windows theory, "there is no reliable empirical support for the proposition that disorder causes crime or that broken-windows policing reduces serious crime."30

--AT: Overlimits

Technological surveillance is broad – multiple examples

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Ontario, Canada ("Adapting to Surveillance and Privacy Issues in the Era of

Technological and Social Networking" International Journal of Social Science and Humanity, Vol. 5, No. 6, June 2015, http://www.ijssh.org/papers/520-H140.pdf)

V. TYPES OF SURVEILLANCE

The advent of advanced forms of technology has made our lives more prone to public scrutiny today, in the 21st century. The concept of a surveillance society whereby our everyday private lives are being monitored and recorded by the authorities is no longer news. Since the September 2001 terrorists attack in the United States, the assault on our privacy by security agents using sophisticated surveillance programs or privacy-invading devices has been a constant presence in the news media. The availability of wireless communications, computers, cameras, sensors, GPS, biometrics, and other technologies is growing silently in our midst.

According Christopher Parsons (2011) [10], "When we send messages to one another online, when we browse web pages and send e-mail, our communications are typically unencrypted, that is, they are in a form that can be easily read". Because our communications are unencrypted, everyone who uses online technology or other forms of communications is vulnerable to surveillance. Our online and offline communications are constantly being monitored and are under surveillance by the "appropriate" authorities. As a result, it is possible for our privacy to be violated without our consent because of our reliance on technology. There is a huge privacy issue in relation to digital and other forms of communications all over the globe, especially when telecommunications companies install equipment that could be used for covert surveillance and even modification of our communications.

Moreover, various forms of surveillance abound that could be blamed for bringing our lives out of the private domain and into the public sphere. These forms of surveillance include.

A. E-mail Surveillance

This is related to the monitoring of both encrypted and unencrypted electronic messages or communications of individuals by government agencies. The government does this by ordering Internet Service Providers (ISP) to inspect their user's communications data, both encrypted and unencrypted. According to the New York Times (June 16, 2009) [11] article, "The National Security Agency is facing renewed scrutiny over the extent of its domestic surveillance program, with critics in Congress saying its recent intercepts of the private telephone calls and e-mail messages of Americans are broader than previously acknowledged, current and former officials said". The above statement suggests that we are living in a surveillance society, and that the challenges society will face in adapting it as a way of life are enormous and potentially overwhelming.

B. Telephone Tracking Surveillance

The recent claims that US intelligence agencies have been monitoring the mobile phone conversations of German Chancellor, Angela Merkel, as well as those of over seventy million French citizens, is a strong example of telephone surveillance.

According to an article, Der Spiegel (2013) [12] reporting on information obtained from former NSA worker Edward Snowden, "Merkel's mobile number had been listed by the NSA's Special Collection Service (SCS) since 2002 and may have been monitored for more than 10 years". This information makes it obvious that the surveillance business observes no boundaries and a respects no individual. In surveillance, everybody is a suspect irrespective of one's position in the society. Surveillance is sometimes carried out by tapping the targets' communications with high-tech surveillance equipment, thus threatening their right to privacy as guaranteed by the International Covenant on Civil and Political Rights. Disclosures of this nature will continue to raise fundamental questions around the world about how to effectively protect our privacy and our personal data from unauthorized surveillance. For instance, if companies are handing over customer data or access to their equipment without authorization, those businesses may well have broken the law by violating the privacy of their customers.

C. Other Forms of Surveillance

According to Christian Fuschs (2010) [13], other forms of surveillance include:

1) Scanning the fingerprints of visitors entering the United States.

2) The use of speed cameras for identifying speeders which involves state power.

3) Electronic monitoring bracelets for prisoners in an open prison system.

4) Scanning of Internet and phone data by secret services.

5) Usage of full body scanners at airports.

6) Biometric passports containing digital fingerprints.

7) CCTV cameras in public places for the prevention of crime and terrorism.

8) Assessment of customer shopping behaviour with the help of loyalty cards.

9) Data collection in marketing research.

10) Assessment of personal images and videos of applicants

on Facebook by employers prior to a job interview.

11) Passenger Name Record (PNR) data transfer in the aviation industry.

12) Corporations spying on employees, or union members.

1nc – people not places violation

Surveillance is the focused, systematic and routine collection of personal details – it excludes surveillance of places

Keiber, 14 – PhD dissertation for the Graduate Program in Political Science at Ohio State (Jason, "The Surveillance of Individuals in International Politics" https://etd.ohiolink.edu/!etd.send_file?accession=osu1397573412&disposition=inline

The study of surveillance has its own discipline, yet it is relatively new. The field of Surveillance Studies "covers a **huge range** of activities and processes, but what they have in common is that, for whatever reason, people and populations are under scrutiny."65 A representative definition of "surveillance" is: "the focused, systematic and routine" collection and analysis of "personal details for purposes of influence, management, protection or direction.66

Various elements of the definition deserve attention. First, surveillance is focused and routine. This suggest it is, at the very least, purposive, and incidental acquisition of data would not count as surveillance proper. Second, it includes both collection and analysis. Note also that collection entails the activity of gathering information as well as the storage of it. Storage, for example of data in a database, is an important component of surveillance because it enables those conducting surveillance to keep track of information over time and recall that information when needed. Analysis is included because often the collected data does not speak for itself. For example most information is classified (sorted) as it gets stored, and classification is itself a form of analysis. Moreover, technology increasingly enables automated data analysis and data mining to discover patterns and novel information. Third, according to the definition above different actors can conduct surveillance—governments, corporations, civic organizations, parents, etc. For my purposes the focus will be on governmental forms of surveillance.

Finally, surveillance is about people. Students of international politics may pause here—what about surveillance of material things like missile sites and nuclear enrichment facilities. Surveillance Studies, which has roots in sociology and human geography, is primarily interested in surveillance as a social and political phenomenon. That being said, sometimes surveillance of objects can provide a lot of information about what certain people are doing. This is well within the purview of surveillance studies. For an IR example, IAEA monitoring of gas centrifuges is similar to workplace monitoring intended to check whether or not employees are doing their job. On the other hand there is some material-focused surveillance which Surveillance Studies doesn't address. For example satellites and seismic and atmospheric monitoring constantly operate to detect nuclear detonations, but this is activity that Surveillance Studies is not too interested in.

Voting issue to ensure predictable limits. Surveillance already covers a huge range of activities – including surveillance of places explodes the topic and skirts the core controversies of surveillance studies

--xt people violation

Surveillance is defined as 'social sorting'---the deliberate collection of personal information for the purpose of management, protection or detection

Tucker and Wang 14 – *PhD, Professor of Computer Science, **PhD, Professor @ U Portsmouth

(Victoria and John, "On the Role of Identity in Surveillance," http://arxiv.org/pdf/1408.3438.pdf)

David Lyon has emphasised a general conception of surveillance, which he has characterised as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or detection" (2007a: 14). Furthermore, "this attention to personal details is not random, occasional or spontaneous; it is deliberate and depends on certain protocol and techniques" (ibid.). Lyon (2003, 2007b) has emphasised the significance of considering contemporary surveillance as social sorting. He defined the term to mean the "focus on the social and economic categories and the computer codes by which personal data is organized with a view to influencing and managing people and populations" (Lyon, 2003: 2). **Social sorting** has become the **main purpose** of surveillance, since surveillance today is **overwhelmingly about personal data**. The rise of surveillance leads to an emphasis on monitoring the behaviours from selected individuals, through groups of people, to the entire population. The growth and effectiveness of the monitoring are made possible by all sorts of new technologies, especially software technologies. However, surveillance as social sorting is becoming increasingly significant, not merely because of the abundance and availabilities of new technological devices. Rather, these devices are required because of the increasing number of perceived and actual risks, and consequently, the desire to monitor the behaviour of the entire population (cf. Lyon, 2003).

Systematic observation and identification of particular attributes of individuals

Tucker and Wang 14 – *PhD, Professor of Computer Science, **PhD, Professor @ U Portsmouth

(Victoria and John, "On the Role of Identity in Surveillance," http://arxiv.org/pdf/1408.3438.pdf)

Indeed, surveillance is about data and essential to contemporary surveillance practices are software technologies and hardware devices that collect, store and process data. Currently, the growth and effectiveness of surveillance are made possible by all sorts of new technologies, especially software technologies. They are increasingly becoming a natural component of our everyday life as various forms of surveillance practices are routinely built into our physical and virtual environments. Surveillance is a process of data gathering that involves the systematic observation of behaviours and individuals, and the identification of the ones that are deemed to have specific attributes (see: Figure 1).

Systematic observation of persons

Wang 11 – PhD, Vice President for Information Services and Chief Information Officer for the RF

(Hao, “Protecting Privacy in China,” p. 27)

Surveillance is defined as the systematic investigation or monitoring of the actions or communications of one or more **persons**. Traditionally, surveillance has been undertaken by physical means, such as guarding prisons. In recent decades, it has been enhanced through image amplification devices such as high-resolution satel¬lite cameras.6"1 Most of them are readily available in China today. However, some of them are also privacy invasive. They render current Chinese legal protections seriously inadequate. These devices may include: (I) microphones or listening devices that can be concealed; (2) miniature tape recorders; (3) hidden cameras such as cell phone cameras; (4) hidden monitors that operated by remote control; (5) infrared devices enabling photographs to be taken at night; (6) miniature transmitters; and so on.

People

Nawawi 15 – PhD, Lecturer of Future Public Health Professionals

(Wan, “Surveillance Methods of Reducing Pilferage Problems in Foodservice Operation,” J. Basic. Appl. Sci. Res., 5(1)91-94, 2015)

Nowadays, pilferage becomes one of the issues that are affecting the foodservice establishment. One of the methods that can help to reduce pilferage problem is through surveillance. According to Advanced English Dictionary, surveillance is defined as “a close watch keeps on a **person**, especially someone suspected of criminal activities”. This means, surveillance is the continuous monitoring of an **individual** under supervision. In the food service industry, the employee theft frequently occurred and it gives bad effect to this industry [8]. So, the surveillance is very important in order to reduce employee theft and it can be done using the technology or by humans.

General surveillance definitions

Limits good - surveillance

Narrow definitions are preferable---otherwise 'surveillance' is completely unlimited

Walby 5 – PhD, Associate Professor, University of Winnipeg, Department of Criminal Justice

(Kevin, "Institutional Ethnography and Surveillance Studies: An Outline for Inquiry," Surveillance & Society 3(2/3): 158-172)

The emerging transdisciplinary field of surveillance studies suffers from an **overabundance** of speculative theorizing and a dearth of rigorous empirical research. Of course, many monographs, articles, and reports tangentially related to the study of surveillance are based on social scientific practice, and many of the classic works that constitute surveillance studies itself are not purely speculative but engage through research with the social world they investigate (see, for instance, Rule, 1973; Braverman, 1974; Marx, 1988). Researching surveillance involves "watching" and needs to be accompanied by an ethics of honesty, sympathy and respect as it regards researchers and their respondents. Still, there is no overarching method in this area of study. Nor should there be only one overarching method. When we use the word "surveillance" we often forget how amazingly diverse the forms, linkages, and processes captured by the word are. That surveillance is a signifier referring to face-to-face supervision, camera monitoring, TV watching, paparazzi stalking, GPS tailing, cardiac telemonitoring, the tracking of commercial/internet transactions, the tracing of tagged plants and animals, etc., points to an **impossible** and **always receding** signified. Nevertheless, we need to refer to these processes, and at present time surveillance is the term. We also need ways of inquiring into these processes. The search is on for the methods of inquiry needed to give surveillance studies continuity and legitimacy in the sport de combat of social science.

Reject broad definitions of surveillance – they prevent rigorously analyzing the topic

Jobard, 8 – Center of Sociological Research on Penal Institutions (Fabien, Law and Deviance, Volume 10 : Surveillance and Governance. Deflem, Mathieu, ed, p. 77 ebrary)

The term surveillance raises a lexical difficulty which complicates its theoretical implications as well as its empirical specification. Narrowly understood, it refers to the set of processes and measures through which the State is informed of the activities of a person or of a group of persons while avoiding repressive action, either because no offence has actually been identified or because the government prefers, for one reason or another, to be discrete (Fijnaut & Marx, 1995; Sharpe, 2000). Yet, Michel Foucault's seminal work Surveiller et punir was translated into English under the title Discipline and Punish (Foucault, 1977). In this latter disciplinary understanding, the notion of surveillance has to do with a much broader field (Deleuze, 1988). It ceases to be a mere policing tool among many others in the State's policing arsenal, and instead becomes a regime of ''governmentality'' combining and articulating different technologies, strategies, and governmental rationalities (Rose & Miller, 1992). Accordingly, surveillance becomes a notion to describe a specific way through which human behavior is apprehended, and

hence ensure predictability, calculability, and ‘‘governability’’ (Gandy, 1993; Lyon, 1994; Wood, 2003). Here, of course, we find ourselves following a path opened by Foucault (1988) and followed by many others since (for instance Rose, 2000).

However, whether one understands the notion of surveillance in its narrow sense, as a mere set of disparate means within a governmental apparatus, or, on the contrary, as the basis for the constitution of a governmentality regime which relies on spotting, identification, and control, using number of techniques, devices, and processes, in both cases, the risk is that surveillance becomes an ‘‘all-terrain’’ notion which has less and less to do with the ground realities of its implementation. As David Garland (1997) strongly underlines, the notion of surveillance could then lead directly to a variant of reductionism: **applicable to too many situations**, it would, at the same time, **suppress the empirical specificities of each one**. This inclination is all the more detrimental that, in polishing the ruggedness of reality, it contributes to neglecting the uniqueness of the organizational methods and the institutional layouts, the various types of intervention, and of the stocks of knowledge precisely meant to define the ‘‘surveillance society.’’ Yet, if there were one systematic observation to report, it would be the multiplicity and variability of the devices of surveillance. Each of these devices adapts to specific constellations, which have characteristic social, spatial, and temporal indicators, and are defined by the nature of the threats and the risks that operate inside of them. The differences from one constellation to another are what deserve particular attention.

Federal surveillance laws

Surveillance laws refer to FISA, the NSA, the Right to Financial Privacy Act, and the Fair Credit Reporting Act

Congressional Record, 13 (Text of S.1599, a bill to amend the Patriot Act, 10/29, p. S7630)

(2) SURVEILLANCE LAW.—The term ‘‘surveillance law’’ means any provision of any of the following:

(A) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(B) Section 802(a) of the National Security Act of 1947 (50 U.S.C. 436(a)).

(C) Section 2709 of title 18, United States Code.

(D) Section 1114 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(A)).

(E) Subsection (a) or (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u(a), 1681u(b)).

(F) Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) (as in effect on the day before the date of the enactment of this Act).

AT: Lyon definition

Topical exceptions exist to general standards for surveillance

Lyon, 7 – David Lyon directs the Surveillance Studies Centre, is a Professor of Sociology, holds a Queen's Research Chair and is cross-appointed as a Professor in the Faculty of Law at Queen's University in Kingston, Ontario (SURVEILLANCE STUDIES: AN OVERVIEW, p. 13-16)

Defining surveillance

Before going any further, I should make clear what is meant by surveillance. Although the word 'surveillance' often has connotations of surreptitious cloak-and-dagger or undercover investigations into individual activities, it also has some fairly straightforward meanings that refer to routine and everyday activity. Rooted in the French verb surveiller, literally to 'watch over', surveillance refers to processes in which special note is taken of certain human behaviours that go well beyond idle curiosity. You can 'watch over' (or, more clumsily, 'surveill') others because you are concerned for their safety; lifeguards at the edge of the swimming pool might be an example. Or you can watch over those whose activities are in some way dubious or suspect; police officers watching someone loitering in a parking lot would be an example of this kind of surveillance.

Surveillance always has some ambiguity, and that is one of the things that make it both intriguing and highly sensitive. For example, parental concern and care for children may lead to the adoption of some surveillance technologies in order to express this. But at what point does this become an unacceptable form of control? Does the answer depend on whether or not the offspring in question are aware that they are being tracked, or is the practice itself unethical by some standards? At the same time, putting the question this way assumes that people in general are wary, if not positively spooked, when they learn that others may be noting their movements, listening to their conversations or profiling their purchase patterns. But this assumption is not always sound. Many seem content to be surveilled, for example by street cameras, and some appear so to relish being watched that they will put on a display for the overhead lenses, or disclose the most intimate details about themselves in blogs or on webcams.

So what is surveillance? For the sake of argument, we may start by saying that it is the focused, systematic and routine attention to per- sonal details for purposes of influence, management, protection or direction. Surveillance directs its attention in the end to individuals (even though aggregate data, such as those available in the public domain, may be used to build up a background picture). It is focused. By systematic, I mean that this attention to personal details is not random, occasional or spontaneous; it is deliberate and depends on certain protocols and techniques. Beyond this, surveillance is routine; it occurs as a 'normal' part of everyday life in all societies that depend on bureaucratic administration and some kinds of information technology. Everyday surveillance is endemic to modern societies. It is one of those major social processes that actually constitute modernity as such (Giddens 1985).

Having said that, there are exceptions. Anyone who tries to present an 'overview' has to admit that particular circumstances make a difference. The big picture may seem over-simplified but, equally, the tiny details can easily lose a sense of significance. For example, not all surveillance is necessarily focused. Some police surveillance, for instance, may be quite general - a 'dragnet' - in

an attempt somehow to narrow down a search for some likely suspects. And by the same token, such surveillance may be fairly random. Again, surveillance may occur in relation to non-human phenomena that have only a secondary relevance to 'personal details'. Satellite images may be used to seek signs of mass graves where genocide is suspected or birds may be tagged to discover how avian flu is spread. Such exceptions are important, and add nuance to our understanding of the big picture. By looking at various sites of surveillance, and exploring surveillance in both 'top-down' and 'bottom-up' ways, I hope to illustrate how such variations make a difference to how surveillance is understood in different contexts.

The above definition makes reference to 'information technology', but digital devices only increase the capacities of surveillance or, sometimes, help to foster particular kinds of surveillance or help to alter its character. Surveillance also occurs in down-to-earth, face-to- face ways. Such human surveillance draws on time-honoured practices of direct supervision, or of looking out for unusual people or behaviours, which might be seen in the factory overseer or in neighbourhood watch schemes. Indeed, to accompany the most high-tech systems invented, the US Department of Homeland Security still conscripts ordinary people to be the 'eyes and ears' of government, and some non-professional citizen-observers in Durban, South Africa have been described by a security manager (without irony) as 'living cameras' (Hentschel 2006).

But to return to the definition: it is crucial to remember that surveillance is always hinged to some specific purposes. The marketer wishes to influence the consumer, the high school seeks efficient ways of managing diverse students and the security company wishes to insert certain control mechanisms - such as PIN (personal identification number) entry into buildings or sectors. So each will garner and manipulate data for those purposes. At the same time, it should not be imagined that the influence, management or control is necessarily malign or unsocial, despite the frequently negative connotations of the word 'surveillance'. It may involve incentives or reminders about legal requirements; the management may exist to ensure that certain entitlements - to benefits or services - are correctly honoured and the control may limit harmful occurrences.

On the one hand, then, surveillance is a set of practices, while, on the other, it connects with purposes. It usually involves relations of power in which watchers are privileged. But surveillance often involves participation in which the watched play a role. It is about vision, but not one-sidedly so; surveillance is also about visibility. Contexts and cultures are important, too. For instance, infra-red technologies that reveal what is otherwise shrouded in darkness help to alter power relations. But the willing self-exposure of blog-writers also helps to change the contours of visibility. To use infra-red devices to see into blog- writers' rooms at night would infringe personal rights and invade private spaces. But for blog-writers to describe their nocturnal activities online may be seen as an unexceptional right to free expression.

Lyon's definition has so many exceptions it's not useful

Sparrow, 13 - LEAP Encryption Access Project (Elijah, "Digital Surveillance", chapter in Global Information Society Watch 2014, giswatch.org/sites/default/files/gisw2014_communications_surveillance.pdf

It is no easy task to pinpoint what we mean when we say "surveillance". As a first approximation, David Lyon defines surveillance as "the focused, systematic, and routine attention to personal

details for purposes of influence, management, protection, or direction." This definition tries to convey the way in which surveillance has historically functioned as a necessary aspect of maintaining modern society,1 for example, in sorting citizens from non-citizens, the sick from the healthy, the credit worthy from the credit risks. He then immediately goes on to note that surveillance is often not focused, systematic or routine at all – for example, in the case of dragnet surveillance that captures information from the digital communication of everyone without any evidence of its efficacy. What are we to make of surveillance in a digital age, where the capture and processing of personal information by powerful actors is not just routine but ubiquitous? Increasingly, surveillance does not seem an activity undertaken for simple "influence, management, protection or direction", but instead seems to be much more, constituting the core security strategy of many nation-states and the core business model for the largest internet firms, credit card companies, and advertisers.

Most historians of surveillance likely agree with Lyon's assertion that "digital devices only increase the capacities of surveillance or, sometimes, help to foster particular kinds of surveillance or help to alter its character."2 It is worthwhile, however, to ask what precisely is different about "digital", and how this transformation of surveillance scale and character might represent something substantially new.

AT: Dictionary definition of surveillance

Dictionary definitions don't reflect the actual federal practice of surveillance

Marx, 4 – Professor Emeritus from M.I.T. (Gary, "Some Concepts that may be Useful in Understanding the Myriad Forms and Contexts of Surveillance, Intelligence and National Security," 19:2, 226-248, DOI: 10.1080/0268452042000302976

WHAT IS SURVEILLANCE?

The dictionary definition of surveillance as it is applied to many contemporary new forms such as video, computer dossiers, electronic location and work monitoring, drug testing and DNA analysis is **woefully inadequate** or worse.7 For example in the Concise Oxford Dictionary surveillance is defined as 'close observation, especially of a suspected person'. Yet today many of the new surveillance technologies are not 'especially' applied to 'a suspected person'. They are commonly applied categorically. In broadening the range of subjects the term 'a suspected person' takes on a different meaning. In a striking innovation, surveillance is also applied to contexts (geographical places and spaces, particular time periods, networks, systems and categories of person), not just to a particular person whose identity is known beforehand.

The dictionary definition also implies a clear distinction between the object of surveillance and the person carrying it out and a non-co-operative relationship. In an age of servants listening behind closed doors, binoculars and telegraph interceptions, that separation made sense. It was easy to distinguish the watcher from the person watched. Yet self-surveillance, cosurveillance and reciprocal surveillance have emerged as important themes, often blurring the easy distinction between agent and subject of surveillance. Well-publicised warnings that surveillance might be present seek to create self-restraint. A general ethos of self-surveillance is also encouraged by the availability of home products such as those that test for alcohol level, pregnancy, AIDS and other medical conditions.

Nor does the traditional definition capture contemporary cases of 'cooperative' parallel or co-monitoring, involving the subject and an external agent in which the former voluntarily sends a remote message (as with location and some implanted physiological monitoring devices). Individuals may agree to wear badges and have transmitters for toll roads or as anti-theft means installed on their cars. They may join programmes that invite police to search their vehicles if driven late at night. Many bio-metric forms involve some degree of co-operation, or at the least, implicit co-operation by the failure to take steps to block transmission.

The border between the watched and the watcher may also be blurred in that there can be a continuous transmission link between sender and receiver as with brain waves or scents. The sender and receiver are in one sense electronically joined. It may be difficult to say where the subject stops and the agent begins. As with questions of copyright and electronic media, new issues of the ownership and control of property appear. Such transmissions are 'personal' but leave the person's body and control. The line between what is public and private is hazy in such settings.

The term 'close observation' also fails to capture contemporary practices. Surveillance may be carried out from afar, as with satellite images or the remote monitoring of communications and

work. Nor need it be 'close' as in detailed – much initial surveillance involves superficial scans looking for patterns of interest to be pursued later in greater detail. It is both farther away and closer than the conventional definition implies.

The dated nature of the definition is further illustrated in its seeming restriction to visual means as implied in 'observation'. The eyes do contain the vast majority of the body's sense receptors and the visual is a master metaphor for the other senses (for example, saying 'I see' for understanding or being able to 'see through people'). Indeed, 'seeing through' is a convenient short-hand for the new surveillance.

To be sure the visual is usually an element of surveillance, even when it is not the primary means of data collection (for example, written accounts of observations, events and conversations, or the conversion to text or images of measurements from heat, sound or movement). Yet to 'observe' a text or a printout is in many ways different from a detective or supervisor directly observing behaviour. The eye as the major means of direct surveillance is increasingly joined or replaced by hearing, touching and smelling. The use of multiple senses and sources of data is an important characteristic of much of the new surveillance.

A better definition of contemporary forms of surveillance is needed. The new forms of surveillance involve scrutiny through the use of technical means to extract or create personal data, whether from individuals or contexts. The data sought may or may not be known by the subject, who may be willing or unwilling to have it discovered or revealed. It may involve revealed information for which verification is sought.

The use of 'technical means' to extract and create the information implies the ability to go beyond what is offered to the unaided senses or voluntarily reported. Many of the examples involve an automated process and most extend the senses by using material artefacts or software of some kind, but the means for rooting out can also be sophisticated forms of deception as with undercover operations, ruses and pretexts. The use of 'contexts' along with 'individuals' recognises that much modern surveillance also looks at settings and patterns of relationships. Systems as well as persons are of interest.

This definition excludes the routine, non-technological surveillance that is a part of everyday life such as looking before crossing the street or seeking the source of a sudden noise or of smoke. An observer on a nude beach or police interrogating a co-operative suspect would also be excluded, because in these cases the information is volunteered and the unaided senses are sufficient.

I use the more neutral and broader verb 'scrutinise' rather than 'observe' (with its tilt toward the visual) in the definition because the nature of the means (or the senses involved) suggests sub-types and issues for analysis that ought not to be foreclosed by a definition. For example how do visual, auditory, text and other forms of surveillance compare with respect to factors such as intrusiveness or validity? In addition much surveillance is automated and hence 'observation' (if that is what it is by a machine, is of a different sort).

While the above definition captures some common elements among new surveillance means, contemporary tactics are enormously varied.8 There is need for a conceptual language that brings some parsimony and unity to the vast array of old and new surveillance activities and which can permit more systematic comparisons and explanations. The next section suggests dimensions that can be used to categorise the means aspect of surveillance.

Surveillance is intentional, systematic, individual focused

Surveillance is intentional, systematic, and focused on individuals

Richards, 13 - Professor of Law, Washington University School of Law (Neil, "THE DANGERS OF SURVEILLANCE" HARVARD LAW REVIEW [Vol. 126:1934, SSRN)

What, then, is surveillance? Scholars working throughout the English-speaking academy have produced a thick descriptive literature examining the nature, causes, and implications of the age of surveillance. 6 Working under the umbrella term of "surveillance studies," these scholars represent both the social sciences and humanities, with sociologists making many of the most significant contributions.7

Reviewing the **vast** surveillance studies literature, Professor David Lyon concludes that surveillance is primarily about power, but it is also about personhood.8 Lyon offers a definition of surveillance as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction."9 Four aspects of this definition are noteworthy, as they expand our understanding of what surveillance is and what its purposes are. First, it is focused on learning information about individuals. Second, surveillance is systematic; it is **intentional rather than random or arbitrary**. Third, surveillance is routine — a part of the ordinary administrative apparatus that characterizes modern societies.10 Fourth, surveillance can have a wide variety of purposes — rarely totalitarian domination, but more typically subtler forms of influence or control.11

Surveillance is data collection

Surveillance is the collection of data for administrative purposes

Allmer, 12 - Lecturer in Social Justice at the University of Edinburgh, Scotland (Thomas, Towards a Critical Theory of Surveillance in Informational Capitalism, p. 24-25, ebrary)

Anthony Giddens (1985, 172-197; 1995, 169-181) defines surveillance as "symbolic material that can be stored by an agency or collectivity" and as "the supervision of the activities of subordinates" (Giddens 1995, 169). He primarily sees surveillance as a phenomenon of the nation-state: "Surveillance as the mobilizing of administrative power – through the storage and control of information – is the primary means of the concentration of authoritative resources involved in the formation of the nation-state." (Giddens 1985, 181) While Foucault's negative and powerful understanding of surveillance is criticized, a neutral notion of surveillance is discussed. Surveillance is seen as documentary activities of the state, as information gathering and processing, as collection, collation and coding of information, and as records, reports and routine data collection for administrative and bureaucratic purposes of organizations. The nation-state began to keep these official statistics from its beginning and to "include the centralized collation of materials registering births, marriages and deaths; statistics pertaining to residence ethnic background and occupation; and … 'moral statistics', relating to suicide, delinquency, divorce and so on." (Giddens 1985, 180)

Surveillance is data collection for population management

Allmer, 12 - Lecturer in Social Justice at the University of Edinburgh, Scotland (Thomas, Towards a Critical Theory of Surveillance in Informational Capitalism, p. 25, ebrary)

Similar to Giddens, Christopher Dandeker (1990) describes surveillance as form of information gathering and administrative organization of modernity. "The term surveillance is not used in the narrow sense of 'spying' on people but, more broadly, to refer to the gathering of information about and the supervision of subject populations in organizations." (Dandeker 1990, vii)

Surveillance is purely data collection about individuals or groups

Allmer, 12 - Lecturer in Social Justice at the University of Edinburgh, Scotland (Thomas, Towards a Critical Theory of Surveillance in Informational Capitalism, p. 26, ebrary)

Computer scientist Roger Clarke (1988, 498-499; 505f.) defines surveillance as "the systematic investigation or monitoring of the actions or communications of one or more persons. Its primary purpose is generally to collect information about them, their activities, or their associates. There may be a secondary intention to deter a whole population from undertaking some kinds of activity." (Clarke 1988, 499) For Clarke, surveillance and dataveillance are neither negative nor positive as it depends on the situation. "I explicitly reject the notion that surveillance is, of itself,

evil or undesirable; its nature must be understood, and society must decide the circumstances in which it should be used". (Clarke, 1988, 498f.) Although many dangers and disadvantages of surveillance in general and dataveillance in particular are mentioned, benefits like physical security of people and financial opportunities in both public (social welfare and tax) and private (insurance and finance) sector are listed as well.

Surveillance doesn't require control

Allmer, 12 - Lecturer in Social Justice at the University of Edinburgh, Scotland (Thomas, Towards a Critical Theory of Surveillance in Informational Capitalism, p. 26, ebrary)

Based on Baudrillard, William Bogard (1996, 1ff.) focuses on the simulation of hypersurveillant control in telematic societies. He defines bureaucratic surveillance as "information gathering and storage systems (accounting, recording, and filing mechanisms) and the various devices for encoding and decoding that information (impersonal, standardized rules governing its access, use, and dissemination)." (Bogard 1996, 1f.) He argues that surveillance ranges between absolute control in disciplined societies and the absence of control in non-disciplined societies. Bogard (2006, 97-101) understands surveillance as decentralized networks, where monopolized power and control of information become more impossible. Surveillance is both a mode of oppressed capture and a mode of lines flight of "escape, deterritorialization, indetermination and resistance" (Bogard 2006, 101).

Surveillance is the administration and control of information – includes birth, marriage and death certificates

Odoemelam, 15 - Chika Ebere Odoemelam is with University of Western Ontario, London,

Ontario, Canada ("Adapting to Surveillance and Privacy Issues in the Era of

Technological and Social Networking" International Journal of Social Science and Humanity, Vol. 5, No. 6, June 2015, http://www.ijssh.org/papers/520-H140.pdf)

Anthony Giddens (1984) [8], provided a definition of surveillance based on administration, explaining that "surveillance as the mobilising of administrative power-through the storage of and control of information-is the primary means of the concentration of authoritative resources involved in the formation of nation-state". Through the above definition, Giddens explains that the modern state uses surveillance and information gathering mechanisms such as those related to births, marriages, deaths and other demographic figures, as a means of exerting its authority, power and influence on the society as the only instrument of enforcing control on its citizens. As a result, surveillance has become a universal phenomenon that exists in every sphere of all human endeavours.

Includes retrospective surveillance

Surveillance includes retrospective surveillance

Gibson, 14 – UK barrister (Bryan, Criminal Justice : A Beginner's Guide, p. 71, ebrary)

In its expanded meaning, the term surveillance is now regularly applied to forms of retrospective surveillance, as where the records of a bank, supermarket or internet provider are accessed under legal powers or must be disclosed following a 'suspicious activity report' (SAR). In modern times extensive duties have been placed on banks, lawyers, accountants and others with access to the monetary dealings of others to make SARs, particularly concerning potential money laundering, which has significant connections to organized crime, illegal drugs, the sex industry, tax evasion and trafficking of all kinds.

Includes political surveillance

Political surveillance is government recording of groups engaged in First Amendment expression

Fisher, 4 - Associate Professor of Law and Director, Center for Social Justice, Seton Hall Law School (Linda, "GUILT BY EXPRESSIVE ASSOCIATION: POLITICAL PROFILING, SURVEILLANCE AND THE PRIVACY OF GROUPS" ARIZONA LAW REVIEW [Vol. 46:621)

This Section examines the governmental and associational interests implicated in surveillance of First Amendment activity, employing the Supreme Court's decisions on associational rights beginning with NAACP and culminating with Dale. Although surveillance issues are generally analyzed solely under the Fourth Amendment, political surveillance should be analyzed primarily under the stricter standards of the First Amendment because it is directed at political and religious speech. At the point of convergence of the First and Fourth Amendments, the reasonableness restrictions of the latter inform analysis, but the compelling state interest standard of the First Amendment should govern; otherwise, expressive activity is not adequately and consistently protected.152 To be consistent, First Amendment standards should govern across the board, regardless of whether a search or seizure might occur.

Moreover, the Fourth Amendment does not cover much of the investigative activity involved in political surveillance, either because no potential search or seizure is involved, or because individuals in a group setting do not have the requisite "reasonable expectation of privacy."153 Even so, the First Amendment protects these individuals and groups from unjustified investigations that intrude upon their lawful expressive activity.154

Political surveillance is defined as an array of techniques employed by government agents to investigate and record the political and religious beliefs and activities of those engaged in First Amendment expression, ranging from infiltrating and disrupting organizational leadership to observing and recording public events.155 Note that the definition does not include terrorism investigations that are not based on First Amendment expression.

Includes library records

The Patriot Act provision allowing monitoring of library records is 'domestic surveillance'

Small, 8 - United States Air Force Academy (Matthew, "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

The USA Patriot Act provided much of the latitude under which President Bush operated. Section 203 of the act allowed the government to intercept oral, wire and electronic communications related to terrorism. The act failed to detail what exactly "communications related to terrorism" are, giving the executive a large umbrella of protection. Section 212 amends section 2702 of Title 18-Crimes and Criminal Procedure allowing government entities to require communications companies to release customer information. This section superseded Title II of the ECPA. The Act also expanded the scope of the FBI's domestic surveillance by allowing the Bureau to monitor library checkout lists and internet use. More importantly, the American public favored the act.15 Even today support still remains for the act.16 As such, the president did not act outside the public mandate but merely did what he saw fit to ensure national security.

Includes physical searches

Surveillance includes physical searches

Byrd, 6 – U.S. Senator (S.2362, Senate bill introduced to establish the National Commission on Surveillance Activities and the Rights of Americans, 3/2, gpo.gov)

(6) the term ‘‘surveillance’’ means any electronic surveillance, physical search, use of a pen register or trap and trace device, order for the production of any tangible item, or surveillance activity for which a Federal or State government agent is required to obtain a warrant, before or after engaging in the activity; and

(7) the term ‘‘warrantless surveillance program’’ means a program of warrantless surveillance conducted inside the United States by any Federal or State agency.

Includes prisons / detention centers

Includes prisons or detention centers

Torpey, 7 - CUNY Graduate Center (John, "Through Thick and Thin: Surveillance after 9/11" Contemporary Sociology, volume 36, n 2, https://www.academia.edu/2796689/A_Symposium_on_Surveillance_Studies

What is "surveillance"? The term evokes suspicion and opprobrium because it suggests a violation of our autonomy, our freedom to move about and to do as we wish, and this indeed it does—in the putative interests of public order, commercial transparency, and personal security. Students of surveillance often make a distinction between visible and invisible forms—the possibility that my keystrokes are being recorded as I write this, for example, as opposed to the readily identifiable security cameras that have become increasingly ubiquitous features of everyday life, at least in the richer parts of the world.

One might, however, make a further distinction between "thin" and "thick" forms of surveillance. Thin surveillance monitors our movements, our business transactions, and our interactions with government, but generally without constraining our mobility per se. Thick surveillance, on the other hand, involves confinement to delineated and often fortified spaces, in which observation is enhanced by a limitation of the range of mobility of those observed. There tend to be significant differences in the social groups supervised by the two forms of surveillance. Although today everyone is subjected to thin surveillance to some degree, it disproportionately affects the non-poor, whose actions and transactions must be facilitated as well as regulated. Access to certain spaces may be limited by thin means that require the wherewithal or the proper identity, to be sure, but departure from those spaces is normally voluntary and at the pleasure of the person in question.

In contrast, thick surveillance disproportionately affects the poor, because it is they who are disproportionately institutionalized; the element of free movement characteristic of thin surveillance is sharply reduced, if not eliminated altogether. Thick surveillance occurs in prisons, military brigs, POW and refugee camps, and similar environments. Probation, parole, surveillance via electronic tracking devices, children's welfare agencies, boarding schools and the like comprise thin variants of thick surveillance. They do not necessarily restrict movement, but they may do so, and in any case they involve a more evident narrowing of freedom than thin surveillance does. While those subjected to thick surveillance are also subject to the thin variety, they are less likely to be exposed to thin surveillance than the non-poor because their means—and hence their actions and transactions— tend to be more limited. In short, supervision and confinement by the state tend to be much more immediate realities for these groups than they are for the non-poor, whose actions and transactions tend more routinely to be outside the purview of the state—but under that of commercial surveillance schemes.

Includes disease surveillance

US code includes disease surveillance as surveillance

Murray, 9 – J.D. Candidate, Georgetown University Law Center (Craig, "Implementing the New International Health Regulations: The Role of the WTO's Sanitary and Phytosanitary Agreement" Georgetown Journal of International Law, questia)

Another U.S. sanitary measure partly based on the need for surveillance is APHIS's list of requirements for "approval to export ... [an] animal" to the United States. (206) Requestors must provide a great deal of information about their country, including the "infrastructure of the veterinary services," (207) the disease status of the region, (208) its laboratory capability, (209) and the "type and extent of disease surveillance in the region," including whether the region has an active or passive surveillance system. (210) Title 9 of the Code of Federal Regulations defines "surveillance" as "[s]ystems to find, monitor, and confirm the existence or absence of a restricted disease agent or agents in livestock, poultry and other animals." (211) a An "active" surveillance system relies on systemic affirmative collection and testing of samples. (212) "Passive" surveillance consists of mandatory reporting of public health events, but the regulatory agency does not actively "seek out and monitor a restricted disease agent." (213) This APHIS regulation is a sanitary measure, within the meaning of the SPS Agreement, since it is meant to protect the health of humans and animals in the U.S. from animal-based diseases. Evidently, the exporting country's surveillance and regulatory infrastructure are significant to APHIS's determination of whether or not to allow importation of food from that country.

Disease detection and response are both 'surveillance'

Leahy, 2k – US Senator (16344 CONGRESSIONAL RECORD—SENATE July 26, 2000, gpo.gov)

By way of background, the term ''surveillance'' covers four types of activities: detecting and reporting diseases; analyzing and confirming reports; responding to epidemics; and reassessing longer-term policies and programs. I will touch on these categories in a bit more detail, as they illustrate the need for reform.

In the detection and reporting phase, local health care providers diagnose diseases and then report the existence of pre-determined ''notifiable'' diseases to national or regional authorities. The accurate diagnosis of patients is obviously crucial, but it can be very difficult as many diseases share symptoms. It is even more difficult in developing countries, where public health professionals have less access to the newest information on diseases.

In the next stage of surveillance, disease patterns are analyzed and reported diseases are confirmed. This process occurs at a regional or national level, and usually involves lab work to confirm a doctor's diagnosis. From the resulting data, a response plan is devised. Officials must determine a number of other factors as well, such as the capability of a doctor to make an

accurate diagnosis. Unfortunately, in many developing countries this process can take weeks, while the disease continues to spread.

When an epidemic is identified, various organizations must determine how to contain the disease, how to treat the infected persons, and how to inform the public about the problem without causing panic. Forty-nine percent of internationally significant epidemics occur in complex emergency situations, such as overcrowded refugee camps. Challenges in responding to epidemics are mainly logistical—getting the necessary treatment to those in need.

Finally, in assessing the longer-term health policies and programs, surveillance teams can provide information on disease patterns, health care priorities, and the allocation of resources. However, information from developing countries is often unreliable.

Disease surveillance applies to individuals

Federal Register, 12 (Federal Register /Vol. 77, No. 247 /Wednesday, December 26, 2012 / Proposed Rules, gpo.gov)

Surveillance. Under this NPRM, HHS/ CDC is proposing to define ''surveillance'' as the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread. We are proposing to update the term ''surveillance'' to more accurately reflect current practice and to clarify that, just as with quarantine and isolation, this public health measure is applicable to individuals and groups of individuals.

Includes health surveillance

Domestic surveillance includes public health surveillance

Brennan, 2 - American Medical Informatics Association (Patricia,"AMIA Recommendations for National Health Threat Surveillance and Response" Journal of the American Medical Informatics Association, 3/1, DOI: http://dx.doi.org.proxy.lib.umich.edu/10.1136/jamia.2002.0090204 204-206

Throughout this news report the term surveillance is defined as "the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation and evaluation of public health practice."1

Members of the AMIA National Health Threats Task Force have attended many important meetings over the past few months with key government, state, and local officials to discuss the needs of the U.S. Health care system, especially in the development and implementation of stronger information technology solutions. AMIA representatives at these meetings included J. Marc Overhage, MD, PhD; W. Edward Hammond, PhD; Michael Wagner, MD, PhD; Luis G. Kun, PhD; William A. Yasnoff, MD, PhD; AMIA Executive Director, Dennis Reynolds; and others.

The Task Force has assisted AMIA in the development of bioterrorism information resources for the AMIA Web site. These resources include:

▪ Daily updates to articles in the news related to current activity in the areas of information technology implementation, bioterrorism, and governmental policy discussion and implementation

▪ Links to pertinent government, state, local, association/society, and other sites that provide the latest information

▪ Posting of scientific articles and recent reports related to information technology in bioterrorism defense

▪ Congressional activity and testimony

The Primary Care Informatics Working Group of AMIA addressed information technology requirements for effective primary care surveillance and rapid response throughout the United States. In special sessions held at the AMIA 2001 Annual Symposium, presentations were made on bioterrorism and the requirements for primary care physicians in the United States to provide essential surveillance. The following key points were derived from the presentations:

▪ Primary care providers are the U.S. "frontline forces" for bioterrorism surveillance, detection, and immediate care.

▪ Hospitals and emergency departments in the United States are often filled to capacity under normal traffic and do not have the current ability to assume the task of evaluating, in the general population, flu-like syndromes for anthrax exposure or other conditions that may first present as abnormal epidemics of common symptoms.

▪ Effective bioterrorism surveillance is a complex task to which there are multiple approaches, including mechanistic, laboratory, and sentinel surveillance.

▪ Voluntary reporting of surveillance data is problematic, especially if a condition does not appear or if the reporting process involves significant time and resources outside the normal practices of a physician.

Based on the key points, the following recommendations were made by members of the PCIWG:

Every primary care physician in the United States should be provided now with information on bioterrorism surveillance and detection using our current resources, especially in anticipation of the flu season, both to provide appropriate care and to avoid enormous unnecessary panic and health care expense.

Every primary care physician in the United States should have and use a fully functional electronic medical record (EMR) with standardized clinical data for current and future **domestic surveillance** against biological, chemical, and nuclear weapons on civilian populations.

▪ The EMRs must "fit" the primary care environment to be effective

▪ The data obtained must be available for epidemiologic surveillance regionally and nationally while protecting patient confidentiality.

▪ Relevant expert knowledge and decision support at the point of care must be linked to the EMR.

▪ Development of such EMRs requires a national commitment to defining standards to which industry can respond.

▪ Primary care acquisition and implementation of such EMRs requires funding mechanisms.

The Primary Care Informatics Working Group offers its expertise to work with all health care organizations, public health officials, the Department of Defense, other agencies, vendors, payers, and the public (patients) to assist in the development of a comprehensive and integrated plan.

The collection and dissemination of health data is surveillance

Pascrell, 14 – US Congressional Representative (H. R. 4251, House bill introduced to direct the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, to establish a surveillance system regarding traumatic brain injury, and for other purposes, gpo.gov)

(5) SURVEILLANCE.—The term ''surveillance'' means the ongoing, systematic collection, analysis, interpretation, and dissemination of data (other than personally identifiable information) regarding a health-related event for use in public health action to reduce morbidity and mortality and to improve health.

Surveillance is the collection and analysis of public health data

GAO, 2k – US General Accounting Office ("WEST NILE VIRUS OUTBREAK Lessons for Public Health Preparedness GAO/HEHS-" September, gpo.gov

Rapid and accurate diagnosis of disease outbreaks is essential for many reasons. It can help contain an outbreak quickly by allowing health officials to implement appropriate control or prevention measures and provide the most effective treatment for those who are affected. Rapid and accurate diagnosis is essential not only for the public at large, but also for health care workers and others who work with patients and laboratory samples. Accurate diagnosis is also important in providing information that could help determine whether the outbreak could have been deliberate—an act of bioterrorism. Public health officials use the term "surveillance" to denote the ongoing effort to collect, analyze, and interpret health-related data so that public health actions can be planned, implemented, and evaluated.

Includes quarantines

Rothstein, 8 – University of Maryland (William, The American Historical Review, Vol. 113, No. 4 (October 2008), Book review of Searching Eyes: Privacy, the State, and Disease Surveillance in America, JSTOR

Surveillance is defined as "the ongoing, name-based reporting of cases of disease to state and local health departments" (p. xvii). The uses of surveillance include investigation and tracking of cases of disease, contact tracing, quarantine, treatment, program development and evaluation, epidemiological studies of disease patterns, and sanitary inspections. Each use has raised privacy concerns.

--health surveillance distinct from monitoring

Surveillance is continuous---that's distinct from monitoring

Hiremath 11 – MD, Dentistry

(SS, "Textbook of Preventive and Community Dentistry," p. 18)

Monitoring is "the performance and analysis of **routine measurements** aimed at detecting changes in the environment or health status of population" such as monitoring air pollution, water quality; growth and nutritional status, etc. Surveillance is defined as "**continuous scrutiny** of the factors that determine the occurrence and distribution of disease and other conditions of ill-health", such as epidemiological surveillance, demographic surveillance, nutritional surveillance, etc. Surveillance provides information about new and changing trends in the health status of a population, feedback which may be expected to modify the policy and the system itself and lead to redefinition of objectives, and timely warning of public health disasters so that interventions can be mobilized.

'Ongoing'

Mohr 98 – MD, Professor of Medicine, Biometry and Epidemiology and Director of the Environmental Biosciences Program

(Lawrence, "Biomarkers: Medical and Workplace Applications," p. 389)

[this is the beginning of the google view]

vcillance" exams, the exam is also a medical "screening" exam. The distinction is more than semantics. Surveillance is defined by Last (1983) as:

"... **ongoing** scrutiny, generally using methods distinguished by their practicability, uniformity, and frequently their **rapidity**, rather than by complete accuracy. Its main purpose is to detect changes in trend or distribution in order to initiate investigative- or control measures."

Must be continuous---anything else dilutes the core meaning of the term

John 13 – PhD, MBBS

(T Jacob, "Textbook of Pediatric Infectious Diseases," p. 12)

True public health surveillance has two characteristics— **continuity** in time and coverage in space. If there are gaps, infectious agents may cause sporadic cases or even outbreaks undetected by the designated stair. Collection of data on the incidence or prevalence of non-infectious diseases is through other methods—such as case registries, surveys of population samples, cumulating hospital statistics, etc. However, many use the term surveillance, inexactly, for other forms of data collection on health conditions, risk factors, etc. or for discontinuous collection of data on infectious diseases. In other words, the term surveillance is often loosely used for various methods of collection of data, **diluting its definitional meaning**. Therefore, it will be difficult now to restrict its usage strictly according to definition. In each context it is necessary to redefine surveillance or at least understand that the term is not used according to the precise definition.

--not health research

It’s distinct from research

Chamberland 1 – MD, MPH

(Mary, “Blood Safety and Surveillance,” p. 424)

Surveillance is defined as "the ongoing systematic collection, analysis, and interpretation of health data, closely integrated with the timely dissemination of these data both to those providing the data and to those who can apply the data to control and prevention programs" (4). While surveillance is **distinct** from epidemiological research, the two are often complementary (5). Epidemiological research studies usually start with a specific hypothesis to be tested, are conducted in a well-defined population, and are often time-limited; in addition, the data are complete. In contrast, surveillance data are often used to identify or describe a problem, identify cases for epidemiological research, monitor temporal trends, or estimate the magnitude of a problem. Surveillance usually encompasses many more individuals than might be enrolled in a research studs. As a consequence, data collected by surveillance, which can either be active or passive, are usually less complete, less detailed, and more open-ended than research data. Importantly, surveillance programs provide an infrastructure or network, such that in the event i I Lin unusual case report or an acute problem, even if not related to the surveillance program, an established methodology is in place for communicating information directly to public health authorities.

Includes nutritional surveillance

Surveillance includes collecting data about nutrition

Kelly, 81 – Trinity College, Dublin (A. "A FOOD AND NUTRITIONAL SURVEILLANCE SYSTEM FOR IRELAND" Journal of the Statistical and Social Inquiry Society of Ireland, Vol. XXIV, Part III, 1980/81, pp. 135-170, proquest)

Strategies to detect, control and prevent problems of human nutrition require accurate, reliable and up-to-date information on a wide range of causal and contributing factors. Hence, an operational definition of surveillance (proposed by Nichman and Lane, 1977) entails — " . . . the continuous collection, analysis, dissemination, and utilization of data relating to the nutrition and health status of population groups, the availability and consumption of food to these groups, and the status of variables which may have direct or indirect effects on both nutrition status and food consumption". Thus, the specific objectives of the surveillance system may be summarised in the following three points:—

(i) To identify and characterise those variables which provide information on past, contemporary and future nutrition conditions:

(ii) To assess the nutritional status of the population, in particular those sectors of it who are identified as being at risk:

(iii) To provide a basis from which decisions on policy, regarding preventive and promotive aspects of nutrition, can be made, and possibly to enable inferences about interrelationships between production, consumption and utilisation to be empirically tested.

Includes occupational health and safety

Surveillance includes occupational hazards and health surveillance

Koh, 3 - D Koh, Head, Dept of Community, Occupational and Family Medicine, Medical Faculty, National University of Singapore ("Surveillance in occupational health" Occupational and Environmental Medicine60.9 (Sep 2003): 705-10, 633., proquest)

A definition of surveillance is as follows: "surveillance (ser-va'lens) noun. 1. Close observation of a person or group, especially one under suspicion. 2. The act of observing or the condition of being observed" (The American Heritage Dictionary of the English Language, 3rd edition, Houghton Mifflin Company, 1992).

The term "surveillance" is derived from the French word meaning "to watch over". In public health, surveillance was originally developed as part of efforts to control infectious diseases, but the principles of surveillance can potentially be applied to other problems such as chronic diseases (loi example, cancer and coronary heart disease), social problems (for example, drug addiction), and the threat of bioterrorism.1

Surveillance is a core activity in the practice of occupational health. Two broad groups of surveillance arc commonly performed-hazard surveillance and health surveillance. While the focus of the former is hazards at the workplace, the latter type of surveillance pertains to the health of a person of group of workers. Both have important roles in occupational health practice and arc complementary.

The focus of this paper will be on chemical and biological exposures and related diseases. In many countries, occupational health concerns include psychosocial and ergonomic issues in the work environment and related problems and adverse health outcomes. These issues will not be addressed in detail in this paper, but surveillance programmes for such concerns have been developed, for instance, in Nordic countries.

HAZARD SURVEILLANCE

Hazard surveillance has been defined as "the process of assessing the distribution of, and the secular trends in, use and exposure levels of hazards responsible for disease and injury".2 For this type of surveillance to be considered, a clear "exposure-health outcome" relation must already have been established. The surveillance of hazards should result in action to reduce exposure in work- places where indicated. This will eventually reduce the disease burden arising from hazardous exposures.

Hazard surveillance can be incorporated into part of an existing national or regional system used for other purposes, for example, registries of usage of toxic substances or discharges of hazardous materials, or information collected by regulatory agencies to check for compliance. One example of this is the carcinogen registry in Finland.3 Regulatory authorities in many other countries have registries of factories or work processes.4 Another approach is to have exposure surveys or inspections. In some countries such as the USA, periodic national occupational exposure surveys arc conducted.1 This is often based on a representative sample of defined workplaces or processes. Another method of hazard surveillance is the recording of hazardous occurrences in

specific occupational groups, such as needlestick or sharps injuries among health care workers.5 At the individual workplace, computer software packages containing exposure databases, can be used to assist in hazard surveillance.

There are several advantages and benefits of hazard surveillance. Firstly, the surveillance of hazards eliminates the need to wait for disease to occur before taking steps for prevention. This is a considerable advantage, as many occupational illnesses take time to develop.

Secondly, the activity of identifying single hazards is generally easier than the detection of disease. Diseases, which have long latent periods, may also have multifactorial aetiologies-thus diagnosis can be complex. The focus on hazards ensures a direct attention to preventable causes of the disease.

However, while monitoring of individual hazards is easier to implement, integrated exposure databases and surveillance systems for combined exposures potentially offer a greater promise for improving health and safety at work.6 As not every exposure results in disease, hazardous situations would be expected to have a higher frequency of occurrence. This allows an opportunity to monitor trends or observe emerging patterns in exposure to workplace hazards. The information can be used to predict or project future disease burdens where prevention is not adequate.

Confidentiality of health information may pose a threat to public health surveillance.7 But unlike health surveillance, in hazard surveillance confidentiality of records that infringe on individual privacy is not an issue. However, there could be a practical difficulty with hazard surveillance in dealing with confidentiality of trade secrets and propriety information on the amount and composition of chemicals used in different industrial processes.

HEALTH SURVEILLANCE

Health surveillance can either take the form of periodic clinical and/or physiological assessment of individual workers, or the public health review of the health status of groups of workers. For the individual, the rationale is to detect adverse health effects resulting from occupational exposures at as early a stage as possible, so that appropriate preventive measures can be instituted promptly. This is a form of secondary prevention. The findings from health surveillance can be used to indicate the absence of a significant hazard, the adequacy of control measures, individuals at increased risk, baseline medical data, benchmarks for preventive action, and opportunities to provide health education. Another function is to quantify the incidence and prevalence of occupational and work related disease.

The criteria for health surveillance are:

(1) If it is not possible in practice to further reduce exposure to a known hazard-for example, in situations where the presence of the hazard is essential or inherent to the work process, and no other feasible alternatives are available. There may be an ethical dilemma involved in considering what constitutes an essential part of an industrial process versus the extent of acceptable risk to those who have to be exposed in the course of their work.

(2) If the relation between the extent of exposure required to produce a health effect is not well defined, as in exposure to sensitiscrs and carcinogens. For sensitisers, a level of exposure may be required to sensitise an individual, but the triggering dose necessary to elicit an effect in those already sensitised may be very small and much lower than the sensitising dose. For carcinogens,

it is uncertain what long term effects may ensue at the cellular level from exposure to small amounts of a known carcinogen. The body's defence mechanisms may be able to eliminate cellular effects from exposure to low doses of carcinogens, but the dose which results in a change that initiates the carcinogenic process irreversibly is often not well determined.

Includes monitoring employees

Surveillance is a way to monitor and control employees

Odoemelam, 15 - Chika Ebere Odoemelam is with University of Western Ontario, London,

Ontario, Canada ("Adapting to Surveillance and Privacy Issues in the Era of

Technological and Social Networking" International Journal of Social Science and Humanity, Vol. 5, No. 6, June 2015, http://www.ijssh.org/papers/520-H140.pdf)

Also surveillance according to Ogura Toshimaru (2006) [9], "surveillance refers to an activity which enables the nation state, or capitalist formations like corporations, to manage a population". The above definition entails a way of monitoring employee performance by employers of labour for their own selfish purposes and maximum benefit. It is a form of control imposed by the owners of the means of production as a way of further enslaving their employees for their own benefit and profit.

Includes places

Surveillance of territory is still surveillance of people

Keiber, 14 – PhD dissertation for the Graduate Program in Political Science at Ohio State (Jason, "The Surveillance of Individuals in International Politics" https://etd.ohiolink.edu/!etd.send_file?accession=osu1397573412&disposition=inline

Under the understanding that "[s]urveillance directs its attention in the end to individuals"67 there is a lacuna in the Surveillance Studies literature that an IR focus helps bring to light. Because Surveillance Studies is primarily interested in domestic activity it takes one important thing for granted—territory. A domestic bias in the literature treats the state's access to people as a fait accompli. There are however cases in which the state cannot penetrate its own territory (or, in the international context, the territory of other states) effectively enough to closely monitor individuals. That is, sometimes the state is not present enough to even know where individuals are to monitor them. As a result states may monitor territory as a means by which to understand people. U.S. aerial surveillance along the Mexican border is an example of this. The surveillance of territory is still surveillance that "directs its attention in the end to individuals."

Surveillance includes land and virtual spaces

Keiber, 14 – PhD dissertation for the Graduate Program in Political Science at Ohio State (Jason, "The Surveillance of Individuals in International Politics" https://etd.ohiolink.edu/!etd.send_file?accession=osu1397573412&disposition=inline

The discussion of territory can be generalized in a useful way. IR's sensitivity to states' desire for security and certainty suggests that the state should focus on any domain in which individuals may be conspiring to harm the state. Surveillance can be applied to any environment in which individuals operate. This includes land and virtual spaces. Scholars of Surveillance Studies would not object to this. I am merely highlighting a point that doesn't get emphasized in the literature. This leads me to the following definition of 'surveillance':

State-led surveillance involves the collection, analysis and storage of information about people, their activity, and their environments for the purposes of influence and intervention.

Persons places and things

IJ 98

(Info Justice, OPERATIONS, SURVEILLANCE AND STAKEOUT PART 1, http://www.infojustice.com/samples/12%20Operations,%20Surveillance%20And%20Stakeout%20Part%201.html)

Surveillance is defined as the systematic observation of **persons, places, or things** to obtain information. Surveillance is carried out without the knowledge of those under surveillance and is

concerned primarily with people. Surveillance is further divided into mobile or stationary. Mobile surveillance can be either by foot or from a moving vehicle. A stationary surveillance is often called a “stakeout”. Foot surveillance, vehicular surveillance and stationary surveillance all have the same objective. That is to obtain the necessary objective, which may differ in each type of surveillance. For example information, a person, a place or piece of land, or a thing such as a plane, a building, nuclear or chemical weapons held by a felon who would destroy the world.

Includes National ID

Real ID

Milberg 12 – JD Candidate

(Debra, "The National Identification Debate: "REAL ID" and Voter Identification," I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY)

A. LACK OF REAL BENEFITS TO NATIONAL SECURITY

Advocates of a more open immigration system are especially concerned about REAL ID. The focus of many immigration advocacy groups is to build support for public policies that are fair and supportive to immigrants and refugees entering the United States.29 These groups feel that the Act will prevent people fleeing persecution from obtaining relief, deny immigrants their day in court when the government makes a mistake, and actually undermine American security more than it would help.30

In response to the argument that REAL ID is necessary for national security, immigration and privacy proponents claim that it will actually hinder the American security process.31 By setting federal eligibility requirements for driver licenses, REAL ID will undermine national security by pushing immigrants deeper into the shadows and forcing many to drive without licenses. Thus, this bill limits, rather than expands, government data about individuals in this country.

Many privacy advocates also argue that REAL ID does little to improve national security. Privacy proponent Jim Harper argues that a national ID represents a transfer of power from individuals to institutions, and that such a transfer threatens liberty, enables identity fraud, and **subjects people to unwanted surveillance**.32 Instead of a uniform, government-controlled identification system, Harper calls for a competitive, responsive identification and credentialing industry that meets the mix of consumer demands for privacy, security, anonymity, and accountability.33 Identification should be a risk-reducing strategy in a social system, Harper concludes, not a rivet to pin humans to governmental or economic machinery.34

National ID

Tucker and Wang 14 – *PhD, Professor of Computer Science, **PhD, Professor @ U Portsmouth

(Victoria and John, "On the Role of Identity in Surveillance," http://arxiv.org/pdf/1408.3438.pdf)

Besides these technologies deliberately created for surveillance purposes, surveillance is often intentionally included in various everyday technologies, such as couriers who deliver packages, inspectors who collect data and operators in call centres. Individuals who work with ICT systems have long been aware that the systems that they use in their work are also intended to be a source of data about their performance – complete recordings of the transactions are made.

In social media sites, such as Facebook, Twitter, Instagram and YouTube, various forms of technologies are used to gather personal data. For example, geotagging is one of the latest forms of tagging that allows real-time surveillance. Often, geotagging is used in (i) searching social media postings on sites by location and finding individuals; and then (ii) exploring their profiles to find out their private information (e.g., home address and phone number) (Smyser and Holt, 2012). In the Android world, an app called eBlaster Mobile can be used to watch over phone usage of children or employees by (i) monitoring text messaging, voice, and Web surfing activity on the Android device; and (ii) logging the physical location of the smartphone (Bradley, 2011).

In more extreme cases, social rules and norms can be approximated by algorithmic formulae to search for deviance automatically, and even render deviance from the roles and norms impossible. For example, various cybercommunities are places where 'dataveillance' (van der Ploeg, 2003: 71) is endemic – every word typed and every movement made can be observed, recorded, stored in digital files, and replayed and examined in the future. Actually, in theory, it is perfectly possible to turn the world of the Internet into a digital panopticon, where surveillance can reach perfection, at least in principle (Wang et al., 2011).

Identity is a core part of existing and developing surveillance practices. The Identity Card Act 2006 is a very good example. The core of this act is the National Identity Register (NIR) of which identity cards are a physical manifestation. The Act's definition of 'identity' refers to 'full name, other names by which an individual might previously have been known, gender, date and place of birth and external characteristics of his that are capable of being used for identifying him' (UK Government, 2006: 2). It introduces a major restructuring of the way identification functions in the UK – identity becomes associated with a singular centralised authoritative documentary source.

Topicality is a Voting Issue- SDI

Decisionmaking

A fundamental problem with the affirmative's perspective is that it ignores that WE ARE ALL POLICY MAKERS. Debating about alternative government policies is the best way to instill a METHOD OF DECISIONMAKING that is useful in all parts of life.
Smith, former debate coach at Wake Forest University, 7 (4/4/2007, Ross K., "Challenge to the Community," https://mail.google.com/mail/?shva=1#inbox, JMP)

Policy: a course of action undertaken by an agent. We are all policy makers every time we decide to undertake a course of action. Most policies are non-governmental. We have an obligation to ourselves and others to be good policy makers and advocates of good policies when dealing with others in our spheres of influence.

Policy Deliberation and Debate: a METHOD for making and advocating better policy decisions.

Intercollegiate debate about PUBLIC policy: a useful way of teaching the SKILLS needed for successful use of a METHOD of making and advocating good decisions. Public policy topics are especially useful because the research base is public. While we could debate about private actions by private agents, we have no way of poviding equal access to the kinds of information that would help make those debates good ones. **There is a side benefit that some of what we learn about the public policy topics sometimes informs our later lives as citizens engaged in public deliberation regarding those same policies, but that is not the primary reason that public policy topics are necessary**.

Andy Ellis is a policy maker. He makes decisions about courses of action for himself and for/with others. But a topic about what Andy Ellis should do is inaccessable and, frankly, largely none of our business.

But Andy Ellis has been well served by having the training in one of the better methods of choosing among and advocating whatever policies he is responsible for. That method is policy debate.

Debate about public policy is a subset of debate about policy, **a subset that is "debatable" because there is a common research base. The fact that the subject matter is at a remove from us personnally while still residing in the "public sphere" is a feature, not a bug.**

The primary purpose of debate should be to improve our skills as decision-makers. We are all individual policy-makers who make choices every day that affect us and those around us. We have an obligation to the people affected by our decisions to use debate as a method for honing these critical thinking and information processing abilities.

Freeley and Steinberg 9 (Austin J. and David L., John Carroll University and University of Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, p. 1-4, googlebooks)

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition.¶ Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these* situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions.¶ Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations.¶ We all make many decisions every day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car. what major to select, what to have for dinner, what candidate to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration?¶ Is the defendant guilty as accused? The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIME magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of "great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs. online networking. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. We have access to infinite quantities of information, but how do we

sort through it and select the best information for our needs?¶ The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates.¶ Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized.¶ Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others.¶ Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job oiler, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for out product, or a vote for our favored political candidate.

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

Steinberg & Freeley 8 (*Austin J. Freeley is a Boston based attorney who focuses on criminal, personal injury and civil rights law, AND **David L. Steinberg , Lecturer of Communication Studies @ U Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making pp45-)

Debate is a **means of settling differences**, so there **must be a** difference of opinion or a **conflict of interest** before there can be a debate. **If everyone is in agreement** on a tact or value or policy, there is **no need for debate**: **the matter can be settled by unanimous consent**. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, **there is no debate**. In addition, debate **cannot produce effective decisions** without **clear identification of a question or questions to be answered**. For example, **general argument may occur about the broad topic of illegal immigration**. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by

employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is **not likely to be productive or useful without focus on a particular question** and identification of a line **demarcating sides in the controversy**. To be discussed and resolved effectively, **controversies must be stated clearly**. **Vague understanding** results in **unfocused deliberation** and **poor decisions**, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate **during the summer of 2007**.

Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, **but without a focus for their discussions**, they could easily agree about the sorry state of education **without finding points of clarity or potential solutions. A gripe session would follow**. But if a **precise question** is posed—such as "What can be done to improve public education?"—then a more **profitable area of discussion** is opened up **simply by placing a focus on the search** for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference.

To have a **productive debate, which facilitates effective decision making** by directing and **placing limits on the decision** to be made, **the basis for argument should be clearly defined**. If we merely talk about "homelessness" or "abortion" or "crime'* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, **the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation**. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose.

Although we now have a **general subject**, we have not yet stated a problem. **It is still too broad**, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a **debate proposition** such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. **This is not to say that debates should completely avoid creative interpretation** of the controversy by advocates, or **that good debates cannot occur over competing interpretations of the controversy**; in fact, **these sorts of debates may be very engaging**. The point is that debate is best facilitated by the guidance provided by **focus on a particular point of difference**, which will be outlined in the following discussion.

Switch side debate good

Even if the resolution is wrong, having a devil's advocate in deliberation is vitally important to critical thinking skills and avoiding groupthink

Mercier and Landemore 11 (Hugo and Hélène, Philosophy, Politics and Economics prof @ U of Penn, Poli Sci prof @ Yale, Reasoning is for arguing: Understanding the successes and failures of deliberation, Political Psychology, http://sites.google.com/site/hugomercier/publications)

Reasoning can function outside of its normal conditions when it is used purely internally. But it is not enough for reasoning to be done in public to achieve good results. And indeed the problems of individual reasoning highlighted above, such as polarization and overconfidence, can also be found in group reasoning (Janis, 1982; Stasser & Titus, 1985; Sunstein, 2002). Polarization and overconfidence happen because not all group discussion is deliberative. According to some definitions of deliberation, including the one used in this paper, reasoning has to be applied to the same thread of argument *from different opinions* for deliberation to occur. As a consequence, "If the participants are mostly like-minded or hold the same views before they enter into the discussion, they are not situated in the circumstances of deliberation." (Thompson, 2008: 502). We will presently review evidence showing that the absence or the silencing of dissent is a quasi-necessary condition for polarization or overconfidence to occur in groups. Group polarization has received substantial empirical support. 11 So much support in fact that Sunstein has granted group polarization the status of law (Sunstein, 2002). There is however an important caveat: group polarization will mostly happen when people share an opinion to begin with. In defense of his claim, Sunstein reviews an impressive number of empirical studies showing that many groups tend to form more extreme opinions following discussion. The examples he uses, however, offer as convincing an illustration of group polarization than of the necessity of having group members that share similar beliefs at the outset for polarization to happen (e.g. Sunstein, 2002: 178). Likewise, in his review of the group polarization literature, Baron notes that "The crucial antecedent condition for group polarization to occur is the presence of a likeminded group; i.e. individuals who share a preference for one side of the issue." (Baron, 2005). Accordingly, when groups do not share an opinion, they tend to depolarize. This has been shown in several experiments in the laboratory (e.g. Kogan & Wallach, 1966; Vinokur & Burnstein, 1978). Likewise, studies of deliberation about political or legal issues report that many groups do not polarize (Kaplan & Miller, 1987; Luskin, Fishkin, & Hahn, 2007; Luskin et al., 2002; Luskin, Iyengar, & Fishkin, 2004; Mendelberg & Karpowitz, 2000). On the contrary, some groups show a homogenization of their attitude (they depolarize) (Luskin et al., 2007; Luskin et al., 2002). The contrasting effect of discussions with a supportive versus dissenting audience is transparent in the results reported by Hansen (2003 reported by Fishkin & Luskin, 2005). Participants had been exposed to new information about a political issue. When they discussed it with their family and friends, they learned more facts supporting their initial position. On the other hand, during the deliberative weekend—and the exposition to other opinions that took place—they learned more of the facts supporting the view they disagreed with. The present theory, far from being contradicted by the observation that groups of likeminded people reasoning together tend to polarize, can in fact account straightforwardly for this observation. When people are engaged in a genuine deliberation, the confirmation bias present in each individual's reasoning is checked, compensated by the confirmation bias of individuals who defend another opinion. When no other opinion is present **(or expressed, or listened to),** people will be disinclined to use reasoning to critically examine the arguments put forward by other discussants, since they share their opinion. Instead, they will use reasoning to strengthen these arguments or find other arguments supporting the same opinion. In most cases the reasons each individual has for holding the same opinion will be partially non-overlapping. Each participant will then be exposed to new reasons supporting the common opinion, reasons that she is unlikely to criticize. It is then only to be expected that group members should strengthen their support for the common opinion in light of these new arguments. In fact**,** groups of like-minded people should have little endogenous motivation to start reasoning together: what is the point of arguing with people we agree with? In most cases, such groups are lead to argue because of some external constraint. These constraints can be more or less artificial—a psychologist telling participants to deliberate or a judge asking a jury for a well supported verdict—but they have to be factored in the explanation of the phenomenon. 4. Conclusion: a situational approach to improving reasoning We have argued that reasoning should not be evaluated primarily, if at all, as a device that helps us generate knowledge and make better decisions through private reflection. Reasoning, in fact, does not do those things very well. Instead, we rely on the hypothesis that the function of reasoning is to find and evaluate arguments in deliberative contexts. This evolutionary hypothesis explains why, when reasoning is used in its normal conditions—in a deliberation—it can be expected to lead to better outcomes, consistently allowing deliberating groups to reach epistemically superior outcomes and improve their epistemic status. Moreover, seeing reasoning as an argumentative device also provides a straightforward account of the otherwise puzzling confirmation bias—the tendency to search for arguments that favor our opinion. The confirmation bias, in turn, generates most of the problems people face when they reason in abnormal conditions— when they are not deliberating. This will happen to people who reason alone while failing to entertain other opinions in a private deliberation and to groups in which one opinion is so dominant as to make all others opinions—if they are even present—unable to voice arguments. In both cases, the confirmation bias will go unchecked and create polarization and overconfidence. We believe that the argumentative theory offers a good explanation of the most salient facts about private and public reasoning. This

explanation is meant to supplement, rather than replace, existing psychological theories by providing both an answer to the why-questions and a coherent integrative framework for many previously disparate findings. The present article was mostly aimed at comparing deliberative vs. non-deliberative situations, but the theory could also be used to make finer grained predictions within deliberative situations. It is important to stress that the theory used as the backbone for the article is a theory of reasoning. The theory can only make predictions about reasoning, and not about the various other psychological mechanisms that impact the outcome of group discussion. We did not aim at providing a general theory of group processes that could account for all the results in this domain. But it is our contention that the best way to reach this end is by investigating the relevant psychological mechanisms and their interaction. For these reasons, the present article should only be considered a first step towards more fined grained predictions of when and why deliberation is efficient. Turning now to the consequences of the present theory, we can note first that our emphasis on the efficiency of diverse groups sits well with another recent a priori account of group competence. According to Hong and Page's Diversity Trumps Ability Theorem for example, under certain plausible conditions, a diverse sample of moderately competent individuals will outperform a group of the most competent individuals (Hong & Page, 2004). Specifically, what explains the superiority of some groups of average people over smaller groups of experts is the fact that cognitive diversity (roughly, the ability to interpret the world differently) can be more crucial to group competence than individual ability (Page, 2007). That argument has been carried over from groups of problem-solvers in business and practical matters to democratically deliberating groups in politics (e.g., Anderson, 2006; Author, 2007, In press). At the practical level, the present theory potentially has important implications. Given that individual reasoning works best when confronted to different opinions, the present theory supports the improvement of the presence or expression of dissenting opinions in deliberative settings. Evidently, many people, in the field of deliberative democracy or elsewhere, are also advocating such changes. While these common sense suggestions have been made in the past (e.g., Bohman,

2007; Sunstein, 2003, 2006), the present theory provides additional arguments for them. It also explains why approaches focusing on individual rather than collective reasoning are not likely to be successful. Specifically tailored practical suggestions can also be made by using departures from the normal conditions of reasoning as diagnostic tools. Thus, different departures will entail different solutions. Accountability—having to defends one's opinion in front of an audience—can be used to bring individual reasoners closer to a situation of private deliberation. The use of different aggregation mechanisms could help identify the risk of deliberation among like-minded people. For example, before a group launches a discussion, a preliminary vote or poll could establish the extent to which different opinions are represented. If this procedure shows that people agree on the issue at hand, then skipping the discussion may save the group some efforts and reduce the risk of polarization. Alternatively, a **devil's advocate** could be introduced in the group to defend an alternative opinion (e.g. Schweiger, Sandberg, & Ragan, 1986).

Switch-side policy debate enables activism.

Brad Hall, 8 – Masters in Communication Studies from Wake Forest and Special Projects Manager with the Offices of Al and Tipper Gore

(Brad, "[eDebate] Mmm Lentils, Chikpeas, and Mohair," 7-11-2008, http://www.ndtceda.com/pipermail/edebate/2008-July/075330.html)

As someone who has (at least temporarily) left debate to do public policy-related research, I think Andy overlooks the benefits of the *process* of policy debate and its connection to his call for "political agency in the real world." Ross and others have made this point many times, but it is worth briefly reiterating: switch sides public policy debate enables activism by teaching a research and decision making process that is applicable outside of the insulated debate community. While debates do not directly change public policy (after all, Mohammed Ali Hammadi still roams the streets of Beirut), the skills of debate teach debaters how to help with "activist" causes once they leave debate. For example, policy debaters are taught the skills of researching a topic both quickly (finding one or two politics cards in 3 minutes) and in depth (consider that hundreds of high school debaters around the country are currently attempting to exhaust the debate over global warming and alternative energy). Debaters learn a number of other useful skills, from word economy to prioritization of the best arguments. But most importantly, the process of reflecting on this research and considering both sides of a public policy issue teaches the participants of debate a decision making process that is applicable to the rest of their life.

Many, many traditional policy debaters have taken these skills and translated them into work at think tanks, law firms, universities, corporations, journalism, and other sectors. NDT Champion

Larry Tribe has produced groundbreaking societal change through the law just to cite one example. Glenn Greenwald is one of the most popular progressive bloggers whose research acumen is obvious. Real change has been produced by these individuals (and many others), and it continues to be.

The real question should be: how do alternative models of debate promote any of these skills/process, or if they don't (since they often base their existence on a criticism of these aspects of policy debate), what do they offer to activism outside of debate? It is somewhat noble to claim that the structures of debate are changed by alternative models (though this is often not the case), but unless you expect the actual channels of power like Congress to be similarly changed, what impact does non-traditional non-policy debate have on the "real world"?

To return to the thrust of Andy's original post, there are few activities I would rather see public money be spent on than training high school and college students in traditional, switch sides policy debate.

This turns their case at the most basic level---people will ignore the 1AC because you don't give the other side a fair chance to respond

Michael **Underwood**, **summarizing** Carl **Hovland**, communication at Yale University, **2000** (*Psychology of Communication*, www.cultsock.ndirect.co.uk/MUHome/cshtml/psy/hovland3.html)

Whether or not you should include arguments for and against your case depends very much on your audience. If you know that they already agree with you, a one-sided argument is quite acceptable. If they are opposed to your point of view, then a one-sided message will actually be less effective, **being dismissed as biased**. Even if your audience don't know much about the subject, but do know that there are counterarguments (even if they don't know what they are) will lead them to reject your views as biased. Hovland's investigations into mass propaganda used to change soldiers' attitudes also suggests that the intelligence of the receivers is an important factor, a two-sided argument tending to be **more persuasive** with a more intelligent audience.

Striving for change through debates fails because of the emphasis on winning – maintaining a resolutional focus is key

Atchison and Panetta, 09 – *Director of Debate at Trinity University and **Director of Debate at the University of Georgia (Jarrod, and Edward, "Intercollegiate Debate and Speech Communication: Issues for the Future," The Sage Handbook of Rhetorical Studies, Lunsford, Andrea, ed., 2009, p. 317-334)

The final problem with an individual debate round focus is the role of competition. Creating community change through individual debate rounds sacrifices the "community" portion of the change. Many teams that promote activist strategies in debates profess that they are more interested in creating change than winning debates. What is clear, however, is that the vast

majority of teams that are not promoting community change are very interested in winning debates. The tension that is generated from the clash of these opposing forces is tremendous. Unfortunately, this is rarely a productive tension. Forcing teams to consider their purpose in debating, their style in debates, and their approach to evidence are all critical aspects of being participants in the community.

However, the dismissal of the proposed resolution that the debaters have spent countless hours preparing for, in the name of a community problem that the debaters often have little control over, does little to engender coalitions of the willing. Should a debate team lose because their director or coach has been ineffective at recruiting minority participants? Should a debate team lose because their coach or director holds political positions that are in opposition to the activist program? Competition has been a critical component of the interest in intercollegiate debate from the beginning, and it does not help further the goals of the debate community to dismiss competition in the name of community change.

The larger problem with locating the "debate as activism" perspective within the competitive framework is that it overlooks the communal nature of the community problem. If each individual debate is a decision about how the debate community should approach a problem, then the losing debaters become collateral damage in the activist strategy dedicated toward creating community change. One frustrating example of this type of argument might include a judge voting for an activist team in an effort to help them reach elimination rounds to generate a community discussion about the problem. Under this scenario, the losing team serves as a sacrificial lamb on the altar of community change. Downplaying the important role of competition and treating opponents as scapegoats for the failures of the community may increase the profile of the winning team and the community problem, but it does little to generate the critical coalitions necessary to address the community problem, because the competitive focus **encourages teams to concentrate on how to beat the strategy with little regard for addressing the community problem**. There is no role for competition when a judge decides that it is important to accentuate the publicity of a community problem. An extreme example might include a team arguing that their opponents' academic institution had a legacy of civil rights abuses and that the judge should not vote for them because that would be a community endorsement of a problematic institution. This scenario is a bit more outlandish but not unreasonable if one assumes that each debate should be about what is best for promoting solutions to diversity problems in the debate community.

If the debate community is serious about generating community change, then it is more likely to occur outside a traditional competitive debate. When a team loses a debate because the judge decides that it is better for the community for the other team to win, then they have sacrificed two potential advocates for change within the community. Creating change through wins generates backlash through losses. Some proponents are comfortable with generating backlash and argue that the reaction is evidence that the issue is being discussed.

From our perspective, the discussion that results from these hostile situations is not a productive one where participants seek to work together for a common goal. Instead of giving up on hope for change and agitating for wins regardless of who is left behind, it seems more reasonable that the debate community should try the method of public argument that we teach in an effort to generate a discussion of necessary community changes. Simply put, debate competitions do not represent the best environment for community change because it is a competition for a win and only one

team can win any given debate, whereas addressing systemic century-long community problems requires a tremendous effort by a great number of people.

Sound conviction can only happen after thoroughly researching and debating both sides of an issue – it is hypocritical and immoral not to require debaters to defend both sides

Muir, 93 – Department of Communications at George Mason (Star A., "A Defense of the Ethics of Contemporary Debate," Philosophy and Rhetoric, Vol. 26, No. 4. Gale Academic Onefile)

In a tolerant context, convictions can still be formed regarding the appropriateness and utility of differing values. Responding to the charge that switch-side debaters are hypocritical and sophistical, Windes responds with a series of propositions:

Sound conviction depends upon a thorough understanding of the controversial problem under consideration. . . . This thorough understanding of the problem depends upon careful analysis of the issues and survey of the major arguments and supporting evidence. . . , This measured analysis and examination of the evidence and argument can best be done by the careful testing of each argument pro and con. . . . The learner's sound conviction covering controversial questions [therefore] depends partly upon his experience in defending and/or rejecting tentative affirmative and negative positions."'*

Sound conviction, a key element of an individual's moral identity, is thus closely linked to a reasoned assessment of both sides. Some have even suggested that it would be immoral not to require debaters to defend both sides of the issues."' It does seem hypocritical to accept the basic premise of debate, that two opposing accounts are present on everything, and then to allow students the comfort of their own untested convictions. Debate might be rendering students a disservice, insofar as moral education is concerned, if it did not provide them some knowledge of alternative views and the concomitant strength of a reasoned moral conviction.

Even Malcolm X understood the value of switch side debate – he'd take the side of his opponents in order to better understand their arguments and later defeat them.

Branham 95 (Robert, Professor Rhetoric at Bates College, Argumentation and Advocacy, "`I Was Gone On Debating': Malcolm X's Prison Debates And Public Confrontations," Winter, vol. 31, no. 3, p.117)

As Malcolm X sought new outlets for his heightened political consciousness, he turned to the weekly formal debates sponsored by the inmate team. "My reading had my mind like steam under pressure," he recounted; "Some way, I had to start telling the white man about himself to his face. I decided to do this by putting my name down to debate" (1965b, p. 184). Malcolm X's prison debate experience allowed him to bring his newly acquired historical knowledge and critical ideology to bear on a wide variety of social issues. "Whichever side of the selected subject was assigned to me, I'd track down and study everything I could find on it," wrote Malcolm X. "I'd put

myself in my opponent's place and decide how I'd try to win if I had the other side; and then I'd figure out a way to knock down those points" (1965b, p. 184). Preparation for each debate included four or five practice sessions.

Fun/Participation

Rules are key to harness the educational value of intellectual contests – this accesses the educational value of fun

Prensky 01 – Internationally acclaimed speaker, writer, consultant, and designer in the critical areas of education and learning, Founder, CEO and Creative Director of games2train.com, former vice president at the global financial firm Bankers Trust

(Marc, "Fun, Play, and Games: What Makes Games Engaging," 2001, www.marcprensky.com/writing/Prensky%20-%20Digital%20Game-Based%20Learning-Ch5.pdf)

So fun — in the sense of enjoyment and pleasure — puts us in a relaxed, receptive frame of mind for learning. Play, in addition to providing pleasure, increases our involvement, which also helps us learn.

Both "fun" and "play" however, have the disadvantage of being somewhat abstract, unstructured, and hard-to-define concepts. But there exists a more formal and structured way to harness (and unleash) all the power of fun and play in the learning process — the powerful institution of games. Before we look specifically at how we can combine games with learning, let us examine games themselves in some detail.

Like fun and play, game is a word of many meanings and implications. How can we define a game? Is there any useful distinction between fun, play and games? What makes games engaging? How do we design them?

Games are a subset of both play and fun. In programming jargon they are a "child", inheriting all the characteristics of the "parents." They therefore carry both the good and the bad of both terms. Games, as we will see, also have some special qualities, which make them particularly appropriate and well suited for learning.

So what is a game?

Like play, game, has a wide variety of meanings, some positive, some negative. On the negative side there is mocking and jesting, illegal and shady activity such as a con game, as well as the "fun and games" that we saw earlier. As noted, these can be sources of resistance to Digital Game-Based Learning — "we are not playing games here." But much of that is semantic. What we are interested in here are the meanings that revolve around the definition of games involving rules, contest, rivalry and struggle.

What Makes a Game a Game? Six Structural Factors

The Encyclopedia Britannica provides the following diagram of the relation between play and games: 35

PLAY spontaneous play organized play (AMES)

noncompetitive games competitive games (CONTESTS)

intellectual contests physical contests (SPORTS)

(repreinted with permission from Britanica.com © 1999-2000 Encyclopedia Britannica Inc.)

Our goal here is to understand why games engage us, drawing us in often in spite of ourselves. This powerful force stems first from the fact that they are a form of fun and play, and second from what I call the six key structural elements of games:

1. Rules

2. Goals and Objectives

3. Outcomes & Feedback

4. Conflict/Competition/Challenge/Opposition

5. Interaction, and

6. Representation or Story.

There are thousands, perhaps millions of different games, but all contain most, if not all, these powerful factors. Those that don't contain all the factors are still classified as games by many, but can also belong to other subclasses described below. In addition to these structural factors, there are also important design elements that add to engagement and distinguish a really good game from a poor or mediocre one.

Let us discuss these six factors in detail and show how and why they lead to such strong engagement.

Rules are what differentiate games from other kinds of play. Probably the most basic definition of a game is that it is organized play, that is to say rule-based. **If you don't have rules you have free play, not a game**. Why are rules so important to games? **Rules impose limits – they force us to take specific paths to reach goals and ensure that all players take the same paths**. They put us inside the game world, by letting us know what is in and out of bounds. What spoils a game is not so much the cheater, who accepts the rules but doesn't play by them (we can deal with him or her) but the nihilist, who denies them altogether. Rules make things both fair and exciting. When the Australians "bent" the rules of the America's Cup and built a huge boat in 1988, and the Americans found a way to compete with a catamaran, it was still a race — but no longer the same game.

While even small children understand some game rules ("that's not fair"), rules become increasingly more important as we grow older. The rules set the limits of what is OK and not OK, fair and not fair, in the game. By elementary school, kids know to cry "cheater" if the rules are broken. Monopoly and even Trivial Pursuit have pages of written rule sets, and by adulthood we are consulting Hoyle, hiring professional referees to enforce rules, and even holding national debates — the designated hitter, the 2 point conversion, the instant replay — over whether to change them.

Fun debate is a prerequisite to education and retention

Prensky 01 – Internationally acclaimed speaker, writer, consultant, and designer in the critical areas of education and learning, Founder, CEO and Creative Director of games2train.com, former vice president at the global financial firm Bankers Trust

(Marc, "Fun, Play, and Games: What Makes Games Engaging," 2001, www.marcprensky.com/writing/Prensky%20-%20Digital%20Game-Based%20Learning-Ch5.pdf)

Fun and Learning

People with the notion that learning cannot and should not be fun are clearly in an archaic mode.

-Mark Bieler, former head of HR, Bankers Trust Company

So what is the relationship between fun and learning? Does having fun help or hurt? Let us look at what some researchers have to say on the subject:

"Enjoyment and fun as part of the learning process are important when learning new tools since the learner is relaxed and motivated and therefore more willing to learn."6 "The role that fun plays with regard to intrinsic motivation in education is twofold. First, intrinsic motivation promotes the desire for recurrence of the experience… Secondly, fun can motivate learners to engage themselves in activities with which they have little or no previous experience." 7

"In simple terms a brain enjoying itself is functioning more efficiently." 8

"When we enjoy learning, we learn better" 9

Fun has also been shown by Datillo & Kleiber, 1993; Hastie, 1994; Middleton, Littlefield & Lehrer, 1992, to increase motivation for learners. 10

It appears then that the principal roles of fun in the learning process are to create relaxation and motivation. Relaxation enables a learner to take things in more easily, and motivation enables them to put forth effort without resentment.

Limits

Failure to enforce limits will kill novice debate and eventually entire programs.

Rowland 84 (Robert C., Debate Coach – Baylor University, "Topic Selection in Debate", American Forensics in Perspective, Ed. Parson, p. 53-54, nkj)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called "NDT" programs, are diminishing both in scope and size. This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breadth. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. National debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change. The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of topics has all but **destroyed** novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process. Despite this advantage of policy debate, Gaske believes that NDT debate is not the best vehicle for teaching beginners. The problem is that broad topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breath of the topic and experience "negophobia," the fear of debating negative. As a consequence, the educational advantages associated with teaching novice through policy debate are lost: "Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caught without evidence or substantive awareness of the issues that confront them at a tournament." The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters who eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much time and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are **forced out** of the activity. Gaske notes, that "broad topics discourage participation because of insufficient time to do requisite research." The final effect may be that **entire programs wither** cease functioning or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: "It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate." In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to **cancel their programs**.

Dogmatism

Debate has unique potential to change attitudes and grow critical thinking skills because it forces pre-round internal deliberation on a of a focused, common ground of debate

Goodin and Niemeyer 3 Australian National University

(Robert E. and Simon J., When Does Deliberation Begin? Internal Reflection versus Public Discussion in Deliberative Democracy, POLITICAL STUDIES: 2003 VOL 51, 627–649, http://onlinelibrary.wiley.com/doi/10.1111/j.0032-3217.2003.00450.x/pdf, twm)

What happened in this particular case, as in any particular case, was in some respects peculiar unto itself. The problem of the Bloomfield Track had been well known and much discussed in the local community for a long time. Exaggerated claims and counter-claims had become entrenched, and unreflective public opinion polarized around them. In this circumstance, the effect of the information phase of deliberative processes was to brush away those highly polarized attitudes, dispel the myths and symbolic posturing on both sides that had come to dominate the debate, and liberate people to act upon their attitudes toward the protection of rainforest itself. The key point, from the perspective of 'democratic deliberation within', is that that happened in the earlier stages of deliberation – before the formal discussions ('deliberations', in the discursive sense) of the jury process ever began. The simple process of jurors seeing the site for themselves, focusing their minds on the issues and listening to what experts had to say did virtually all the work in changing jurors' attitudes. Talking among themselves, as a jury, did very little of it. However, the same might happen in cases very different from this one. Suppose that instead of highly polarized symbolic attitudes, what we have at the outset is mass ignorance or mass apathy or non-attitudes. There again, people's engaging with the issue – focusing on it, acquiring information about it, thinking hard about it – would be something that is likely to occur earlier rather than later in the deliberative process. And more to our point, it is something that is most likely to occur within individuals themselves or in informal interactions, well in advance of any formal, organized group discussion. There is much in the large literature on attitudes and the mechanisms by which they change to support that speculation.31 Consider, for example, the literature on 'central' versus 'peripheral' routes to the formation of attitudes. Before deliberation, individuals may not have given the issue much thought or bothered to engage in an extensive process of reflection.32 In such cases, positions may be arrived at via peripheral routes, taking cognitive shortcuts or arriving at 'top of the head' conclusions or even simply following the lead of others believed to hold similar attitudes or values (Lupia, 1994). These shorthand approaches involve the use of available cues such as 'expertness' or 'attractiveness' (Petty and Cacioppo, 1986) – not deliberation in the internal-reflective sense we have described. Where peripheral shortcuts are employed, there may be inconsistencies in logic and the formation of positions, based on partial information or incomplete information processing. In contrast, 'central' routes to the development of attitudes involve the application of more deliberate effort to the matter at hand, in a way that is more akin to the internal-reflective deliberative ideal. Importantly for our thesis, there is nothing intrinsic to the 'central' route that requires group deliberation. Research in this area stresses instead the importance simply of 'sufficient impetus' for engaging in deliberation, such as when an individual is stimulated by personal involvement in the issue.33 The same is true of 'on-line' versus 'memory-based' processes of attitude change.34 The suggestion here is that we lead our ordinary lives largely on autopilot, doing routine things in routine ways without much thought or reflection. When we come across something 'new', we update our routines – our 'running' beliefs and pro cedures, attitudes and evaluations – accordingly. But having updated, we then drop the impetus for the update into deep-stored 'memory'. A consequence of this procedure is that, when asked in the ordinary course of events 'what we believe' or 'what attitude we take' toward something, we easily retrieve what we think but we cannot so easily retrieve the reasons why. That more fully reasoned assessment – the sort of thing we have been calling internal-reflective deliberation – requires us to call up reasons from stored memory rather than just consulting our running on-line 'summary judgments'. Crucially for our present discussion, once again, what prompts that shift from online to more deeply reflective deliberation is not necessarily interpersonal discussion. The impetus for fixing one's attention on a topic, and retrieving reasons from stored memory, might come from any of a number sources: group discussion is only one. And again, even in the context of a group discussion, this shift from 'online' to 'memory-based' processing is likely to occur earlier rather than later in the process, often before the formal discussion ever begins. All this is simply to say that, on a great many models and in a great many different sorts of settings, it seems likely that elements of the pre-discursive process are likely to prove crucial to the shaping and reshaping of people's attitudes in a citizens' jury-style process. The initial processes of focusing attention on a topic, providing information about it and inviting people to think hard about it is **likely to provide a strong impetus to internal-reflective deliberation, altering not**

just the information people have about the issue but also the way people process that information and hence (perhaps) what they think about the issue. What happens once people have shifted into this more internal-reflective mode is, obviously, an open question. Maybe people would then come to an easy consensus, as they did in their attitudes toward the Daintree rainforest.35 Or maybe people would come to divergent conclusions; and they then may (or may not) be open to argument and counter-argument, with talk actually changing minds. Our claim is not that group discussion will always matter as little as it did in our citizens' jury.36 Our claim is instead merely that the earliest steps in the jury process – the sheer focusing of attention on the issue at hand and acquiring more information about it, and the internal-reflective deliberation that that prompts – will invariably matter more than deliberative democrats of a more discursive stripe would have us believe. However much or little difference formal group discussions might make, on any given occasion, the pre-discursive phases of the jury process will invariably have a considerable impact on changing the way jurors approach an issue. From Citizens' Juries to Ordinary Mass Politics? In a citizens' jury sort of setting, then, it seems that informal, pre-group deliberation – 'deliberation within' – will inevitably do much of the work that deliberative democrats ordinarily want to attribute to the more formal discursive processes. What are the preconditions for that happening? To what extent, in that sense, can findings about citizens' juries be extended to other larger or less well-ordered deliberative settings? Even in citizens' juries, deliberation will work only if people are attentive, open and willing to change their minds as appropriate. So, too, in mass politics. In citizens' juries the need to participate (or **the anticipation of participating) in formally organized group discussions might be the 'prompt' that evokes those attributes**. But there might be many other possible 'prompts' that can be found in less formally structured mass-political settings. Here are a few ways citizens' juries (and all cognate micro-deliberative processes)37 might be different from mass politics, and in which lessons drawn from that experience might not therefore carry over to ordinary politics: • A citizens' jury concentrates people's minds on a single issue. Ordinary politics involve many issues at once. • A citizens' jury is often supplied a background briefing that has been agreed by all stakeholders (Smith and Wales, 2000, p. 58). In ordinary mass politics, there is rarely any equivalent common ground on which debates are conducted. • A citizens' jury separates the process of acquiring information from that of discussing the issues. In ordinary mass politics, those processes are invariably intertwined. • A citizens' jury is provided with a set of experts. They can be questioned, debated or discounted. But there is a strictly limited set of 'competing experts' on the same subject. In ordinary mass politics, claims and sources of expertise often seem virtually limitless, allowing for much greater 'selective perception'. • Participating in something called a 'citizens' jury' evokes certain very particular norms: norms concerning the 'impartiality' appropriate to jurors; norms concerning the 'common good' orientation appropriate to people in their capacity as citizens.38 There is a very different ethos at work in ordinary mass politics, which are typically driven by flagrantly partisan appeals to sectional interest (or utter disinterest and voter apathy). • In a citizens' jury, **we think and listen in anticipation of the discussion phase, knowing that we soon will have to defend our views in a discursive setting where they will be probed intensively**.39 In ordinary mass-political settings, there is no such incentive for paying attention. It is perfectly true that citizens' juries are 'special' in all those ways. But if being special in all those ways makes for a better – more 'reflective', more 'deliberative' – political process, then those are design features that we ought try to mimic as best we can in ordinary mass politics as well. There are various ways that that might be done. Briefing books might be prepared by sponsors of American presidential debates (the League of Women Voters, and such like) in consultation with the stakeholders involved. Agreed panels of experts might be questioned on prime-time television. Issues might be sequenced for debate and resolution, to avoid too much competition for people's time and attention. Variations on the Ackerman and Fishkin (2002) proposal for a 'deliberation day' before every election might be generalized, with a day every few months being given over to small meetings in local schools to discuss public issues. All that is pretty visionary, perhaps. And (although it is clearly beyond the scope of the present paper to explore them in depth) there are doubtless many other more-or-less visionary ways of introducing into real-world politics analogues of the elements that induce citizens' jurors to practice 'democratic deliberation within', even before the jury discussion gets underway. Here, we have to content ourselves with identifying those features that need to be replicated in real-world politics in order to achieve that goal – and with the 'possibility theorem' that is established by the fact that (as sketched immediately above) there is at least one possible way of doing that for each of those key features.

Debates that forces students to take a particular position on a political issue helps gain greater insight into contemporary world issues. It moves the debate from stale argument over principles to real world policy analysis.

Joyner 99 Prof of International Law (Christopher C. **Joyner** is a Professor of International Law in the Government Department at Georgetown University, Spring, [5 ILSA J Int'l & Comp L 377])

Use of the debate can be an effective pedagogical tool for education in the social sciences. Debates, like other role-playing simulations, help students understand different perspectives on a policy issue by adopting a perspective as their own. But, unlike other simulation games, debates do not require that a student participate directly in order to realize the benefit of the game. Instead of developing policy alternatives and experiencing the consequences of different choices in a traditional role-playing game, debates present the alternatives and consequences in a formal, rhetorical fashion before a judgmental audience. Having the class audience serve as jury helps each student develop a well-thought-out opinion on the issue by providing contrasting facts and views and enabling audience members to pose challenges to each debating team. These debates ask undergraduate students to examine the international legal implications of various United States foreign policy actions. Their chief tasks are to assess the aims of the policy in question, determine their relevance to United States national interests, ascertain what legal principles are involved, and conclude how the United States policy in question squares with relevant principles of international law. Debate questions are formulated as resolutions, along the lines of: "Resolved: The United States should deny most-favored-nation status to China on human rights grounds;" or "Resolved: The United States should resort to military force to ensure inspection of Iraq's possible nuclear, chemical and biological weapons facilities;" or "Resolved: The United States' invasion of Grenada in 1983 was a lawful use of force;" or "Resolved: The United States should kill Saddam Hussein." In addressing both sides of these legal propositions, the student debaters must consult the vast literature of international law, especially the nearly 100 professional law-school-sponsored international law journals now being published in the United States. This literature furnishes an incredibly rich body of legal analysis that often treats topics affecting United States foreign policy, as well as other more esoteric international legal subjects. Although most of these journals are accessible in good law schools, they are largely unknown to the political science community specializing in international relations, much less to the average undergraduate. By assessing the role of international law in United States foreign policy- making, students realize that United States actions do not always measure up to international legal expectations; that at times, international legal strictures get compromised for the sake of perceived national interests, and that concepts and principles of international law, like domestic law, can be interpreted and twisted in order to justify United States policy in various international circumstances. In this way, the debate format gives students the benefits ascribed to simulations and other action learning techniques, in that it makes them become actively engaged with their subjects, and not be mere passive consumers. Rather than spectators, students become legal advocates, observing, reacting to, and structuring political and legal perceptions to fit the merits of their case. The debate exercises carry several specific educational objectives. First, students on each team must work together to refine a cogent argument that compellingly asserts their legal position on a foreign **policy issue** confronting the United States. In this way, they gain **greater insight** into **the real-world legal dilemmas** faced by policy makers. Second, as they work with other members of their team, they realize the complexities of applying and implementing international law, and the difficulty of bridging the gaps between United States policy and international legal principles, either by reworking the former or creatively reinterpreting the latter. Finally, research for the debates forces students to become familiarized with contemporary issues on the United States foreign policy agenda and the role that international law plays in formulating and executing these policies. 8 The debate thus becomes an **excellent vehicle** for pushing students **beyond stale arguments over principles** into the real world of policy analysis, political critique, and legal defense.

Effective education requires the advocacy of a particular policy position.

Keller, Whittaker, and Burke 1 [Thomas E., James K., and Tracly K., Asst. professor School of Social Service Administration U. of Chicago, professor of Social Work, and doctoral student School of Social Work, "Student debates in policy courses: promoting policy practice skills and knowledge through active learning," *Journal of Social Work Education*, Spr/Summer, EBSCOhost]

Based on a review of the literature, the authors' experience conducting debates in a course, and the subsequent evaluation of those debates, the authors believe the development of policy practice skills and the acquisition of substantive knowledge can be advanced through structured student debates in policy-oriented courses. The authors think debates on important **policy questions** have numerous benefits: prompting students to deal with values and assumptions, encouraging them to **investigate and analyze competing alternatives**, compelling them to advocate a particular position, and motivating them to articulate a point of view in a persuasive manner. We think engaging in these analytic and persuasive activities promotes greater knowledge by stimulating active participation in the learning process.

Policy analysis is necessary to develop critical thinking skills that isn't promoted by methodological focus --- checks dogmatism

Keller, Whittaker, and Burke 1 [Thomas E., James K., and Tracy K., Asst. professor School of Social Service Administration U. of Chicago, professor of Social Work, and doctoral student School of Social Work, "Student debates in policy courses: promoting policy practice skills and knowledge through active learning," *Journal of Social Work Education*, Spr/Summer, EBSCOhost]

Policy practice encompasses social workers' "efforts to influence the development, enactment, implementation, or assessment of social policies" (Jansson, 1994, p. 8). Effective policy practice involves analytic activities, such as defining issues, gathering data, conducting research, identifying and prioritizing policy options, and creating policy proposals (Jansson, 1994). It also involves persuasive activities intended to influence opinions and outcomes, such as discussing and debating issues, organizing coalitions and task forces, and providing testimony. According to Jansson (1984,pp. 57-58), social workers rely upon five fundamental skills when pursuing policy practice activities:

* value-clarification skills for identifying and assessing the underlying values inherent in policy positions;

* conceptual skills for identifying and evaluating the relative merits of different policy options;

* interactional skills for interpreting the values and positions of others and conveying one's own point of view in a convincing manner;

* political skills for developing coalitions and developing effective strategies; and

* position-taking skills for recommending, advocating, and defending a particular policy.

These **policy practice skills reflect the hallmarks of critical thinking** (see Brookfield, 1987; Gambrill, 1997). **The central activities of critical thinking** are identifying and challenging underlying assumptions, exploring alternative ways of thinking and acting, and arriving at commitments after a period of questioning, analysis, and reflection (Brookfield, 1987). Significant parallels exist with the policy-making process--identifying the values underlying policy choices, **recognizing and evaluating multiple alternatives, and taking a position and advocating for its adoption**. **Developing policy practice skills seems to share much in common with developing capacities for critical thinking.**

Switch side debate checks dogmatism

Keller, et. al, 1 – Asst. professor School of Social Service Administration U. of Chicago

(Thomas E., James K., and Tracly K., Asst. professor School of Social Service Administration U. of Chicago, professor of Social Work, and doctoral student School of Social Work, "Student debates in policy courses: promoting policy practice skills and knowledge through active learning," *Journal of Social Work Education*, Spr/Summer 2001, EBSCOhost) // SEP

SOCIAL WORKERS HAVE a professional responsibility to shape social policy and legislation (National Association of Social Workers, 1996). In recent decades, the concept of policy practice has encouraged social workers to consider the ways in which their work can be advanced through active participation in the policy arena (Jansson, 1984, 1994; Wyers, 1991). The emergence of the

policy practice framework has focused greater attention on the competencies required for social workers to influence social policy and placed greater emphasis on preparing social work students for policy intervention (Dear & Patti, 1981; Jansson, 1984, 1994; Mahaffey & Hanks, 1982; McInnis-Dittrich, 1994). The curriculum standards of the Council on Social Work Education (CSWE) require the teaching of knowledge and skills in the political process (CSWE, 1994). With this formal expectation of policy education in schools of social work, the best instructional methods must be employed to ensure students acquire the requisite policy practice skills and perspectives.

The authors believe that structured student debates have great potential for promoting competence in policy practice and in-depth knowledge of substantive topics relevant to social policy. Like other interactive assignments designed to more closely resemble "real-world" activities, issue-oriented debates actively engage students in course content. Debates also allow students to develop and exercise skills that may translate to political activities, such as testifying before legislative committees. Finally, and perhaps most importantly, debates may help to stimulate critical thinking by shaking students free from established opinions and helping them to appreciate the complexities involved in policy dilemmas.

R.W. Paul (as cited in Gambrill, 1997) states that critical thinkers acknowledge the

> imperative to argue from opposing points of view and to seek
>
> to identify weakness and limitations in one's own position.
>
> Critical thinkers are aware that there are many legitimate
>
> points of view, each of which (when thought through) may
>
> yield some level of insight. (p. 126)

John Dewey, the philosopher and educational reformer, suggested that the initial advance in the development of reflective thought occurs in the transition from holding fixed, static ideas to an attitude of doubt and questioning engendered by exposure to alternative views in social discourse (Baker, 1955, pp. 36-40). Doubt, confusion, and conflict resulting from discussion of diverse perspectives "force comparison, selection, and reformulation of ideas and meanings" (Baker, 1955, p. 45). Subsequent educational theorists have contended that learning requires openness to divergent ideas in combination with the ability to synthesize disparate views into a purposeful resolution (Kolb, 1984; Perry, 1970). On the one hand, clinging to the certainty of one's beliefs risks dogmatism, rigidity, and the inability to learn from new experiences. On the other hand, if one's opinion is altered by every new experience, the result is insecurity, paralysis, and the inability to take effective action. The educator's role is to help students develop the capacity to incorporate new and sometimes conflicting ideas and experiences into a coherent cognitive framework. Kolb suggests that, "if the education process begins by bringing out the learner's beliefs and theories, examining and testing them, and then integrating the new, more refined ideas in the person's belief systems, the learning process will be facilitated" (p. 28).

The authors believe that involving students in substantive debates challenges them to learn and grow in the fashion described by Dewey and Kolb. Participation in a debate stimulates clarification and critical evaluation of the evidence, logic, and values underlying one's own policy position. In addition, to debate effectively students must understand and accurately

evaluate the opposing perspective. The ensuing tension between two distinct but legitimate views is designed to yield a reevaluation and reconstruction of knowledge and beliefs pertaining to the issue.

A discussion of specific policy-questions is crucial for skills development---we control uniqueness: university students already have preconceived and ideological notions about how the world operates---government policy discussion is vital to force engagement with and resolution of competing perspectives to improve social outcomes, however those outcomes may be defined---and, it breaks out of traditional pedagogical frameworks by positing students as agents of decision-making

Esberg & Sagan 12 *Jane Esberg is special assistant to the director at New York University's Center on. International Cooperation. She was the winner of 2009 Firestone Medal, AND **Scott Sagan is a professor of political science and director of Stanford's Center for International Security and Cooperation "NEGOTIATING NONPROLIFERATION: Scholarship, Pedagogy, and Nuclear Weapons Policy," 2/17 The Nonproliferation Review, 19:1, 95-108

These government or quasi-government think tank simulations often provide very similar lessons for high-level players as are learned by **students in educational simulations** Government participants learn about the **importance of understanding foreign perspectives,** the need to practice internal coordination, and the necessity to compromise and coordinate with other governments in negotiations and crises. During the Cold War, political scientist Robert Mandel noted how crisis exercises and war games forced government officials to **overcome ''bureaucratic myopia**,'' moving beyond their normal organizational roles and **thinking more creatively** about how others might react in a crisis or conflict.6 The **skills of imagination** and the subsequent ability to **predict foreign interests** and reactions remain **critical for real-world foreign policy makers**. For example, simulations of the Iranian nuclear crisis*held in 2009 and 2010 at the Brookings Institution's Saban Center and at Harvard University's Belfer Center, and involving former US senior officials and regional experts* highlighted the **dangers of misunderstanding foreign governments' preferences** and misinterpreting their subsequent behavior. In both simulations, the primary criticism of the US negotiating team lay in a failure to predict accurately how other states, both allies and adversaries, would behave in response to US policy initiatives.7

By **university age**, **students** often have a **pre-defined view of international affairs**, and the literature on simulations in education has long emphasized how such exercises **force students to challenge their assumptions about how other governments behave and how their own government works**.8 Since simulations became more common as a teaching tool in the late 1950s, **educational literature has expounded on their benefits**, from encouraging engagement by **breaking from the typical lecture format**, to improving communication skills, to promoting teamwork.9 More broadly, simulations can deepen understanding by asking students to **link fact and theory**, providing a context for facts while **bringing theory into the realm of practice**.10 These exercises are particularly valuable in teaching international affairs for many of the same reasons they are useful for policy makers: **they force participants to ''grapple with the issues arising from a world in flux.**''11 Simulations have been used successfully to teach students about such disparate topics as European politics, the Kashmir crisis, and US response to the mass killings in Darfur.12 **Role-playing exercises** certainly encourage students to learn political and technical facts* but they learn them in a **more active style**. Rather than sitting in a classroom and merely receiving knowledge, **students**

actively research ‘‘their’’ government’s positions and actively argue, brief, and negotiate with others.13 Facts can change quickly; simulations teach students **how to contextualize and act on information.**14

Focus on policy making

Investigating Policy implications are necessary to test theory—a legitimate proposal must describe the consequences of implementing specific change because rhetorical criticism can make the world worse—the impact is education and it turns the case

Feaver 1 (Peter, Asst. Prof of Political Science at Duke University, Twenty-First Century Weapons Proliferation, p 178)

At the same time, virtually all good theory has implications for policy. Indeed, if no conceivable extension of the theory leads to insights that would aid those working in the 'real world', what can be 'good' about good theory? Ignoring the policy implications of theory is often a sign of intellectual laziness on the part of the theorist. It is hard work to learn about the policy world and to make the connections from theory to policy. Often, the skill sets do not transfer easily from one domain to another, so a formidable theorist can show embarrassing naivete when it comes to the policy domain he or she putatively studies. Often, when the policy implications are considered, flaws in the theory (or at least in the presentation of the theory) are uncovered. Thus, focusing attention on policy implications should lead to better theorizing. The gap between theory and policy is more rhetoric than reality. But rhetoric can create a reality–or at least create an undesirable kind of reality–where policy makers make policy though ignorant of the problems that good theory would expose, while theorists spin arcana without a view to producing something that matters. It is therefore incumbent on those of us who study proliferation–a topic that raises interesting and important questions for both policy and theory–to bring the communities together. Happily, the best work in the proliferation field already does so.

Topicality v. Non-Topical Aff's- DDI

T versus Non-Topical Affs – DDI 15

Stop trying to be cool

Bennett 11 (Professor in the Department of Political Science at the University of Victoria, British Columbia)
(Colin J., In Defence of Privacy: The concept and the regime, Surveillance & Society 8(4): 485- 496)

> For younger scholars in particular, perhaps privacy simply is not 'cool'; surveillance is. Poring over laws, reports, guidelines, standards or privacy policies is not '**cool**' either; zzinterpreting the latest technologies and practices through the **lens of post-modern social theory is**. Responding to consultative exercises, or preparing for hearings, or registering complaints is not 'cool'; resistance is. **Engaging with the crucially important contemporary debates** about how, practically, to make consent meaningful on the internet **is not 'cool'**; **deconstructing the ontological assumptions behind the very notion of consent, is**. Coming to grips with cookies, deep-packet inspection, cryptography, spyware, protocols, and other opaque instruments of network management is not cool either; constructing metaphors about 'cyber-surveillance' is.

1NC Long Shell

Our interpretation is that an affirmative should defend curtailing federal government surveillance as the endpoint of their advocacy. This does not mandate roleplaying, immediate fiat or any particular means of impact calculus.

Surveillance can only be understood in relation to the agent doing the surveying – understanding federal government surveillance as unique is key or the topic becomes abstract and unlimited

Cetina 14
(DANIEL K. CETINA, BALANCING SECURITY AND PRIVACY IN 21ST CENTURYAMERICA: A FRAMEWORK FOR FISA COURT REFORM, 47 J. Marshall L. Rev. 1453 2013-2014, Hein)

> Any legitimate attempt to discuss and critique United States surveillance tactics necessarily demands defining **exactly what surveillance is and what it entails**. Although discourse surrounding governments' intelligence and law enforcement techniques transcends any specific epoch or state,11 modern communication technologies "have revolutionized our daily lives [and] have also created minutely detailed recordings of those lives," 12 thereby making governmental surveillance simple, potentially ubiquitous, and susceptible to abuse.13 Of course, recent surveillance programs were implemented for the noble purpose of conducting the War on Terrorism; 14 but the danger is that pursuing this purpose unchecked can undermine the central principles that both provide the Republic's foundation and differentiate it from the very enemies it combats. 15
> While the prospect of governmental surveillance seems to implicitly suggest a quasi-Orwellian dystopia,16 fantastical science fiction mythologies, 17 abstruse philosophical concepts, 18 or documented repressive regimes,19 the reality is both less foreboding and more nuanced. Although American society, ostensibly, is looking increasingly akin to such fiction, theory, and totalitarianism, surveillance as applied is not so disturbing. Surveillance involves and

encompasses many topics and practices, both abstract and practical,20 but it primarily involves power relationships. 2 1 Specifically, surveillance is "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction."22 Surveillance can target a modern society's numerous communications networks, 28 which exist to send and receive information. 24 The communications include both envelope information and content information, distinct categories that draw varying degrees of interest from the surveillance authority. 25

But surveillance is not strictly the province of the federal government. 26 Indeed, state and local governments have their own surveillance practices, as do private corporations, which routinely use surveillance data to determine purchasing trends and calibrate advertising, especially through such social media sites as Facebook.28 Surveillance, therefore, transcends the boundary between the private sector and the public sector. 29

The focus here, however, is on **federal governmental surveillance**. It is therefore critical to understand from where the federal government derives its authority to monitor and analyze communications networks.

The Aff undermines the ability to have a limited and stable number of Affirmatives to prepare against. The link magnitude is high. Their affirmative prevents arguments about ____.

This is a reason to vote negative.

Our first standard is competition – every affirmative argument needs to be filtered through the question of "how does this function in a competitive venue of debate where there must be a win or a loss assigned to each team. All their evidence will assume non-competitive academic environment rather than one where a forced choice will inevitably take place with every ballot.

Second is substantive side bias

Not defending the clear actor and mechanism of the resolution produces a substantive side bias.

They have the ability to recontextualize link arguments, shift focus to different proscriptive claims of the 1AC while using traditional competition standards like perms to make non-absolutist disagreements irrelevant.

The first impact to Aff sides bias is absolutism – their interp creates bad debates where negatives are forced into the absolutist positions like cap and Baudrillard to ensure links and have generic positions that can apply to everything. This is bad for education -- forcing us to the academic margins, makes us less effective scholars and less literate in current events. Trains us only for leftist infighting, rather than social change.

Second, it undermines research – Aff has an incentive to constantly break new affs at every tournament making any real attempt at engagement irrelevant and decreasing the quality of all debates. They don't spur engagement and exploration cause there are so many teams reading so many Affs, the only way to respond it with generics. The Aff is conversely incentivized to pick a body of literature with very little negative literature and a prolif of aff advocacies based on single articles or created phrases. There is no incentive to produce detailed strategies because academic disagreements in the literature are minute and easily wished away by perms or Aff changes.

And we have an external impact – Sufficient research-based preparation and debates focused on detailed points of disagreement are key to political effectiveness

Gutting 13 **(professor of philosophy at the University of Notre Dame) (Gary, Feb 19, A Great Debate, http://opinionator.blogs.nytimes.com/2013/02/19/a-great-debate/?emc=eta1)**

> This is the year of what should be a decisive debate on our country's spending and debt. But our political "debates" seldom deserve the name. For the most part representatives of the rival parties exchange one-liners: "The rich can afford to pay more" is met by "Tax increases kill jobs." Slightly more sophisticated discussions may cite historical precedents: "There were higher tax rates during the post-war boom" versus "Reagan's tax cuts increased revenues."
> Such volleys still don't even amount to arguments: they don't put forward generally accepted premises that support a conclusion. Full-scale speeches by politicians are seldom much more than collections of such slogans and factoids, hung on a string of platitudes. Despite the name, candidates' pre-election debates are exercises in looking authoritative, imposing their talking points on the questions, avoiding gaffes, and embarrassing their opponents with "zingers" (the historic paradigm: "There you go again.").
> There is a high level of political discussion in the editorials and op-eds of national newspapers and magazines as well as on a number of blogs, with positions often carefully formulated and supported with argument and evidence. But even here we seldom see a direct and sustained confrontation of rival positions through the dialectic of assertion, critique, response and counter-critique.
> Such exchanges occur frequently in our law courts (for example, oral arguments before the Supreme Court) and in discussions of scientific papers. But they are not a significant part of our deliberations about public policy. As a result, partisans typically remain safe in their ideological worlds, convincing themselves that they hold to obvious truths, while their opponents must be either knaves or fools — with no need to think through the strengths of their rivals' positions or the weaknesses of their own.
> Is there any way to make genuine debates — sustained back-and-forth exchanges, meeting high intellectual standards but still widely accessible — part of our political culture? (I leave to historians the question of whether there are historical precedents— like the Webster-Hayne or Lincoln-Douglas debates.) Can we put our politicians in a situation where they cannot ignore challenges, where they must genuinely engage with one another in responsible discussion and not just repeat talking points?
> A first condition is that the debates be focused on specific points of major disagreement. Not, "How can we improve our economy?" but "Will tax cuts for the wealthy or stimulus spending on infrastructure do more to improve our economy?" This will prevent vague statements of principle that don't address the real issues at stake.

Another issue is the medium of the debate. Written discussions, in print or online could be easily arranged, but personal encounters are more vivid and will better engage public attention. They should not, however, be merely extemporaneous events, where too much will depend on quick-thinking and an engaging manner. We want remarks to be carefully prepared and open to considered responses.

**This guts any educational potential of the aff – failure to engage with the legal detail of surveillance policy prevents translating their argument into action.

Cohen 15 (professor of law at Georgetown University Law Center)
(Julie, 2015, Studying Law Studying Surveillance, Studying Law Studying Surveillance. Surveillance & Society 13(1): 91-101)

Relative to legal scholarship, work in Surveillance Studies is more likely to build from a solid foundation in contemporary social theory. Even so, such work often reflects both an insufficient grasp of the complexity of the legal system in action and lack of interest in the ways that legal and regulatory actors understand, conduct, and contest surveillance. By this I don't mean to suggest that Surveillance Studies scholars need law degrees, but only to point out what ought to be obvious but often isn't: legal processes are social processes, too, and in overlooking these processes, Surveillance Studies scholars also engage in a form of black-boxing that treats law as monolithic and surveillance and government as interchangeable. Legal actors engage in a variety of discursive and normative strategies by which institutions and resources are mobilized around surveillance, and understanding those strategies is essential to the development of an archaeology of surveillance practices. Work in Surveillance Studies also favors a type of theoretical jargon that can seem impenetrable and, more importantly, unrewarding to those in law and policy communities. As I've written elsewhere (Cohen 2012a: 29), "[t]oo many such works find power everywhere and hope nowhere, and seem to offer well-meaning policy makers **little more than a prescription for despair**." Returning to the topics already discussed, let us consider some ways in which Surveillance Studies might benefit from dialogue with law.
Let us return first to the problem of digitally-enhanced surveillance by law enforcement—the problem of the high-resolution mosaic. As discussed in the section above, works by Surveillance Studies scholars exploring issues of mobility and control offer profound insights into the ways in which continual observation shapes spaces and subjectivities—the precise questions about which, as we have already seen, judges and legal scholars alike are skeptical. Such works reveal the extent to which pervasive surveillance of public spaces is emerging as a new and powerful mode of ordering the public and social life of civil society. They offer rich food for thought—but not for action. Networked surveillance is increasingly a fact of contemporary public life, and totalizing theories about its power don't take us very far toward gaining regulatory traction on it. That enterprise is, moreover, essential even if it entails an inevitable quantum of self-delusion. Acknowledgment of pervasive social shaping by networked surveillance need not preclude legal protection for socially-shaped subjects, but that project requires attention to detail. To put the point a different way, the networked democratic society and the totalitarian state may be points on a continuum rather than binary opposites, but the fact that the continuum exists is still worth something. If so, one needs tools for assessment and differentiation that Surveillance Studies does not seem to provide.
As an example of this sort of approach within legal scholarship, consider a recent article by legal scholars Danielle Citron and David Gray (2013), which proposes that courts and legislators undertake what they term a technology-centered approach to regulating surveillance. They would have courts and legislators ask whether particular technologies facilitate total surveillance and, if so, act to put in place comprehensive procedures for approving and overseeing their use. From a Surveillance Studies perspective, this approach lacks theoretical purity because its technology-specific focus appears to ignore the fact that total surveillance also can emerge via the fusion of data streams originating from various sources. But the proposal is pragmatic; it does not so much ignore that risk as bracket it while pursuing the narrower goal of gaining a regulatory foothold within the data streams. And because it focuses on the data streams themselves, it is administrable in a way that schemes based on linear timelines and artificial distinctions between different types of surveillance are not. One can envision both courts and legislatures implementing the Citron and Gray proposal in a way that enables far better oversight of what law enforcement is doing.
Turning next to the linked practices of commercial profiling and social media surveillance, we have already seen that work in Surveillance Studies again steps in where legal scholarship badly needs supplementation: on the question of how pervasive surveillance by private market actors shapes the production of culture and the patterns of emergent subjectivity. Such work typically does not, however, consider or explore the ways that the legal construct of consent mobilizes legal and policy discourses to sanction ongoing expansions of private-sector surveillance and insulate them from regulatory oversight. Work in Surveillance Studies also has not seemed to pay particularly careful attention to the roles that rhetorics of innovation and competition play in regulatory debates about information privacy. For a discipline that seeks to develop comprehensive and rigorous accounts of surveillance as social ordering and as cultural practice, these are large omissions. As we have seen, the notice-and-choice paradigm has deep roots within liberal theory, and legal and policy discourses about notice and choice reflect legal culture in action. By the same token, understanding surveillance simply as a means to effective administration, or as a means for pursuing and performing security, misses the extent to which a narrative about the inevitable nature of innovation and knowledge production positions surveillance as a modality of technical and social progress (Cohen 2015). The "surveillance-industrial complex" does not simply parallel the military-industrial complex; it is also deeply rooted in Silicon Valley's technoculture and (albeit paradoxically) in the tropes of romantic individualism and cultural iconoclasm with which its participants self-identify. These themes have been especially salient for privacy regulators. Engagement with legal scholarship on information privacy would inform the project of understanding surveillance as social ordering, and as culture in a number of complementary ways. First and most basically, many legal writings on information privacy are important as primary sources that reveal the notice-and-choice paradigm and the narrative of inevitable innovation at work. But there is also a rich vein of legal scholarship interrogating the assumptions and the politics that underlie privacy and data protection regulation (e.g., Cohen 2012a, 2012c, 2013, 2015; Kerr 2013; Ohm 2010; Solove 2013). In addition, legal scholars have produced richly detailed and revealing investigations of regulatory and compliance processes; for example, scholars concerned with the operation of "surveillant assemblages" and "digital enclosures" ought to read and consider the important work by Kenneth Bamberger and Deirdre Mulligan on corporate privacy compliance cultures (2011a, 2011b).

If Surveillance Studies is to inform the content of laws and the nature of regulatory practice in the domain of commercial profiling and social media, however, surveillance theorists will need to do more than simply read legal sources. Work in Surveillance Studies so far has not been particularly well-adapted to helping policymakers figure out what, if anything, to do about evolving practices of commercial surveillance. Once again, if it is to be useful to policymakers, the view from Surveillance Studies requires translation into a form that might furnish a framework for action. Here I want to identify three important sets of questions on which Surveillance Studies scholars who want their work to make a difference might take their cues from legal scholarship.
An initial set of questions concerns how to redefine privacy and data protection in functional terms that do not presuppose the stable, liberal self, and that instead offer real benefit to the situated subjects who might claim their protection. David Lyon (2001) has argued that the organizing concepts of "privacy" and "data protection" are inadequate to comprehend surveillance as a mode of social ordering. From a sociological perspective that is undoubtedly right, but privacy and data protection still might be made effective as legal constructs if articulated differently, in ways that correspond more closely to the ways that surveillance shapes experience. That project calls for the sort of theoretical cannibalization that makes Ph.D. committees in Real Disciplines nervous, but at which legal scholars excel. With some trepidation, I offer my own work on privacy as boundary management for the postliberal self (Cohen 2012a, 2013), as well as Valerie Steeves' (2009) work on relational subjectivity, as examples of the sort of exercise that is necessary to reframe the effects of surveillance as social ordering in ways to which legal systems can respond. For law to develop a sustainable and effective approach to regulating data protection and protecting privacy, the ways of theorizing about the subject represented by these projects must become second nature, not only for scholars but also and more importantly for legislatures, regulators, and courts. That in turn requires second process of translation, from the language of academia into a vernacular that can supply inputs into policy processes.
A second set of questions concerns how to understand what constitutes privacy harm in an era in which some surveillance is a constant. To the Surveillance Studies reader this may seem to be a variation on the first question, but it is different: in law, harm is what makes violation of an interest actionable, and the potential for harm is what creates the predicate for comprehensive regulation of particular domains of activity. Harm need not be individualized or monetizable; environmental regulations and financial market regulations address systemic and often nonmonetizable risk. But it must be reasonably definite; talk of power, power everywhere is plainly insufficient and it should come as no surprise that policymakers find it risible. Work on this problem is still preliminary, but here legal scholarship has a leg up because it deals in practicalities. Surveillance Studies scholars might profitably read works by Danielle Citron (2007) and Paul Ohm (2010) that identify and name the systemic risks associated with leaky and largely unregulated data reservoirs, and that draw on resources ranging from the history of tort law to computational science to craft recommendations for more effective regulatory strategies.
A final set of questions concerns the design of governance mechanisms. As we have already seen, the flows of surveillance within social media create novel institutional design challenges. In the domain of commercial profiling, many activities on the business-facing side of personal information markets, removed from consumer-facing processes that purport to ensure notice and choice, have eluded regulatory scrutiny entirely. Some of the classic works on privacy governance originate within the Surveillance Studies tradition; these include Priscilla Regan's (1995) study of the way privacy legislation emerges within the U.S. political system and Colin Bennett and Charles Raab's (2006) work on privacy governance and the emergence of data protection as a regulatory paradigm. But the question of governance badly needs to be revisited; in particular, Surveillance Studies scholars have not yet engaged with the "new privacy governance" now emerging as official policy in the U.S. (and as de facto policy in the European Union) in a sustained and meaningful way. Works by legal scholars on the political, epistemological, and normative dimensions of the new governance (e.g., Bamberger 2010; Cohen 2012b, 2013; Freeman 2000; Lobel 2004) offer starting points for an inquiry that moves beyond "doing Surveillance Studies" to consider the more pressing challenge of doing surveillance regulation wisely and effectively.
Conclusion: Doing Law-and-Surveillance-Studies Differently
The prospects for fruitful interchange and collaboration between legal scholars and Surveillance Studies scholars are likely to remain complicated by pronounced differences in underlying theoretical orientation. But since Surveillance Studies is itself an interdiscipline (Garber 2001), and since legal scholarship has thrived on interdisciplinary exploration, the prospects for effective communication also seem reasonably good. Bridging the gaps requires, first and foremost, efforts by emissaries from both traditions to foster a more tolerant and curious dialogue directed toward improved understanding and, ultimately, toward methodological hybridization. Within one's own academic community, it can become too easy to mistake consensus on methodological conventions for epistemological rigor, and to forget that methodological strength also derives from refusal to be hemmed in by disciplinary boundaries.
From the standpoint of theory, a more sustained dialogue between law and Surveillance Studies

would count as a success if it produced a mode of inquiry about surveillance that melded the theoretical sophistication of Surveillance Studies with lawyerly attention to the details, mechanisms, and interests that constitute surveillance practices as legal practices, and to the kinds of framing that mobilize legal and policy communities. To do Surveillance Studies better, legal scholars need to challenge their own preference for putting problems in categories that fit neatly within the liberal model of human nature and behavior, and Surveillance Studies scholars can help by calling attention to the social and cultural processes within which surveillance practices are embedded. Surveillance Studies scholars need to do more to **resist their own penchant for totalizing dystopian narratives**, and should delve more deeply into **the legal and regulatory realpolitik** that surrounds the administration of surveillance systems; legal scholars can help by demystifying legal and regulatory processes.

From a legal scholar's perspective, however, theory achieves its highest value when it becomes a tool for forcing productive confrontations about how to respond to real problems. And so I think it would count as an even bigger success if dialogue between law and Surveillance Studies generated not only a hybridized theoretical discourse of law-and-Surveillance-Studies but also the beginnings of a **more accessible policy discourse** about surveillance and privacy, along with reform proposals designed to put the animating concepts behind such a discourse into practice. Here the goal would be a hybridization between law's ingrained pragmatism and Surveillance Studies' attentiveness to the social and cultural processes through which surveillance is experienced and assimilated. Working together, legal scholars and Surveillance Studies scholars might advance the project of formulating working definitions of privacy interests and harms, and might develop more sophisticated projections of the likely effects of different policy levers that could be brought to bear on systems of surveillance.

Next is **Mechanism Education**

The Aff's failure to identify an agent and mechanism makes cost-benefits analysis impossible, meaning debates take place in an academic vacuum where tradeoffs are irrelevant. It makes link comparisons vacuous and means that detailed PICs about substance are all but impossible.

And this turns the Aff – debates over mechanisms for change are crucial to solve material violence on a large scale

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(Eduardo R.C., CLIENT ACTIVISM IN PROGRESSIVE LAWYERING THEORY, CLINICAL LAW REVIEW, 16 Clinical L. Rev. 109, Fall, 2009)

Motivating client activism under dynamic social conditions requires the development and constant assessment and reassessment of a political perspective that measures that resistance and its possibilities. That task in turn requires the development of specific activist goals within the context of such analyses, and perhaps broader, national and international strategy--what some call the political "next step." This is particularly true today, when the economic crisis plaguing capitalism, the "war on terror" and climate change undeniably have world-wide dimensions. Instances of failure, too, need to be part of that analysis, because they teach us much about why otherwise promising activist efforts do not become sustained mass movements of the sort to which we all aspire.

Thus, the theoretical need is two-fold: to construct a broader organizing perspective from a political standpoint, and to consider activism writ large. Without reading the pulse of prevailing social conditions, it is easy to miscalculate what that next step ought to be. We will not build a mass movement though sheer perseverance--a linear, idealist conception of change at odds with dynamic social conditions. By the same token, we may underestimate the potential of such mass

activism if we focus simply on the local dimensions of our work.

The dialectic between a dynamic social context and political consciousness and action requires a constant organizational and political calibration and modulation often missing from theoretical scholarship. Without such a working perspective, we are apt to be either ultra-left or overly conservative. As Jim Pope put it recently in the context of new forms of labor organizing: "If we limit our vision of the future to include only approaches that work within the prevailing legal regime and balance of forces, then we are likely to be irrelevant when and if the opportunity for a paradigm shift arises." n449 The cyclical nature of labor organizing, he argues, mirrors politics generally:

American political life as a whole has likewise alternated between periods characterized by public action, idealism, and reform on the [*189] one hand, and periods of private interest, materialism, and retrenchment on the other. A prolonged private period spawns orgies of corruption and extremes of wealth and poverty that, sooner or later, ignite passionate movements for reform. n450

C. 'Activism': Towards a Broader, Deeper, Systematic Framework

In progressive lawyering theory, grassroots activism is frequently equated with "community organizing" and "movement" or "mobilization" politics. n451 Indeed, these methods have come to predominate activist lawyering in much the same way as "public interest law" has come for many to encompass all forms of progressive practice. "Activism" is, of course, broader still. Even on its own terms, the history of community organizing and social movements in the United States includes two vitally important traditions frequently given short shrift in this realm: industrial union organizing and alternative political party-building. n452 In this section, my aim is not to catalogue the myriad ways in which lawyers and clients can and do become active (methodically or institutionally)--which, given human creativity and progress, in any event may be impossible to do--but rather to problematize three assumptions: first, the tendency to define grassroots activity narrowly; second, the notion that certain groups--for example "the poor" or the "subordinated"--are the definitive agents of social change; and finally, the conviction that mass mobilization or movement-building, by itself, is key to social transformation.

1. Grassroots Activism

There are countless ways in which people become socially or politically active. Yet even the more expansive and sophisticated considerations of activism in progressive lawyering theory tend to unnecessarily circumscribe activism. For example, Cummings and Eagly argue that we need to "unpack" the term "organizing." n453 Contrasting two strategies of the welfare rights movement in the 1960s, these authors distinguish between "mobilization as short-term community action and organizing as an effort to build long-term institutional power." n454 In the same breath, however, they define organizing "as shorthand for a range of community-based practices," n455 even though at least some activism, for example union organizing or, say, [*190] fasting, might not be best characterized as "community-based."

What is required is a larger framework that takes into account the sum total of activist initiatives. Lucie White argues that we need to "map out the internal microdynamics of progressive grassroots initiatives ... observe the multiple impacts of different kinds of initiatives on wide spheres of social and political life ... and devise typologies, or models, or theories that map out a range of opportunities for collaboration." n456 This map would be inadequate--and therefore inaccurate--if we include certain activist initiatives and not others. But that is precisely what the progressive lawyering literature has done by failing to regularly consider, for example, union organizing or alternative political party-building.

2. Agents of Social Change: Identity, Class and Political Ideology

As with our definition of activism, here, too, the problem is a lack of clarity, breadth or scope, which leads to misorientation. Have we defined, with theoretical precision, the social-change agents to whom we are orienting--e.g., the "people," the "poor," the "subordinated," "low-income communities" or "communities of color?" And if so, are these groupings, so defined, the primary agents of social change? By attempting to harmonize three interrelated (yet divergent) approaches to client activism--organizing on the bases of geography and identity, class and the workplace, and political ideology--modern community organizing simultaneously blurs and balkanizes the social-change agents to whom we need to orient. What, after all, is "community?" In geographic terms, local efforts alone cannot address social problems with global dimensions. n457 As Pope observed of workers' centers: "the tension between the local and particularistic focus of community unionism and the global scope of trendsetting corporations like Wal-Mart makes it highly unlikely that community unionism will displace industrial unionism as 'the' next paradigm of worker organization." n458 On the other hand, members of cross-class, identity-based "communities" may not necessarily share the same interests. In the "Asian American community," Ancheta explains: using the word "community" in its singular form is often a misnomer, because Asian Pacific Americans comprise many communities, each with its own history, culture and language: Filipino, Chinese, Japanese, Korean, Vietnamese, Thai, Cambodian, Lao, Lao-Mien, [*191] Hmong, Indian, Indonesian, Malaysian, Samoan, Tongan, Guamanian, Native Hawaiian, and more. The legal problems facing individuals from different communities defy simple categorization. The problems of a fourth-generation Japanese American victim of job discrimination, a monolingual refugee from Laos seeking shelter from domestic violence, an elderly immigrant from the Philippines trying to keep a job, and a newcomer from Western Samoa trying to reunite with relatives living abroad all present unique challenges. Add in factors such as gender, sexual orientation, age, and disability, and the problems become even more complex. n45 Angela Harris echoes this observation by pointing out how some feminist legal theory assumes "a unitary, 'essential' women's experience [that] can be isolated and described independently of race, class, sexual orientation, and other realities of experience." n460 The same might be said of the "people," which, like the "working class," may be too broad. Other categorizations--such as "low-income workers," "immigrants", and the "poor", for example--may be too narrow to have the social weight to fundamentally transform society. In practice, progressive lawyers orient to the politically advanced among these various "communities." In so doing, then, we need to acknowledge that we are organizing on the basis of political ideology, and not simply geography, identity or class. Building the strongest possible mass movement, therefore, requires an orientation not only towards certain "subordinated" communities, but to the politically advanced generally. Otherwise, we may be undermining activism writ large. This is not to denigrate autonomous community efforts. As I have mentioned, subordinated communities of course have the right to self-determination, i.e. to organize separately. But the point is not simply to organize groups of people who experience a particular oppression, but rather to identify those who have the social power to transform society. Arguing that these agents are the collective, multi-racial working class, Smith explains: The Marxist definition of the working class has little in common with those of sociologists. Neither income level nor self-definition are [sic] what determine social class. Although income levels obviously bear some relationship to class, some workers earn the same or higher salaries than some people who fall into the category of middle class. And many people who consider themselves "middle [*192] class" are in fact workers. Nor is class defined by categories such as white and blue collar. For Marx the working class is defined by its relationship to the means of production. Broadly speaking, those who do not control the means of production and are forced to sell their labor power to capitalists are workers. n461 The practical consequence of this very well may be that we redefine who we represent as clients and consider activism or potential activism outside subordinated communities, for example union activity and alternative political-party building, as part of our work.

3. From Movementism to Political Organization

Dogged as our work is in the activist realm, any effort at fundamental social transformation is doomed without effective political leadership. Such leadership, in turn, requires work not often associated with "activism," such as, for example, theoretical study. n462 "Movementism," n463 by which I mean the conviction that building a mass movement is the answer to oppression and exploitation, has its limitations. Even though activism itself is perhaps the best school for political education, we have an enormous amount to learn from our predecessors. In the final analysis, fundamental social transformation will only come about if there are political organizations clear enough, motivated enough, experienced enough, large enough, embedded enough and agile enough to respond to the twists and turns endemic in any struggle for power. "The problem," as Bellow astutely observed, "is not our analytic weaknesses, but the opportunistic, strategic, and political character of our subject." n464 Such opportunities typically occur when there is a confluence of three factors: a social crisis; a socio-economic elite that finds itself divided over how to overcome it; and a powerful mass movement from below. As I understand the nature of social change, successful social transformations occur when there is a fourth element: political organization.

Conclusion

Client activism is not a monolithic, mechanical object. Most of the time, it is neither the gathering mass movement many of us wish for, nor the inert, atomized few in need of external, professional motivation. Rather, activism is a phenomenon in constant ebb and flow, a [*193] mercurial, fluid complex shaped by an unremitting diversity of factors. The key through the maze of lawyering advice and precaution is therefore to take a hard, sober look at the overarching state of activism. Are our clients in fact active or are they not? How many are and who are they? What is the nature of this period? Economically? Politically? Culturally? What are the defining issues? What political and organizing trends can be discerned? With which organizations are our clients active, if any? What demands are they articulating, and how are they articulating them?

This is a complex evaluation, one requiring the formulation, development and constant assessment and reassessment of an overarching political perspective. My aim in this Article is to begin to theorize the various approaches to this evaluation. In essence, I am arguing for the elaboration of a systematic macropolitical analysis in progressive lawyering theory. Here, my purpose is not to present a comprehensive set of political considerations, but rather to develop a framework for, and to investigate the limitations of, present considerations in three areas: strategic aims; prevailing social conditions; and methods of activism. Consciously or not, admittedly or not, informed and systematic or not, progressive lawyers undertake their work with certain assumptions, perspectives and biases. Progressive lawyering theory would be a much more effective and concrete guide to action--to defining the lawyer's role in fostering activism--if it would elaborate on these considerations and transform implicit and perhaps delimited assumptions and approaches into explicit and hopefully broader choices.

Over the past four decades, there has been remarkable continuity and consistency in progressive lawyers' use of litigation, legislation, direct services, education and organizing to stimulate and support client activism. The theoretical "breaks" to which Buchanan has referred n465 have not been so much about the practice of lawyering itself, but rather about unarticulated shifts in ultimate goals, societal analyses, and activist priorities, each necessitated by changes in the social, economic, and political context. That simply is another way of stating the obvious: that progressive lawyers change their practices to adapt to changing circumstances. The recurrent problem in progressive lawyering theory is that many commentators have tended to generalize these practice changes to apply across social circumstances. In so doing, they displace and often replace more fundamental differences over strategic goals, interpretation of social contexts, and organizing priorities with debates over the mechanics of lawyering practice.

The argument is turned on its head: we often assume or tend to [*194] assume agreement over the meanings and underlying conceptual frameworks relating to "fundamental social change," current political analysis, and "community organizing," and debate lawyering strategy and tactics; but instead we should be elaborating and clarifying these threshold political considerations as a prerequisite to using what we ultimately agree to be a broad and flexible set of lawyering tools. In effect, the various approaches to lawyering have become the currency by which scholars have debated politics and activism. The irony is that our disagreements are less about lawyering approaches per se, I believe, than they are about our ultimate political objectives, our analyses of contemporary opportunities, and our views of the optimal paths from the latter to the former. The myriad lawyering descriptions and prescriptions progressive lawyering theory offers are of limited use unless they are anchored in these primary considerations. How do we decide if we should subscribe to "rebellious" and not traditional "public interest" lawyering, for example, or "collaborative" over "critical" lawyering, if we do not interrogate these questions and instead rush too quickly into practical questions? The differences among these approaches matter precisely because they have different political goals, are based on different political analyses, and employ different political activist strategies.

Activist lawyers already engage in these analyses--necessarily so. To foster client activism, they must read prevailing social conditions and strategize with their clients about the political next step, often with an eye toward a long-term goal. But I don't think we necessarily engage in these analyses as consciously, or with as full a picture of the history and dynamics involved or options available, as we could. Often this is because there simply isn't time to engage these questions. Or perhaps not wanting to dominate our clients, we squelch our own political analysis and agenda to allow for organic, indigenous leadership from below. But if we are truly collaborative--and when we feel strongly enough about certain political issues--we engage on issues and argue them

out. In either event, we undertake an unsystematic engagement of these fundamental issues at our peril.

If we adhere to the belief that only organized, politicized masses of people can alter or replace exploitative and oppressive institutions and bring about lasting fundamental social change, then, as progressive lawyers, we need to be clear about which legal tactics can bring about such a sustained effort in each historical moment. Without concrete and comprehensive diagnoses of ultimate political goals, social and economic contexts, and organizing priorities, progressive legal practice will fail to live up to its potential.

Now the State debate

We do not need to win that the state is good, rather just that the value of the state is something that should be **debated about. This is the screen you should adopt for the Aff's ev – it can't just say that the state is bad or ineffective, their ev has to say that the state should not even be discussed. General indictments of the state can be done on the neg, while still preserving limited and effective debate and research.**

First, engaging with the law is inevitable and can be effective

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Nevertheless, in contrast to what Steve Bachmann has called the [*116] "a-legal" or "crude Marxist" approach, n19 progressive activists recognize that the legal arena remains a forum for social struggle. n20 This is so for three reasons: First, activists often do not have a choice but to work within the legal system, as when they are arrested or otherwise prevented from engaging in activism by state authorities. Second, because law is relatively autonomous from economic and political interests, n21 campaigns for legal reform can win substantial gains and are frequently the only vehicles through which more far-reaching change takes shape; struggles for reform, in other words, beget more radical possibilities and aspirations. n22 And third, law is constitutive of the social order. Law--or, more accurately, the concept of it--is not (again as some crude analysts would argue) simply a tool of one ruling class or other, but rather an essential component of a just society. n23

Commentators observe that lawyers who base their practice on these three premises are "hungry for theory," n24 for theory checks the "occupational hazards [of] reformism or cynicism." n25 The theoretical project is thus a dialectic: while law reform alone cannot "disturb the basic political and economic organization of modern American society," n26 [*117] law and lawyering are "a complex, contradictory, and open-textured setting that provides opportunities to challenge the status quo."

Second, debate about arcane legal details are crucial to the short-term survival of oppressed populations. Outside of the law being good or bad, legal education is crucial to empower even the most revolutionary of movements.

Arkles et al 10
(Gabriel Arkles, Pooja Gehi and Elana Redfield, The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change, Seattle Journal for Social Justice, 8 Seattle J. Soc. Just. 579, Spring / Summer, 2010, LN)

While agenda-setting by lawyers can lead to the replication of patterns of elitism and the reinforcement of systems of oppression, we do believe that legal work is a necessary and critical way to support movements for social justice. We must recognize the limitations of the legal system and learn to use that to the advantage of the oppressed. If lawyers are going to support work that dismantles oppressive structures, we must radically rethink the roles we can play in building and supporting these movements and acknowledge that our own individual interests or even livelihood may conflict with doing radical and transformative work. n162 A. Community Organizing for Social Justice When we use the term community organizing or organizing, we refer to the activities of organizations engaging in base-building and leadership development of communities directly

impacted by one or more social [*612] problems and conducting direct action issue campaigns intended to make positive change related to the problem(s). In this article, we discuss community organizing in the context of progressive social change, but community-organizing strategies can also be used for conservative ends. Community organizing is a powerful means to make social change. A basic premise of organizing is that inappropriate imbalances of power in society are a central component of social injustice. In order to have social justice, power relationships must shift. In Organizing for Social Change: Midwest Academy Manual for Activists (hereinafter, "the Manual"), n163 the authors list three principles of community organizing: n164 (1) winning real, immediate, concrete improvements in people's lives; (2) giving people a sense of their own power; and (3) altering the relations of power. n165 Before any of these principles can be achieved it is necessary to have leadership by the people impacted by social problems. n166 As Rinku Sen points out: [E]ven allies working in solidarity with affected groups cannot rival the clarity and power of the people who have the most to gain and the least to lose . . . organizations composed of people whose lives will change when a new policy is instituted tend to set goals that are harder to reach, to compromise less, and to stick out a fight longer. n167 She also notes that, "[I]f we are to make policy proposals that are grounded in reality and would make a difference either in peoples' lives or in the debate, then we have to be in touch with the people who are at the center of such policies. n168 We believe community organizing has the potential to make fundamental social change that law reform strategies or "movements" led by lawyers cannot achieve on their own. However, community organizing is not always just and effective. Community-organizing groups are not immune to any number of problems that can impact other organizations, including internal oppressive dynamics. In fact, some strains of white, male-dominated [*613] community organizing have been widely criticized as perpetuating racism and sexism. n169 Nonetheless, models of community organizing, particularly as revised by women of color and other leaders from marginalized groups, have much greater potential to address fundamental imbalances of power than law reform strategies. They also have a remarkable record of successes. Tools from community organizers can help show where other strategies can fit into a framework for social change. The authors of the Manual, for example, describe various strategies for addressing social issues and illustrate how each of them may, at least to some extent, be effective. n170 They then plot out various forms of making social change on a continuum in terms of their positioning with regard to existing social power relationships. n171 They place direct services at the end of the spectrum that is most accepting of existing power relationships and community organizing at the end of the spectrum that most challenges existing power relationships. n172 Advocacy organizations are listed in the middle, closer to community organizing than direct services. n173 The Four Pillars of Social Justice Infrastructure model, a tool of the Miami Workers Center, is somewhat more nuanced than the Manual. n174 According to this model, four "pillars" are the key to transformative social justice. n175 They are (1) the pillar of service, which addresses community needs and stabilizes community members' lives; (2) the pillar of policy, which changes policies and institutions and achieves concrete gains with benchmarks for progress; (3) the pillar of consciousness, which alters public opinion and shifts political parameters through media advocacy and popular education; and (4) the pillar of power, which achieves autonomous community power through base-building and leadership development. n176 According to the Miami Workers Center, all of these pillars are essential in making social change, but the pillar of power is most crucial in the struggle to win true liberation for all oppressed communities. n177 [*614] In their estimation, our movements suffer when the pillar of power is forgotten and/or not supported by the other pillars, or when the pillars are seen as separate and independent, rather than as interconnected, indispensable aspects of the whole infrastructure that is necessary to build a just society. n178 Organizations with whom we work are generally dedicated solely to providing services, changing policies, or providing public education. Unfortunately, each of these endeavors exists separate from one another and perhaps most notably, separate from community organizing. In SRLP's vision of change, this separation is part of maintaining structural capitalism that seeks to maintain imbalances of power in our society. Without incorporating the pillar of power, service provision, policy change, and public education can never move towards real social justice. n179 B. Lawyering for Empowerment In the past few decades, a number of alternative theories have emerged that help lawyers find a place in social movements that do not replicate oppression. n180 Some of the most well-known iterations of this theme are "empowerment lawyering," "rebellious lawyering," and "community lawyering." n181 These perspectives share skepticism of the efficacy of impact litigation and traditional direct services for improving the conditions faced by poor clients and communities of color, because they do not and cannot effectively address the roots of these forms of oppression. n182 Rather, these alternative visions of lawyering center on the empowerment of community members and organizations, the elimination of the potential for dependency on lawyers and the legal system, and the collaboration between lawyers and directly impacted communities in priority setting. n183 Of the many models of alternative lawyering with the goal of social justice, we will focus on the idea of "lawyering for empowerment," generally. The goal of empowerment lawyering is to enable a group of people to gain control of the forces that affect their lives. n184 Therefore, the goal of empowerment lawyering for low-income transgender people of [*615] color is to support these communities in confronting the economic and social policies that limit their life chances.

Rather than merely representing poor people in court and increasing access to services, the role of the community or empowerment lawyer involves:

> organizing, community education, media outreach, petition drives, public demonstrations, lobbying, and shaming campaigns . . . [I]ndividuals and members of community-based organizations actively work alongside organizers and lawyers in the day-to-day strategic planning of their case or campaign. Proposed solutions--litigation or non-litigation based--are informed by the clients' knowledge and experience of the issue. n185

A classic example of the complex role of empowerment within the legal agenda setting is the question of whether to take cases that have low chances of success. The traditional approach would suggest not taking the case, or settling for limited outcomes that may not meet the client's expectations. However, when our goals shift to empowerment, our strategies change as well. If we understand that the legal system is incapable of providing a truly favorable outcome for low-income transgender clients and transgender clients of color, then winning and losing cases takes on different meanings. For example, a transgender client may choose to bring a lawsuit against prison staff who sexually assaulted her, despite limited chance of success because of the "blue wall of silence," her perceived limited credibility as a prisoner, barriers to recovery from the Prison Litigation Reform Act, and restrictions on supervisory liability in § 1983 cases. Even realizing the litigation outcome will probably be unfavorable to her, she may still develop leadership skills by rallying a broader community of people impacted by similar issues. Additionally, she may use the knowledge and energy gained through the lawsuit to change policy. If our goal is to familiarize our client with the law, to provide an opportunity for the client [*616] and/or community organizers to educate the public about the issues, to help our client assess the limitations of the legal system on their own, or to play a role in a larger organizing strategy, then taking cases with little chance of achieving a legal remedy can be a useful strategy.

Lawyering for empowerment means not relying solely on legal expertise for decisionmaking. It means recognizing the limitations of the legal system, and using our knowledge and expertise to help disenfranchised communities take leadership. If community organizing is the path to social justice and "organizing is about people taking a role in determining their own future and improving the quality of life not only for themselves but for everyone," then "the primary goal [of empowerment lawyering] is building up the community." n186

C. Sharing Information and Building Leadership

A key to meaningful participation in social justice movements is access to information. Lawyers are in an especially good position to help transfer knowledge, skills, and information to disenfranchised communities--the legal system is maintained by and predicated on arcane knowledge that lacks relevance in most contexts but takes on supreme significance in courts, politics, and regulatory agencies. It is a system intentionally obscure to the uninitiated; therefore the lawyer has the opportunity to expose the workings of the system to those who seek to destroy

it, dismantle it, reconfigure it, and re-envision it.

As Quigley points out, the ignorance of the client enriches the lawyer's power position, and thus the transfer of the power from the lawyer to the client necessitates a sharing of information. n187 Rather than simply performing the tasks that laws require, a lawyer has the option to teach and to collaborate with clients so that they can bring power and voice back to their communities and perhaps fight against the system, become politicized, and take leadership. "This demands that the lawyer undo the secret wrappings of the legal system and share the essence of legal advocacy--doing so lessens the mystical power of the lawyer, and, in practice, enriches the advocate in the sharing and developing of rightful power." n188

Lawyers have many opportunities to share knowledge and skills as a form of leadership development. This sharing can be accomplished, for example, through highly collaborative legal representation, through community clinics, through skill-shares, or through policy or campaign meetings where the lawyer explains what they know about the existing structures and fills in gaps and questions raised by activists about the workings of legal systems.

D. Helping to Meet Survival Needs

SRLP sees our work as building legal services and policy change that directly supports the pillar of power. n189 Maintaining an awareness of the limitations and pitfalls of traditional legal services, we strive to provide services in a larger context and with an approach that can help support libratory work. n190 For this reason we provide direct legal services but also work toward leadership development in our communities and a deep level of support for our community-organizing allies.

Our approach in this regard is to make sure our community members access and obtain all of the benefits to which they are entitled under the law, and to protect our community members as much as possible from the criminalization, discrimination, and harassment they face when attempting to live their lives. While we do not believe that the root causes keeping our clients in poverty and poor health can be addressed in this way, we also believe that our clients experience the most severe impact from state policies and practices and need and that they deserve support to survive them. n191 Until our communities are truly empowered and our systems are fundamentally changed to increase life chances and health for transgender people who are low-income and people of color, our communities are going to continue to have to navigate government agencies and organizations to survive.

Monolithic rejections of the law are wrong – cooption is more likely in non-state activism and fails to compare to alternative mechanisms for change. Concrete mechanisms for success should be your metric for evaluation.

Lobel 7 (Assistant Professor of Law, University of San Diego)
(Orly, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, 120 Harv. L. Rev. 937, February, 2007, LN)

In the following sections, I argue that the extralegal model has suffered from the same drawbacks associated with legal cooptation. I show that as an effort to avoid the risk of legal cooptation, the current wave of suggested alternatives has effects that ironically mirror those of cooptation itself. Three central types of difficulties exist with contemporary extralegal scholarship. First, in the contexts of the labor and civil rights movements, arguments about legal cooptation often developed in response to a perceived gap between the conceptual ideal toward which a social reform group struggled and its actual accomplishments. But, ironically, the contemporary message of opting out of traditional legal reform avenues may only accentuate this problem. As the rise of informalization (moving to nonlegal strategies), civil society (moving to extralegal spheres), and pluralism (the proliferation of norm-generating actors) has been effected and appropriated by supporters from a wide range of political commitments, these concepts have had unintended implications that conflict with the very social reform ideals from which they stem. Second, the idea of opting out of the legal arena becomes self-defeating as it discounts the ongoing importance of law and the possibilities of legal reform in seemingly unregulated spheres. A model encompassing exit and rigid sphere distinctions further fails to recognize a reality of increasing interpenetration and the blurring of boundaries between private and public spheres, profit and nonprofit sectors, and formal and informal institutions. It therefore loses the critical insight that law operates in the background of seemingly unregulated relationships. Again paradoxically, the extralegal view of decentralized activism and the division of society into different spheres in fact have worked to subvert rather than support the progressive agenda. Finally, since extralegal actors view their actions with romantic idealism, they fail to develop tools for evaluating their success. If the critique of legal cooptation has involved the argument that legal reform, even when viewed as a victory, is never radically transformative, we must ask: what are the criteria for assessing the achievements of the suggested alternatives? As I illustrate in the following sections, much of the current scholarship obscures the lines between the descriptive and the prescriptive in its formulation of social activism. If current suggestions

present themselves as alternatives to formal legal struggles, we must question whether the new extralegal politics that are proposed and celebrated are capable of producing a constructive theory and meaningful channels for reform, rather than passive status quo politics.

A. Practical Failures: When Extralegal Alternatives Are Vehicles for Conservative Agendas

We don't want the 1950s back. What we want is to edit them. We want to keep the safe streets, the friendly grocers, and the milk and cookies, while blotting out the political bosses, the tyrannical headmasters, the inflexible rules, and the lectures on 100 percent Americanism and the sinfulness of dissent. n163

A basic structure of cooptation arguments as developed in relation to the labor and civil rights movements has been to show how, in the move from theory to practice, the ideal that was promoted by a social group takes on unintended content, and the group thus fails to realize the original vision. This risk is particularly high when ideals are framed in broad terms that are open to multiple interpretations. Moreover, the pitfalls of the potential risks presented under the umbrella of cooptation are in fact accentuated in current proposals. Paradoxically, as the extralegal movement is framed by way of opposition to formal legal reform paths, without sufficiently defining its goals, it runs the very risks it sought to avoid by working outside the legal system.

Extralegal paths are depicted mostly in negative terms and as resorting to new alternative forms of action rather than established models. Accordingly, because the ideas of social organizing, civil society, and legal pluralism are framed in open-ended contrarian terms, they do not translate into specific visions of social justice reform. The idea of civil society, which has been embraced by people from a broad array of often conflicting ideological commitments, is particularly demonstrative. Critics argue that "some ideas fail because they never make the light of day. The idea of civil society ... failed because it [*972] became too popular." n164 Such a broadly conceived ideal as civil society sows the seeds of its own destruction.

In former eras, the claims about the legal cooptation of the transformative visions of workplace justice and racial equality suggested that through legal strategies the visions became stripped of their initial depth and fragmented and framed in ways that were narrow and often merely symbolic. This observation seems accurate in the contemporary political arena; the idea of civil society revivalism evoked by progressive activists has been reduced to symbolic acts with very little substance. On the left, progressive advocates envision decentralized activism in a third, nongovernmental sphere as a way of reviving democratic participation and rebuilding the state from the bottom up. By contrast, the idea of civil society has been embraced by conservative politicians as a means for replacing government-funded programs and steering away from state intervention. As a result, recent political uses of civil society have subverted the ideals of progressive social reform and replaced them with conservative agendas that reject egalitarian views of social provision.

In particular, recent calls to strengthen civil society have been advanced by politicians interested in dismantling the modern welfare system. Conservative civil society revivalism often equates the idea of self-help through extralegal means with traditional family structures, and blames the breakdown of those structures (for example, the rise of the single parent family) for the increase in reliance and dependency on government aid. n165 This recent depiction of the third sphere of civic life works against legal reform precisely because state intervention may support newer, nontraditional social structures. For conservative thinkers, legal reform also risks increasing dependency on social services by groups who have traditionally been marginalized, including disproportionate reliance on public funds by people of color and single mothers. Indeed, the end of welfare as we knew it, n166 as well as the [*973] transformation of work as we knew it, n167 is closely related to the quest of thinkers from all sides of the political spectrum for a third space that could replace the traditional functions of work and welfare. Strikingly, a range of liberal and conservative visions have thus converged into the same agenda, such as the recent welfare-to-work reforms, which rely on myriad non-governmental institutions and activities to support them. n168

When analyzed from the perspective of the unbundled cooptation critique, it becomes evident that there are multiple limits to the contemporary extralegal current. First, there have been significant problems with resources and zero-sum energies in the recent campaigns promoting community development and welfare. For example, the initial vision of welfare-to-work supported by liberal reformers was a multifaceted, dynamic system that would reshape the roles and responsibilities of the welfare bureaucracy. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 n169 (PRWORA), supported by President Clinton, was designed to convert various welfare programs, including Aid to Families with Dependent Children, into a single block grant program. The aim was to transform passive cash assistance into a more active welfare system, in which individuals would be better assisted, by both the government and the community, to return to the labor force and find opportunities to support themselves. Yet from the broad vision to actual implementation, the program quickly became limited in focus and in resources. Indeed, PRWORA placed new limits on welfare provision by eliminating eligibility categories and by placing rigid time limits on the provision of benefits. n170

Moreover, the need to frame questions relating to work, welfare, and poverty in institutional arrangements and professional jargon and to comply with various funding block grants has made some issues, such as the statistical reduction of welfare recipients, more salient, whereas other issues, such as the quality of jobs offered, have been largely eliminated from policymakers' consideration. Despite aspects of the reform that were hailed as empowering for those groups they were designed to help, such as individual private training vouchers, serious questions have been raised about the adequacy of the particular [*974] policy design because resources and institutional support have been found lacking. n171 The reforms require individual choices and rely on the ability of private recipients to mine through a vast range of information. As in the areas of child care, health care, and educational vouchers, critics worry that the most disadvantaged workers in the new market will not be able to take advantage of the reforms. n172 Under such conditions, the goal of eliminating poverty may be eroded and replaced by other goals, such as reducing public expenses. Thus, recalling the earlier cooptation critique, once reforms are envisioned, even when they need not be framed in legalistic terms, they in some ways become reduced to a handful of issues, while fragmenting, neglecting, and ultimately neutralizing other possibilities.

At this point, the paradox of extralegal activism unfolds. While public interest thinkers increasingly embrace an axiomatic rejection of law as the primary form of progress, their preferred form of activism presents the very risks they seek to avoid. The rejected "myth of the law" is replaced by a "myth of activism" or a "myth of exit," romanticizing a distinct sphere that can better solve social conflict. Yet these myths, like other myths, come complete with their own perpetual perils. The myth of exit exemplifies the myriad concerns of cooptation. For feminist agendas, for example, the separation of the world into distinct spheres of action has been a continuous impediment to meaningful reform. Efforts to create better possibilities for women to balance work and family responsibilities, including relaxing home work rules and supporting stay-at-home parents through federal child care legislation, have been couched in terms of support for individual choice and private decisionmaking. n173 Indeed, recent initiatives in federal child care legislation to support stay-at-home parents have been clouded by preconceptions of the separation of spheres and the need to make one-or-the-other life choices. Most importantly, the emergence of a sphere-oriented discourse abandons a critical perspective that distinguishes between valuing traditional gender-based characteristics and celebrating feminine difference in a universalist and essentialist manner. n174 [*975] Not surprisingly then, some feminist writers have responded to civil society revivalism with great skepticism, arguing that efforts to align feminine values and agendas with classic republican theory of civil society activism should be understood, at least in part, as a way of legitimizing historical social structures that subordinated women.

The feminist lesson on the law/exit pendulum reveals a broader pattern. In a classic example of cooptation, activists should be concerned about the infusion (or indeed confusion) of nonlegal strategies with conservative privatization agendas. Indeed, in significant social policy contexts, legal scholarship oriented toward the exploration of extralegal paths reinforces the exact narrative that it originally resisted - that the state cannot and should not be accountable for sustaining and improving the lifeworld of individuals in the twenty-first-century economy and that we must seek alternative ways to bring about social reform. Whether using the terminology of a path-dependent process, an inevitable downward spiral, a transnational prisoner's dilemma, or a global race to the bottom, current analyses often suggest a lack of control over the forces of new economic realities. Rather than countering the story of lack of control, pointing to the ongoing role of government and showing the contradictions between that which is being kept regulated and that which is privatized, alternative extralegal scholarship accepts these developments as natural and inevitable. Similar to the arguments developed in relation to the labor movement - in which focusing on a limited right to collective bargaining demobilized workers and stripped them of their voice, participation, and decisionmaking power - contemporary extralegal agendas are limited to very narrow and patterned sets of reforms.

A striking example has been the focus on welfare reform as the single frontier of economic redistribution without a connection being made between these reforms and social services in which the middle class has a strong interest, such as Social Security and Medicare. Similarly, on the legal pluralism frontier, when activists call for more corporate social responsibility, the initial expressions are those of broad demands for sustainable development and overall industry obligations for the social and environmental consequences of their activities. n176 The discourse, however, quickly becomes coopted by a shift to a narrow focus on charitable donations and corporate philanthropy or [*976] private reporting absent an institutionalized compliance structure. n177 Moreover, because of institutional limitations and crowding out effects possible in any type of reform agenda, the focus shifts to the benefits of corporate social responsibility to businesses, as marketing, recruit-ment, public relations, and "greenwashing" strategies. n178 Critics therefore become deeply cynical about the industry's real commitments to ethical conduct.

A similar process can be described with regard to the literature on globalization. Globalization scholarship often attempts to produce a unifying narrative and an image of unitary struggle when in fact such unity does not exist. Embodied in the aforementioned irony of a "global anti-globalization" movement, social reform activism that resides under the umbrella of global movements is greatly diverse, some of it highly conservative. An "anti-globalization" movement can be a defensive nationalist movement infused with xenophobia and protective ideologies. n179 In fact, during central instances of collective action, such as those in Seattle, Quebec, Puerto Alegre, and Genoa, competing and conflicting claims were frequently encompassed in the same protest. n180 Nevertheless, there is a tendency to celebrate and idealize these protests as united and world-altering.

Similarly, at the local level, grassroots politics often lack a clear agenda and are particularly ripe for cooptation resulting in far lesser achievements than what may have been expected by the groups involved. In a critical introduction to the law and organizing model, Professor Scott Cummings and Ingrid Eagly describe the ways in which new community-based approaches to progressive lawyering privilege grassroots activism over legal reform efforts and the facilitation of community mobilization over conventional lawyering. n181 After carefully unpacking the ways in which community lawyers embrace [*977] law and organizing, Professor Cummings and Eagly rightfully warn against "exaggerating the ineffectiveness of traditional legal interventions" and "closing off potential avenues for redress." n182 Significantly, the strategies embraced by new public interest lawyers have not been shown to produce effective change in communities, and certainly there has been no assurance that these strategies fare comparatively better than legal reform. Moreover, what are meant to be progressive projects of community action and community economic development frequently can have a hidden effect of excluding worse-off groups, such as migrant workers, because of the geographical scope and zoning restrictions of the project. n183 In the same way that the labor and corporate social responsibility movements have failed because of their embrace of a legal framework, the community economic development movement - so diverse in its ideological appeal yet so prominent since the early 1990s as a major approach to poverty relief - may bring about its own destruction by fracture and diffusion. n184

In all of these cases, it is the act of engagement, not law, that holds the risks of cooptation and the politics of compromise. It is not the particularities of lawyers as a professional group that create dependency. Rather, it is the dynamics between skilled, networked, and resourced components and those who need them that may submerge goals and create reliance. It is not the particularities of the structural limitations of the judiciary that threaten to limit the progressive vision of social movements. Rather, it is the essential difficulties of implementing theory into practice. Life is simply messier than abstract ideals. Cooptation analysis exposes the broad, general risk of assuming ownership over a rhetorical and conceptual framework of a movement for change. Subsequently, when, in practice, other factions in the political debate embrace the language and frame their projects in similar terms, groups experience a sense of loss of control or possession of "their" vision. In sum, in the contemporary context, in the absence of a more programmatic and concrete vision of what alternative models of social reform activism need to achieve, the conclusions and rhetoric of the contemporary critical legal consciousness are appropriated by advocates representing a wide range of political commitments. Understood [*978] from this perspective, cooptation is not the result of the turn to a particular reform strategy. Rather, cooptation occurs when imagined ideals are left unchecked and seemingly progressive rhetoric is reproduced by a conservative agenda. Dominant interpretations such as privatization and market competitiveness come out ahead, whereas other values, such as group empowerment and redistributive justice, receive only symbolic recognition, and in turn serve to facilitate and stabilize the process. n185

Mechanism Debates

2NC Side Bias

Not defending the clear actor and mechanism of the resolution produces a substantive side bias and produces worse debates

1. Minimize Lit Base – Their inter incentivizes picking the smallest lit base possible. Aff advocacies based on mechanisms from single articles or created phrases produce less nuanced debates and decrease both the ability and incentive to engage in research. There is no incentive to produce detailed strategies because academic disagreements in the literature are minute and easily wished away by the structure of debate like perms or Aff changes.

2. Link Recontextualiztion and Multiple Normative Claims – prevent DA's to focus, links of omission, or other non-absolutist academic disagreements.

3. Number of non-topical advocacies prevents in depth research and the ability to break a new affirmative with no connection to the previous mechanism negates incentives to produce detailed case negs

The first impact to Aff sides bias is absolutism – anthro, Baudrillard and other structural criticisms are the only recourse to ensure links and be able to keep up with Aff volume especially for small schools. This forces us to the academic margins, makes us less effective scholars and less literate in current events. Trains us only for leftist infighting, rather than social change.

Dixon 14 (activist, writer, anarchist and educator who received a PhD from the History of Consciousness program at the University of California, Santa Cruz. He has been involved in transformative social movements for more than two decades.)
(Chris, Another Politics Talking across Today's Transformative Movements, pg. 111)

> There is a certain prefigurative logic to this tendency-a sense that, if we announce our convictions loudly enough and do everything in the way that we think is most righteously radical, our activities will achieve what we want. But this is a prefigurative politics detached from calculated consequential action. I As Lehman said, "If I can't articulate what that larger whole is and where that larger whole is going or where it could potentially go, then I'm participating on blind hope, and I think there are a lot of us doing that. And I don't think you can operate on principles alone. We have to have a strategy, and it has to be a viable one-not just based on an idea of how it could possibly work but we don't know how to ge' from here to there."
> One result of this fixation on principles over plans is that activists often spend a lot of time and energy debating whether particular individuals, activities, or organizations **are sufficiently "radical"** without asking basic questions about how they seek to move us toward actually winning. A focus on political ideas and rhetoric, in this way, eclipses strategic thinking. It also creates a context in which some activists are quick to dismiss any effort-often **sloppily using the terms "liberal" and "reformist**"-that doesn't lead directly to the complete destruction of the existing social order. San Francisco direct action organizer David Salnit didn't mince words about this: "**A lot of radicals talk shit about anything short of smashing the state, but they don't have any idea of how to take necessary steps in that direction."**

Second, is research – an over focus on extemporaneous speaking in crushing time limits isn't radical, it's more Fox News and the 24-hour news cycle. Our 1NC Gutting ev says that politically effective debate needs careful preparation and research based responses.

2NC Competition

Frame the interp debate through the zero sum nature of debate competition – The yes/no structure of debate radically redefines how educational choices should be made and has to be the first issue you address when read their cards. This explicitly zero sum environment short circuits their aspirational educational claims.

2NC Mechanism Debates

The Aff's failure to identify an agent and mechanism is awful for debate

a. **Cost-benefit analysis - debates take place in an academic vacuum where tradeoffs are irrelevant and we can't consider the way in which deeply important issues like resource and time scarcity effect and limit politics. Only understanding these material dynamics allow us to achieve political success – it's the cause of current left failure**

Dixon 14 (activist, writer, anarchist and educator who received a PhD from the History of Consciousness program at the University of California, Santa Cruz. He has been involved in transformative social movements for more than two decades.)
(Chris, Another Politics Talking across Today's Transformative Movements, pg. 111)

> Strategy is a consistent challenge in the anti-authoritarian current. As activists and organizers, we often talk abstractly about how crucial strategy is, but much of the time we recognize its importance mainJy through its absence in our activities. If we're serious about social transformation and honest with ourselves, we eventually begin to realize that we can't simply do the same things week after week, month after month, with no clear plans for how these activities will help us build movements, achieve interim gains, pick up momentum, and move toward winning the world we want. Revolutionary change needs more than good intentions, commitment, and effort; it also requires conscious strategies and a movement culture that supports strategic discussion and planning.
> Many in the anti-authoritarian current yearn for this. As Toronto-based youth organ.izer Pauline Hwang put it, "To have some level of dialogue at which these questions are being raised-the questions of long-term direc- tion, the questions of how does our work fit into building the society we want to have after the so-called revolution-having that kind of dialogue is important to rne." This yearning is something I've encountered again and again in conversations and workshops with activists across the continent. So why do we have such tremendous difficulty sustaining this kind of dialogue and developing strategy? In my view, there are three major obstacles that trip us up again and again.
> The first of these obstacles is a tendency to focus on principles over plans. This focus, which comes out of some sectors of North American anarchism in particular, is based on a legitimate concern that radicals may sacrifice our core values and beliefs in order to win.' But focusing exclusively on princi- ples slips into a kind of magical thinking: if we have the right ideas and values, so this goes, everything else will more or less follow. Brooke Lehman, an experienced activist and educator who was involved with Occupy Wall Street, characterized this tendency as "Well, I'm gonna do what I believe in and what feels right to me and just be a piece of this larger whole."

b. **Poor Engagement – their interp makes link comparisons vacuous and means that detailed PICs about substance are all but impossible. There's literature on the judge voting yes or no, they prevent questions of materiality and scale which turns the Aff. Our 1NC Capulong ev say that only constant organizational and political calibration can produce mass movements. It is not our analytic weaknesses, but the opportunistic, strategic, and political definiteness in our political debate that prevent success now.**

Mechanism Debates Good Ext.

Strategic discussion key

Schostak 11 **(Professor of Education at Manchester Metropolitan University) (John, Wikileaks, Tahrir Square – their significance for re-thinking democracy, Manchester social movements conference, April, http://www.enquirylearning.net/ELU/politics/tahrirwikileaks.html)**

> In his study of the conditions of work imposed by neo-liberal practices in France, Christophe Dejours (1998) has argued that political strategies, particularly those on the left, have not employed appropriate strategies of analysis. Without a good analysis of contemporary circumstances, he argues, political strategies aiming at social justice will be deficient or wrong. And a good analysis for the production of appropriate strategies can only be accomplished through a multiplicity of collective reflections, debates and decision making in public spaces for public action(s). The protests that have spread since the food riots in Algeria on the 6th January, the revolution in Tunisia and then the revolution in Egypt and then riots spreading to Bahrain, Yemen, Libya, Jordan and others have drawn lessons from each other providing experience for the development of local strategies. Any protest will give insights into the conditions underlying the protests and the community and state structures, discourses, practices, and processes that tacitly if not explicitly underlie the social, political and economic order at local, national, transnational and global levels. This is why, it seems to me, that critically exploring from an educational and research perspective what has happened in response to Wikileaks and has been happening in the Middle East is so important today.

Mechanism Debates Good Ext./Monolith Ext

We need to have a complex and comparative understanding of different tactics possibilities

Lobel 7 (Assistant Professor of Law, University of San Diego)
(Orly, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, 120 Harv. L. Rev. 937, February, 2007, LN)

> B. Conceptual Boundaries: When the Dichotomies of Exit Are Unchecked
> At first glance, the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, we are attracted to declarations about newness - new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures. n186 However, the critical insights about law's reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as the "state" is not a single organism but a multiplicity of legislative, administrative, and judicial organs, "nonstate arenas" are dispersed, multiple, and constructed.
> The focus on action in a separate sphere broadly defined as civil society can be self-defeating precisely because it conceals the many ways in which law continues to play a crucial role in all spheres of life. Today, the lines between private and public functions are increasingly blurred, forming what Professor Gunther Teubner terms "polycorporatist regimes," a symbiosis between private and public sectors. n187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities. n188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard [*979] to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good. n189 In the same way, legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts. n190 These false dichotomies should resonate well with classic cooptation

analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives.
Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, voluntary associations have flourished in mutually beneficial relationships with federal regulations. n191 A dichotomized notion of a shift between spheres - between law and informalization, and between regulatory and nonregulatory schemes - therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. The challenge for social reform groups and for policymakers today is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality. Community empowerment requires ongoing government commitment. n192 In fact, the most successful community-based projects have been those which were not only supported by public funds, but in which public administration also continued to play some coordination role. n193

Agent Key

Failure to identify an agent for change dooms their politics

Capulong 9 (Assistant Professor of Law, University of Montana)
(Eduardo R.C., CLIENT ACTIVISM IN PROGRESSIVE LAWYERING THEORY, CLINICAL LAW REVIEW, 16 Clinical L. Rev. 109, Fall, 2009)

Agents of Social Change: Identity, Class and Political Ideology
As with our definition of activism, here, too, the problem is a lack of clarity, breadth or scope, which leads to misorientation. Have we defined, with theoretical precision, the social-change agents to whom we are orienting--e.g., the "people," the "poor," the "subordinated," "low-income communities" or "communities of color?" And if so, are these groupings, so defined, the primary agents of social change?
By attempting to harmonize three interrelated (yet divergent) approaches to client activism--organizing on the bases of geography and identity, class and the workplace, and political ideology--modern community organizing simultaneously blurs and balkanizes the social-change agents to whom we need to orient. What, after all, is "community?" In geographic terms, local efforts alone cannot address social problems with global dimensions. n457 As Pope observed of workers' centers: "the tension between the local and particularistic focus of community unionism and the global scope of trendsetting corporations like Wal-Mart makes it highly unlikely that community unionism will displace industrial unionism as 'the' next paradigm of worker organization." n458
On the other hand, members of cross-class, identity-based "communities" may not necessarily share the same interests. In the "Asian American community," Ancheta explains:
using the word "community" in its singular form is often a misnomer, because Asian Pacific Americans comprise many communities, each with its own history, culture and language: Filipino, Chinese, Japanese, Korean, Vietnamese, Thai, Cambodian, Lao, Lao-Mien, [*191] Hmong, Indian, Indonesian, Malaysian, Samoan, Tongan, Guamanian, Native Hawaiian, and more. The legal problems facing individuals from different communities defy simple categorization. The problems of a fourth-generation Japanese American victim of job discrimination, a monolingual refugee from Laos seeking shelter from domestic violence, an elderly immigrant from the Philippines trying to keep a job, and a newcomer from Western Samoa trying to reunite with relatives living abroad all present unique challenges. Add in factors such as gender, sexual orientation, age, and disability, and the problems become even more complex. n459
Angela Harris echoes this observation by pointing out how some feminist legal theory assumes "a unitary, 'essential' women's experience [that] can be isolated and described independently of race, class, sexual orientation, and other realities of experience." n460 The same might be said of the "people," which, like the "working class," may be too broad. Other categorizations--such as "low-income workers," "immigrants", and the "poor", for example--may be too narrow to have

the social weight to fundamentally transform society.

Law Debate Good

2NC Law Debate

First, we do not need to win that the state is good, rather just that the value of the state is something that should be debated about. This massively raises the bar on their ev – it can't just say that the state is bad or ineffective, their ev has to say that the state should not even be discussed. General indictments of the state can be done on the neg, while still preserving limited and effective debate and research.

Second, the affirmative's ability to critique the law, indict it's structure and advocate for negative action all short circuit their claims about reformism and agency – these public deliberations about the law and power positive forces for marginalized communities

Morales-Cruz 11 (J.D. Puerto Rico, LL.M. Harvard, M.Jur. Oxford)
(Myrta, COUNTER-HEGEMONIC WORK AS A LAWYER: THE ROLE OF THE LAWYER WORKING WITH MARGINALIZED GROUPS IN THE AGE OF "GLOBAL GOVERNANCE", Revista Juridica Universidad Interamericana De Puerto Rico Facultad De Derecho, 45 Rev. Jur. U.I.P.R. 399)

> The discourse of the 'autonomy of law' has been used to confer legitimacy to globalization processes. n13 Counter-hegemonic work as a lawyer involves working in strategic and pragmatic ways that can both question the 'autonomy of the law' discourse, when it is used to sustain neoliberal claims, and use it to confer legitimacy to counter-hegemonic claims against neoliberal globalization (e.g. the discourse of human rights). This is particularly difficult since using the discourse of the 'autonomy of law' can legitimize neoliberal globalization. n14 Carroll, quoting Ford, states that from a neo-Gramscian perspective global civil society appears as a "terrain for both legitimizing and challenging global governance." n15 Social movements must be aware of the risk of reproducing, rather than challenging global hegemony in the global discursive space. n16
>
> Since the publication of Lucie White's article To Learn and Teach: Lessons from Driefontein on Lawyering and Power in 1988, and Gerald Lopez's book Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice in 1992, many progressive lawyers in the United States were challenged to focus on empowering the communities with which they worked as opposed to focusing on result oriented legal strategies. n17
>
> [*402] White and López suggest that legal strategies should be used as part of a broader strategy of organizing marginalized communities and helping to support an empowerment process. n18 They embrace the 'critical legal studies' theory's vision in which law is indeterminate, another arena where political battles are being fought. n19 A main challenge of lawyers is not dominating the process in a way that can co-opt the possibilities of social mobilization. n20 It is important to be creative with the law since the grievances that marginalized communities have are not easily translated into legal claims. n21 Litigation has its limitations and should be used as an option of last resort; as part of a larger social mobilization campaign, as "public action with political significance." n22 Focusing on pedagogy based on dialogue and strategic work to promote client empowerment, and engaging in multidisciplinary

work is of vital importance. n23 Strategies such as organizing, lobbying, holding press conferences, and protests are crucial. Finally, it is helpful to link struggles with other local, national and international struggles. n24

This is an advocacy model that centers on process instead of results. n25 López has described this model as one where the focus is on "process oriented client empowerment". n26 Traditionally lawyers that work with marginalized groups have concentrated on developing legal strategies in order to obtain results, "result oriented legal strategies". n27 López prefers a model more focused on the process, one that will allow the low income 'client' to take control of his or her situation and that will promote empowerment and self-help. n28

White has written extensively about this type of advocacy model, which has been called by some commentators "law and organizing". n29 Pedagogical work, based on a dialogue with the community, is of key importance. n30 The theory and methodology of popular education developed by the Brazilian educator and lawyer, Paulo Freire, are particularly useful in this type of lawyering work. n31 Freire critiques [*403] traditional education by labeling it "banking education" since it assumes that there is an "empty brain" where the educator "deposits" information. n32 For education to be truly transformative it should start from the experience of the participants and be based on dialogue and action; it must be a participatory experience, aiming to generate a process of "consciousness raising". n33

As early as 1970, Steven Wexler, in an article published in the Yale Law School Law Review, had remarked that since the problems of the poor were fundamentally problems of a social nature and not individual problems, poor people had to organize and act for themselves. To support this process, poverty lawyers had to radically depart from the traditional lawyering role and do work similar to that of a teacher, turning each moment into an occasion for poor clients to practice skills and establish networks that would allow them to make change. n34

Lobbying can be a good strategy for promoting empowerment among marginalized groups. n35 In court, lawyers are in control of the process. Lobbying makes it easier for lawyers to work side by side with marginalized groups. They gain power as they speak and argue about their situation, about the law and about how the law should be. Their voice is independent from the voice of the lawyers. Focusing on lobbying, as opposed to litigation also makes it easier for marginalized groups to gain access to the press and to make alliances with other marginalized groups, which helps to create more public discussion about their issues. n36

Third, outside of the law being good or bad, legal education is crucial to empower even the most revolutionary of movements. Debate about arcane legal details are crucial to the short-term survival of oppressed populations – that's our 1NC Arkles ev the legal system is maintained by and predicated on arcane knowledge but legal education has the opportunity to expose the workings of the system to those who seek to destroy it and dismantle it. This is also crucial in the short term because being able to navigate is key to communities that are going to continue to have to navigate government agencies and organizations to survive.

Forth, no alternative solvency mechanism – they don't magically create a space outside the law much less the bounds of white supremacy and capitalism. Cooption is more likely in non-state activism than in the law. Their ev romanticizes action outside the state and law by failing to offer any clear mechanism for change or concrete alternative. 1NC Lobel says opting out of traditional legal reform avenues only accentuates cooption and passive status quo politics. It is the act of engagement, not law, that risks cooptation and compromise. It is not the law that threatens movements, it is the essential difficulties of implementing theory into practice.

Even if we lose all those arguments though engaging with state is good for social change –

a. **<u>It's inevitable</u> – 1NC Caplong activists often do not have a choice but to work within the legal system especially under conditions of criminalization.**
b. **<u>Momentum Building</u> – Campaigning against particular laws can be effective and is often necessary. Seemingly small reform efforts can be effective tools to mobilize populations. This <u>draw factor</u> disproves their general claim about reformism**

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(Scott L. and Ingrid V., A Critical Reflection on Law and Organizing, 48 UCLA L. Rev. 443, LN)

> Gordon has offered a particularly comprehensive vision of law and organizing practice. She argues that there are "three interesting and under-explored possibilities for how to use law" in grassroots organizing work. n105 First, <u>law can be used "as a draw" to bring new members</u> into an organization that has larger organizing and reformist goals. n106 The promise of legal assistance on a discrete case can motivate a worker to come to a workers' meeting at which she will be exposed to the broader educational and organizing activities of the group. Second, the law can be used as a "measure of injustice." n107 For instance, as part of educational efforts, workers can be asked to analyze how their own experiences may diverge from what the law defines as basic legal protections. In this way, a <u>discussion of legal issues can highlight discrepancies between the law as written and the law as lived by marginalized workers</u>. n108 <u>The gap between the legal ideal and practical reality can then be used to chart a course for political action and community mobilization</u>. Finally, <u>the law can be used as "part of a larger organizing campaign</u>" n109 <u>in which the ultimate goal is</u> not <u>to</u> win a particular lawsuit, but rather to achieve specific organizing objectives and <u>build power among unrepresented groups</u>. According to this conception, <u>the law serves as a strategic mechanism</u> to support or advance organizing campaigns in practical ways - for example, by filing a lawsuit to call attention to a broader structural issue or to put pressure on an employer or industry to undertake systemic reforms. n110

[this is the one to skip if you're short on time]

c. Short term survival – Rejecting engagement with the law directly trades off with mechanisms that help ensure the daily survival of underserved populations – [poor people flood legal services offices seeking assistance in accessing welfare benefits, contesting discriminatory employment terminations, petitioning for political asylum, resisting unlawful evictions, obtaining restraining orders from abusive spouses, and recovering illegally withheld wages]

Cummings and Eagly 2k1 (Staff Attorney, Community Development Project, Public Counsel Law Center, Los Angeles, California. J.D., Harvard Law School; Coordinating Attorney, Immigrant Domestic Violence Project, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Los Angeles, California. J.D., Harvard Law School)
(Scott L. and Ingrid V., A Critical Reflection on Law and Organizing, 48 UCLA L. Rev. 443, LN)

> First, exaggerating the ineffectiveness of traditional legal interventions minimizes the significant institutional restructuring that legal advocacy has achieved. Indeed, creative litigation and court-ordered remedies have changed many aspects of the social, political, and economic landscape. n203 An analysis that obscures this fact truncates progressive legal practice by closing off potential avenues for redress.
> In addition, the suggestion by proponents of law and organizing that lawyers should act as organizers, facilitators, and educators would require that less time be spent providing conventional representation to low-income clients, n204 who are already drastically underserved. n205 As it stands, [*492] there are only six thousand full-time legal services staff lawyers to meet the legal needs of the forty-five million persons who are income-eligible for free legal services. n206 Each day, poor people flood legal services offices seeking assistance in accessing welfare benefits, contesting discriminatory employment terminations, petitioning for political asylum, resisting unlawful evictions, obtaining restraining orders from abusive spouses, and recovering illegally withheld wages. Given the scarcity of resources in legal aid programs, a shift toward an organizing-centered approach would result in a reduction of basic services to these clients.

2NC Neolib Add On

Using the state is the only way to check neoliberal exploitation

Connolly 13 (Krieger-Eisenhower Professor of Political Science at Johns Hopkins University)
(William, The Fragility of Things: Self-Organizing Processes, Neoliberal Fantasies, and Democratic Activism, pg. 40-42)

> 6) The democratic state, while it certainly cannot alone tame capital or re- constitute the ethos and infrastructure of consumption, must play a significant role in reconstituting our lived relations to climate, weather, re- source use, ocean currents, bee survival, tectonic instability, glacier flows, species diversity, work, local life, consumption, and investment, as it also responds favorably to the public pressures we must generate to forge a new ethos. A new, new left will thus experimentally enact new intersections be- tween role performance and political activity, outgrow its old disgust with the very idea of the state, and remain alert to the dangers states can pose. It will do so because, as already suggested, the fragile ecology of late capital requires state interventions of several sorts. A refusal to participate in the state today cedes too much hegemony to neoliberal markets, either explicitly or by implication. Drives to fascism, remember, rose the last time in capitalist states after a total market meltdown. Most of those movements failed.
> But a couple became consolidated through a series of resonances (vibrations) back and forth between industrialists, the state, and vigilante groups in neighborhoods, clubs, churches, the police, the media, and pubs. You do not fight the danger of a new kind of neofascism by

withdrawing from either micropolitics or state politics. You do so through a multisited politics designed to infuse a new ethos into the fabric of everyday life. Changes in ethos can in turn open doors to new possibilities of state and interstate action, so that an advance in one domain seeds that in the other. And vice versa. A positive dynamic of mutual amplification might be generated here. Could a series of significant shifts in the routines of state and global capital ism even press the fractured system to a point where it hovers on the edge of capitalism itself? We don't know. That is one reason it is important to focus on *interim goals*. Another is that in a world of becoming, replete with periodic and surprising shifts in the course of events, you cannot project far beyond an interim period. Another yet is that activism needs to project concrete, interim possibilities to gain support and propel itself forward. That being said, it does seem unlikely to me, at least, that a positive interim future includes either socialist productivism or the world projected by proponents of deep ecology.

7) To advance such an agenda it is also imperative to negotiate new connec- tions between nontheistic constituencies who care about the future of the Earth and numerous devotees of diverse religious traditions who fold posi- tive spiritualities into their creedal practices. The new, multifaceted move- ment needed today, if it emerges, will take the shape of a vibrant pluralist assemblage acting at multiple sites within and across states, rather than either a centered movement with a series of fellow travelers attached to it or a mere electoral constellation. Electoral victories are important, but they work best when they touch priorities already embedded in churches, uni- versities, film, music, consumption practices, media reporting, investment priorities, and the like. A related thing to keep in mind is that the capitalist modes of acceleration, expansion, and intensification that heighten the fra- gility of things today also generate pressures to *minoritize* the world along multiple dimensions at a more rapid pace than heretofore. A new pluralist constellation will build upon the latter developments as it works to reduce the former effects.

I am sure that the forgoing comments will appear to some as "opti- mistic" or "utopian." But optimism and pessimism are both primarily spec- tatorial views. Neither seems sufficient to the contemporary condition. In- deed pessimism, if you dwell on it long, easily slides into cynicism, and cynicism often plays into the hands of a right wing that applies it exclu- sively to any set of state activities not designed to protect or coddle the corporate estate. That is one reason that "dysfunctional politics" redounds so readily to the advantage of cynics on the right who work to promote it. *They want to promote cynicism with respect to the state and innocence with respect to the market.* Pure critique, as already suggested, does not suffice either. Pure critique too readily carries critics and their followers to the edge of cynicism.

It is also true that the above critique concentrates on neoliberal capital- ism, not capitalism writ large. That is because it seems to me that we need to specify the terms of critique as closely as possible and think first of all about interim responses. If we lived under, say, Keynesian capitalism, a somewhat different set of issues would be defined and other strategies identified. Capitalism writ large—while it sets a general context that neoliberalism inflects in specific ways—sets too large and generic a target. It can assume multiple forms, as the differences between Swedish and American capitalism suggest; the times demand a set of interim agendas targeting the hegemonic form of today, pursued with heightened militancy at sev- eral sites. The point today is not to wait for a revolution that overthrows the whole system. The "system," as we shall see further, is replete with too many loose ends, uneven edges, dicey intersections with nonhuman forces, and uncertain trajectories to make such a wholesale project plausible. Be- sides, things are too urgent and too many people on the ground are suffer- ing too much now. The need now is to activate the most promising political strategies to the contemporary condition out of a bad set. On top of assessing *probabilities* and predicting them with secret relish or despair—activities I myself pur- sue during the election season—we must define the urgent *needs* of the day in relation to a set of *interim possibilities* worthy of pursuit on several fronts, even if the apparent political odds are stacked against them. We then test ourselves and those possibilities by trying to enact this or that aspect of them at diverse sites, turning back to reconsider their efficacy and side effects as circumstances shift and results accrue. In so doing we may ex- perience more vibrantly how apparently closed and ossified structures are typically punctuated by jagged edges, seams, and fractures best pried open with a mix of public contestation of established interpretations, experimen- tal shifts in multiple role performances,

micropolitics in churches, univer- sities, unions, the media, and corporations, state actions, and large-scale, cross-state citizen actions.

Pragmatic use of the law can be successful at fighting back against neoliberalism

Ashar 8 (Associate Professor of Law and Director of the Immigrant and Refugee Rights Clinic, City University of New York (CUNY) School of Law)
(Sameer M., LAW CLINICS AND COLLECTIVE MOBILIZATION, 14 Clinical L. Rev. 355, LN)

> Public interest lawyers today represent clients in a period of rapid political and economic change. Poor people are besieged by unprecedented market forces with less protection by the state than at any other time in our recent history. Multinational corporate actors and their collaborators in government have advanced an agenda in both developed and developing nations - described by some as "neoliberal globalization"-with three major tenets: (1) weakening and impoverishment of the state so that it is unable to provide basic social protections; (2) privatization of formerly public functions; and (3) free and rapid movement of capital that facilitates lowered labor and environmental standards. n9 In the United States, the advocates of neoliberalism successfully fought to remove the federal social welfare entitlement in 1996 and to condition access to subsistence relief on participation in enforced labor programs, thus expanding the class of [*361] low-wage workers in the economy. n10 The reserve wage has fallen as our clients have become more vulnerable to their employers and other market actors, including banks and landlords. Previously robust civil society organizations, such as unions and identity-based associations, have weakened n13 and increasingly depend upon corporate and governmental patrons.
> In response to this environment, a growing number of small groups of poor and working-class people have risen to challenge the reordering of our economy and politics. These resistance movements self-consciously act locally and think globally, allying themselves (actually or symbolically) with grassroots movements outside the United States. n14 This resistance simultaneously opposes neoliberalism and constructs a decentralized "radical democratic" program. n15 In the area in which I work, immigrant workers and organizers have banded together along ethnic, geographic, and occupational lines in "worker centers" to improve their conditions of employment through direct action, litigation, and legislation. n16 These worker centers have drawn [*362] extensively in the course of their campaigns on legal resources provided by a small number of law school clinics. n17 Similarly informed and designed law school clinics have also had highly productive collaborations with environmental justice, n18 welfare rights, n19 and community development organizations n20 that are either directly or indirectly related to global social movements.

Law Good – Example Run

This is really more for your own edification but I suppose if you need to get crazy deep on this debate you might read this.

We'll provide a bunch of examples that the law can be used successfully for Black and other oppressed populations:

First, community labor groups and the movement for undocumented immigrants

Cummings 7 (Acting Professor of Law, UCLA School of Law)
(Scott L., CRITICAL LEGAL CONSCIOUSNESS IN ACTION, 120 Harv. L. Rev. F. 62, Harvard Law Review Forum, LN)

B. Revisiting the Role of Law Within the Paradigmatic Social Movements

Focusing on the world of practice allows us to discern multiple "critical legal consciousnesses," including one that I would associate with the notion of "constrained legalism," by which I mean an approach to legal activism informed by a critical appreciation of law's limits that seeks to exploit law's opportunities to advance transformative goals. To illuminate this approach, it is instructive to return briefly to current activity within the two fields that have symbolized the perils of legal cooptation: labor and civil rights. Interestingly, both movements have embraced law reform as an important goal, though the current wave of reform efforts looks quite different from its New Deal and Civil Rights era precursors.

Within the labor movement, local legal reform to promote labor standards has been pursued by a coalition of community-labor groups, supported by public interest lawyers. In Los Angeles, for example, community-labor coalitions have pressed a reform agenda that includes card check neutrality, living wage laws, the imposition of community benefits requirements on publicly subsidized private developers, and limits on the negative economic impact of big-box retail stores like Wal-Mart. n39 These efforts have enlisted lawyers to conduct research on living wage impacts, draft legislation, negotiate community benefits agreements with developers, and resist big-box developments through land use and environmental challenges.

Classical civil rights activism has been channeled into a diverse range of new movements, including prominent efforts to promote the rights of immigrants and other noncitizens. The movement for undocumented immigrant rights has deployed a traditional social movement strategy, with the 2006 "Spring Marches" demonstrating power in numbers in order to influence the content of a proposed guest worker statute. The movement has also relied on strategic litigation, as mentioned above in the context of restaurant and garment advocacy, as well as organizing-based labor enforcement efforts in the low-wage immigrant work sector, as the example of the Workplace Project illustrates. [*71] In the wake of the Bush administration's counterterrorism policies after 9/11, we have also been reminded of the continued importance of public interest law in protecting the rights of noncitizens against executive power, with the Center for Constitutional Rights bringing two successful lawsuits that resulted in courts upholding the right of detainees to challenge their detention through habeas corpus in Rasul v. Bush n40 and invalidating military commissions in Hamdan v. Rumsfeld. n41 Though these cases have by no means ended the battle over detainee rights, they have succeeded in mobilizing intense political pressure on administration officials to change their practices. It is the self-conscious effort to combine the legal and political -- to deploy them in mutually reinforcing ways that recognize the power and limits of both -- that points beyond the boundaries of extralegalism.

Second, environmental justice work

Cummings and Eagly 2k1 (Staff Attorney, Community Development Project, Public Counsel Law Center, Los Angeles, California. J.D., Harvard Law School; Coordinating Attorney, Immigrant Domestic Violence Project, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Los Angeles, California. J.D., Harvard Law School)
(Scott L. and Ingrid V., A Critical Reflection on Law and Organizing, 48 UCLA L. Rev. 443, LN)

For example, while an attorney at the California Rural Legal Assistance Foundation, Luke Cole engaged in a broad range of strategies, including community organizing, to remedy environmental problems faced by the poor. In Kettleman City, California, Cole worked with community leaders to organize meetings of neighborhood residents seeking to oppose the building of a toxic waste incinerator. The residents initiated a letter-writing campaign n138 and established a core leadership group that mobilized the community into action. n139 This strong organizing effort, in conjunction with legal actions taken by Cole, played an important part in defeating the incinerator project. n140

Other examples underscore how law and organizing strategies can be effectively deployed to combat environmental racism. For instance, the Golden Gate Law and Justice Clinic worked with community-based organizations to halt the development of a power plant in the largely

African American Bayview-Hunters Point section of San Francisco. n141 Against the [*475] backdrop of threatened legal action, community groups organized strident opposition to the proposed plant at numerous administrative hearings, coordinated studies demonstrating its potentially deleterious health and economic consequences, and ultimately forced the city to adopt a resolution, crafted by community groups and their lawyers, that prevented the placement of any power generation facilities in the community. n142 In St. James Parish, Louisiana, local activists established a grassroots organization that held educational forums for community residents, participated in local governmental hearings, and collaborated with attorneys to defeat the siting of an environmentally hazardous plant in a predominantly African American community. n143

Professor Shelia Foster has discussed how a coalition of lawyers and community-based organizations in Chester, Pennsylvania worked to stop the clustering of commercial waste facilities in a low-income, African American neighborhood. n144 The Chester case study focused on the multifaceted strategy these organizations used to challenge the siting of a waste sterilization plant and soil incineration facility in a community that was already home to various environmental hazards. n145 In particular, the proposed sitings galvanized community residents to form an organization, Chester Residents Concerned About Quality of Life, that convened meetings with government and industry leaders, disrupted the operations of existing waste facilities, worked with public interest attorneys to challenge the issuance of site permits, and lobbied city council to increase the burden on companies seeking to locate hazardous facilities in Chester. n146 As a result of these efforts, community residents and their legal representatives were able to block the location of the soil incinerator. n147

Third is the Workplace Project

Cummings and Eagly 2k1 (Staff Attorney, Community Development Project, Public Counsel Law Center, Los Angeles, California. J.D., Harvard Law School; Coordinating Attorney, Immigrant Domestic Violence Project, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Los Angeles, California. J.D., Harvard Law School)
(Scott L. and Ingrid V., A Critical Reflection on Law and Organizing, 48 UCLA L. Rev. 443, LN)

Another practice frequently associated with community organizing is legislative advocacy. Although many efforts to influence legislation have an organizing component, it is important to disaggregate the concepts in order to better understand the different levers for applying political pressure. An example of effective legislative advocacy by the Workplace Project highlights this point. By organizing aggrieved Latino workers and building political coalitions with sympathetic constituencies, Workplace Project organizers were able to help win the passage of stringent employer penalties for nonpayment of wages. n169 In this effort, the Workplace Project relied on a variety of community-based techniques, including education, n170 media pressure, n171 and signature gathering. n172 In addition, organizers and community members worked together to draft legislation and conduct lobbying [*483] visits with key legislators. These varied practices suggest different roles for lawyers engaged in legislative work. In particular, practitioners supporting the efforts of a community-based organization to change the law might explain the technical aspects of the existing legal regime, research how other jurisdictions have dealt with similar issues, assist in drafting legislation, and help the organization understand and negotiate the legislative process.

Not only does organizing practice comprise a range of different techniques, it also takes place within disparate institutional contexts. In his recent work on organizing, Gary Delgado, one of the founders of ACORN, highlights three principal community organizing structures: (1) the direct membership model, (2) the coalition model, and (3) the institutionally based model. n173 These structures vary in terms of their constituencies and methods, and often organizers working within these structures employ a combination of tactical strategies. Groups using the direct membership model are generally small, geographically based organizations of low-and moderate-income members that aim to increase their political power through direct action, including organized protests, strategic pressure, and media campaigns. n174 Coalitions, in

contrast, are issue-based groupings of existing organizations that seek to mobilize their members to change public policy through lobbying, public hearings, and electoral work. n175 Institutionally based organizations, which tend to be affiliated with religious institutions, focus on developing strong indigenous leaders who use public pressure and negotiation strategies to influence local politics. n176

Law and organizing practice can vary depending on the type of institutional arrangements chosen by community groups. In a direct membership organization the lawyer might be asked to provide limited legal assistance to members. Frequently such services are promoted as a benefit of membership and used as a method to draw new members. For instance, a group focused on welfare reform might offer a free consultation with a lawyer on benefits issues in order to attract welfare recipients as members. Coalition [*484] organizations, in contrast, might find it useful for lawyers to share their knowledge of a particular specialized issue. For example, a coalition focused on immigrant rights would need a lawyer to explain existing immigration laws and interpret new legislative proposals. Finally, lawyers working with an institutionally based organization might be asked to analyze local redevelopment laws or the rules governing municipal decision making in order to strengthen the organization's ability to influence political decisions affecting the allocation of local resources.

Organizing must therefore be understood as encompassing a diverse range of methods and institutional forms. Although the analytic distinctions outlined in this part are schematic and do not fully capture the fluid nature of organizing work, they are nevertheless important for beginning to sharpen discussions of law and organizing practice. To move forward, these distinctions must be elaborated, challenged, and brought to life with practice-based examples. Sophisticated practitioners have already begun this process by providing models of coordinated law and organizing advocacy that deftly integrate different community-based techniques to achieve clearly defined strategic goals. For instance, the Workplace Project and Make the Road by Walking, a community-based organization in Bushwick, Brooklyn, both use organizing, education, media pressure, and legislative advocacy to advance their workers' rights agendas. n177 Similarly, the Metropolitan Alliance in Los Angeles has recently launched a Jobs and Health Care Campaign that thoughtfully combines an array of techniques - demonstrations, an electoral campaign, organization-building, and education - to increase quality jobs and expand job training programs in low-income communities. Yet, despite these examples of model practices, many community activists continue to adopt the rhetoric of organizing without having developed an understanding of the complexity of community-based practices. In order for lawyers to target their legal resources in a way that advances community projects, a more intricate typology of organizing methods is needed. At the moment, the picture of what organizing is - as well as what it is not - is still incomplete.

Law Good – Neolib

Abandoning legal structures for the sake of revolutionary purity would leave millions of trans, poor and Black people who are everyday attacked by those same structures without defense or recourse.

Robertson 97 (Osgoode Hall Law School, York University)

(Cherie. "The Demystification of Legal Discourse: Reconceiving the Role of the Poverty Lawyer as Agent of the Poor." Osgoode Hall Law Journal 35.3/4 (1997))

Empowerment of the poor will not come from a withdrawal of legal services. If we, as advocates of the poor, simultaneously withdrew the provision of our services, the current system would not bow down in penitent acquiescence under the weight of our moral uprightness, but rather, the system would greedily digest its unprotected prey and the fit that continued to survive would simply become relatively more fit. In the meantime, we need to work in collaboration with not for the poor. Poverty will only be eradicated through the coordinated efforts and actions of various different sectors of society committed to ending the oppression of the poor. We must

work to create alliances aimed at taking the poor out of isolation. As L6pez writes:
Lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up to being educated by all those with whom they come in contact, particularly about the traditions and experiences of life on the bottom and at the margins.

Law Good – Social Movements

Marginalized groups use the law precisely because they lack power

Lobel 7 (Assistant Professor of Law, University of San Diego)
(Orly, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, 120 Harv. L. Rev. 937, February, 2007, LN)

In the triangular conundrum of "law and social change," law is regularly the first to be questioned, deconstructed, and then critically dismissed. The other two components of the equation - social and change - are often presumed to be immutable and unambiguous. Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need, in any effort for social reform, to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action. Despite its weaknesses, however, law is an optimistic discipline. It operates both in the present and in the future. Order without law is often the privilege of the strong. Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories. Rather than experiencing a disabling disenchantment with the legal system, we can learn from both the successes and failures of past models, with the aim of constantly redefining the boundaries of legal reform and making visible law's broad reach.